



**Economic Regulation Authority**

# Ringfencing rules for the Alinta Port Hedland and Horizon Power coastal networks

Determination

21 January 2022

## **Economic Regulation Authority**

Level 4, Albert Facey House

469 Wellington Street, Perth WA 6000

**Telephone** 08 6557 7900

**Email** [info@erawa.com.au](mailto:info@erawa.com.au)

**Website** [www.erawa.com.au](http://www.erawa.com.au)

This document can also be made available in alternative formats on request.

National Relay Service TTY: 13 36 77

© 2022 Economic Regulation Authority. All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged

# Contents

<b>1. Decision</b> .....	<b>1</b>
<b>2. Regulatory requirements</b> .....	<b>4</b>
<b>3. Network descriptions</b> .....	<b>9</b>
3.1 Alinta Port Hedland network .....	9
3.2 Horizon Power coastal network .....	10
<b>4. Content of ringfencing rules</b> .....	<b>12</b>
<b>5. Protecting commercially sensitive information</b> .....	<b>13</b>
<b>6. Cost allocation</b> .....	<b>15</b>
<b>7. Preventing discriminatory treatment</b> .....	<b>16</b>
<b>8. Compliance monitoring and reporting</b> .....	<b>17</b>

# 1. Decision

The *Pilbara Networks Access Code* sets out the light-handed access regime that facilitates third-party access to covered networks in the Pilbara region. Currently, the Code covers two Pilbara networks:

- The Alinta Port Hedland network, which is owned and operated by Alinta Duke Energy WA Power Pty Ltd (ADEWAP), a subsidiary of Alinta Energy.
- The Horizon Power coastal network, which is owned and operated by Horizon Power, a government trading enterprise.

Covered networks are required to have ringfencing rules that effectively address the requirements set out in chapter 8 of the Code.

The primary objective of chapter 8 is to ensure that vertical integration of a network service provider (NSP) with an “other business” does not lead to a reduction in competition in related markets through the implementation of ringfencing rules, which:

- Prevent the use of commercially sensitive information outside of the network business or for a purpose other than the purpose for which the information was acquired or developed.
- Allocate costs between the network business and any associate or other business of the NSP in a manner that avoids the charges being paid by users of the network business incorporating costs or charges associated with an associate or other business of the NSP.
- Prevent discriminatory treatment in favour of an associate or other business of the NSP as compared to a competitor in a related market or against such a competitor.<sup>1</sup>

A secondary objective of chapter 8 is to achieve the primary objective by allowing for:

- Flexibility, recognising the fact that the structure and nature of NSP’s businesses differ substantially.
- A balancing of cost and disruption against the primary objective.
- Flexibility to deal with changing circumstances over time.

The requirements for the content of the ringfencing rules are set out in section 134 of the Code.

In addition to measures that ensure the achievement of the primary ringfencing objective, section 134 requires that the network service providers establish, maintain and keep records that provide sufficient information to enable an assessment of compliance with the ringfencing rules, and to detect non-compliance.

As required under section 135(1) of the Code, ADEWAP and Horizon Power applied to the ERA for a determination on proposed ringfencing rules for the Alinta Port Hedland network and the Horizon Power coastal network respectively.

<sup>1</sup> The Code defines “other business” as the part or parts of a NSP’s business which are not the *network business*, and includes any part or parts of the NSP’s business and functions which acquire *covered services* from the *network business*.

Under section 135(4) of the Code, the ERA must determine whether the ringfencing rules proposed by a NSP effectively address the requirements set out in chapter 8 of the Code:

- If the ERA determines that the proposed ringfencing rules effectively address the requirements of chapter 8 of the Code, then the ERA must publish a determination to that effect (section 135(4)(a)).
- If the ERA determines that the proposed ringfencing rules do not effectively address the requirements of chapter 8 of the Code, then the ERA must notify the NSP of the determination and may suggest amendments to the ringfencing rules that would meet the relevant requirements (section 135(4)(b)).

Under section 135(5) of the Code, any amendments suggested by the ERA must be consistent with the applicable objectives under chapter 8 of the Code and:

- Must have regard to the possible harms the ringfencing rules are intended to address and the direct and indirect costs that are likely to be incurred by the NSP by imposing a particular requirement.
- Must not result in the cost of compliance with the relevant requirement for the NSP and its associates outweighing the public benefit resulting from compliance.

The ERA published the proposed ringfencing rules submitted by ADEWAP and Horizon Power on 23 August 2021 for consultation. The ERA received submissions from Alinta Energy and Horizon Power, which it published on 21 September 2021.

Following an assessment of the proposed ringfencing rules, including matters raised in stakeholder submissions, the ERA determined that the proposed ringfencing rules submitted by ADEWAP and Horizon Power did not effectively address the requirements in Chapter 8 of the Code.

In particular, the ERA considered that the ringfencing rules proposed by the NSPs did not include adequate measures to ensure the achievement of the primary ringfencing policy objective – that is, to reduce the risks of reduced competition caused by vertical integration of the NSP. In addition, the ERA considered that the measures proposed for monitoring compliance with the ringfencing rules, and detecting non-compliance, were not adequate.

As required under section 135(4)(b) of the Code, the ERA notified the NSPs of its determination.

In addition, as permitted under section 135(4)(b), the ERA suggested amendments to the proposed ringfencing rules that would meet the relevant requirements. The ERA consulted with the NSPs to ensure that the cost of compliance resulting from the suggested amendments would not exceed the public benefit of reducing the potential harms associated with vertical integration.

In accordance with section 135(6)(a) of the Code, ADEWAP and Horizon Power amended the proposed ringfencing rules and resubmitted them to the ERA.

The ringfencing rules resubmitted by ADEWAP and Horizon Power adopted the amendments suggested by the ERA. On that basis, the ERA is satisfied that the resubmitted ringfencing rules effectively address the requirements of chapter 8 of the Code and has made a determination to that effect as required under section 135(4)(a). The approved ringfencing rules are attached to this decision.

As required under section 139(3) of the Code, ADEWAP and Horizon Power must publish the approved ringfencing rules within 10 business days of the date of this decision. Consistent

with the provisions in section 133(2), the approved ringfencing rules must commence within six months of the date they are published by ADEWAP and Horizon Power respectively.

Section 137 of the Code requires ADEWAP and Horizon Power to review their ringfencing rules not less than 15 months before the commencement of the next pricing period or within three months after the occurrence of an event that is likely to have a material effect on the operation of the ringfencing rules.<sup>2</sup> If any changes are required to address the requirements of chapter 8, ADEWAP and/or Horizon Power must submit revised ringfencing rules to the ERA for a determination under section 135 of the Code.

Further details of the ERA's determination are set out in the following sections.

---

<sup>2</sup> The new pricing period for both ADEWAP and Horizon Power commences on 1 July 2024 so both NSPs must review their ringfencing rules no later than 31 March 2023.

## 2. Regulatory requirements

Chapter 8 of the Code sets out the ringfencing requirements.

The ringfencing policy objective is provided in section 127:

### 127. Ringfencing policy objective

- (1) The primary objective of Chapter 8 is to ensure that vertical integration of an NSP with an *other business* does not lead to a reduction of competition in a *related market* by requiring rules which —
  - (a) prevent the use of *commercially sensitive information* outside of the network business or for a purpose other than the purpose for which the information was acquired or developed; and
  - (b) allocate costs between the *network business* and any *associate* or *other business* of the NSP in a manner which avoids the charges being paid by *users* of the *network business* incorporating costs or *charges* associated with an *associate* or *other business* of the Network Service Provider (other than charges properly and transparently levied by the *associate* or *other business* for services or other things provided to, or at the direction of, the *network business* or the *ISO* for the benefit of *users*, such as charges for the supply of essential system services); and
  - (c) prevent discriminatory treatment:
    - (i) in favour of an *associate* or *other business* of the Network Service Provider as compared to a competitor in a *related market*; or
    - (ii) against such a competitor.
- (2) A secondary objective of Chapter 8 is to achieve the primary objective by allowing for —
  - (a) flexibility, recognising the fact that the structure and nature of Network Service Provider's businesses differ substantially; and
  - (b) a balancing of cost and disruption against the primary objective of this Chapter 8; and
  - (c) flexibility to deal with changing circumstances over time.

“Network Service Provider” (NSP) is defined as a person who owns, controls or operates a Pilbara network. “Pilbara network” is defined as network infrastructure facilities that are located wholly or partly in the Pilbara region.

“Other business” is defined as the part, or parts, of a NSP’s business and functions that are not the network business and includes any part or parts of the NSP’s business and functions that acquire covered services from the network business.

“Network business” means the part of an NSP’s business and functions that are responsible for the operation and maintenance of a light regulation network and the provision of covered services by means of the light regulation network. “Light regulation network” means a covered Pilbara network that is regulated by Part 8A of the *Electricity Industry Act 2004*.

“Related market” means the market in which a related business of an NSP, or an associate of an NSP, participates. “Related business” means the business of generating, purchasing or selling electricity, but does not include generating, purchasing or selling electricity to the extent necessary:

- For the safe and reliable operation of a light regulation network.

- To enable an NSP to provide balancing and ancillary services in connection with a light regulation network.

“Commercially sensitive information” means all confidential or commercially sensitive information in relation to, as applicable:

- An applicant or customer that is developed by or comes into the possession of an NSP, including a network business’s present and future dealings with the applicant, or customer, but excludes aggregated information that does not relate to an identifiable applicant or customer.
- An NSP that comes into the possession of another NSP for the purposes of performing a function under the Pilbara networks rules.
- An NSP that is developed by or comes into the possession of an applicant or customer, but excludes information required by this Code to be published or aggregated information that does not relate to the identifiable NSP.

The content of the ringfencing rules is prescribed in section 134 of the Code:

#### 134. Content of ringfencing rules

- (1) *Ringfencing rules* must contain measures, which may include processes and procedures, designed to ensure the following, in each case to the extent the relevant subsection below is applicable —
- (a) in respect of section 127(1)(a) of the primary objective — that *commercially sensitive information* and any information received by the NSP in respect of a function under the *Pilbara network rules* is kept confidential and is only used within the *network business* and for the purpose for which it was acquired or developed; and
  - (b) in respect of section 127(1)(b) of the primary objective — that the NSP allocates or attributes costs relating to its *network business* in a way that, from the *ringfencing commencement date* —
    - (i) provides a true and fair view of —
      - A. the *network business* as distinct from any *other business* carried on by the NSP or any associate of the NSP; and
      - B. income derived from, and expenditure relating to, the *network business*; and
      - C. the *NSP’s* assets and liabilities so far as they relate to the *network business*; and
      - D. the percentage of any corporate overhead costs applied to the *network business* for services that provide the *network business* with necessary resources;

and
    - (ii) enables all revenue received by the NSP from the provision of goods or services to an *associate* of the *network business* to be separately identified; and
    - (iii) enables all expenditure by the NSP on goods or services provided by an *associate* of the *network business* to be separately identified; and
  - (c) in respect of section 127(1)(c) of the primary objective — measures to ameliorate the potential for discriminatory treatment in favour of an *associate* or *other business* of the NSP as compared to competitors in a *related market*, or against such competitors, whether the treatment occurs through operational decision making, contracting or otherwise; and



- (d) in respect of any specific objectives included in a determination under section 138(1) — measures to effectively address those objectives, including any measures specified by the Minister in the determination; and
  - (e) that the NSP establishes, *maintains* and keeps records that demonstrate —
    - (i) how the NSP meets its obligations under this section 134; and
    - (ii) which provide sufficient information to enable an assessment as to whether the NSP and its *network business* are complying, and have complied, with this section 134, and to detect any non-compliances.
- (2) *Ringfencing rules* which apply to a *network business* may, and must, to the extent necessary to achieve the objectives under this Chapter 8, require an NSP to procure an *associate* of the *network business* to comply with any applicable *ringfencing rules*.

The requirements for the ERA's determination are provided in section 135 of the Code:

### 135 Authority to approve ringfencing rules

- (1) An NSP must apply to the *Authority* for a determination whether the NSP's proposed *ringfencing rules* adequately address the requirements of this Chapter 8.
- (2) Following an application by an NSP under section 135(1), the *Authority* must complete the process in this section 135 within six months after receipt of the proposed *ringfencing rules*.
- (3) Before making a determination under section 135(4) the *Authority* may (but is not required to) consult the public in accordance with the *standard consultation process*.
- (4) The *Authority* must determine that the proposed *ringfencing rules* either —
  - (a) effectively address the requirements of this Chapter 8 — in which case the *Authority* must *publish* a determination to that effect ("**ringfencing approval**"); or
  - (b) do not effectively address the requirements of this Chapter 8, in which case the *Authority* —
    - (i) must notify the NSP of the determination; and
    - (ii) with the notice may, but is not required to, suggest amendments to the *ringfencing rules* that would meet the relevant requirements.
- (5) Any amendments to *ringfencing rules* suggested by the *Authority* under section 135(4)(b)(ii) must be consistent with the applicable objectives under this Chapter 8 and —
  - (a) must have regard to —
    - (i) the potential harms the *ringfencing rules* are intended to address; and
    - (ii) the direct and indirect costs that are likely to be incurred by the NSP in imposing a particular requirement; and
  - (b) must not result in the cost of compliance with the relevant requirement for the NSP (and its *associates*) outweighing the public benefit resulting from compliance. If the relevant requirement would, in the *Authority's* opinion, lead to increased competition in a market, the *Authority* must, in carrying out the assessment, disregard costs associated with losses arising from competition in upstream or downstream markets.
- (6) If the *Authority* makes a determination under section 135(4)(b), then-
  - (a) the NSP must, within 30 *business days* of the notice under section 135(4)(b)(i), amend the *ringfencing rules* and resubmit them to the *Authority* and the *Authority* must assess the resubmitted *ringfencing rules* in accordance with this

section 135. If the *Authority* chooses to consult the public in relation to the resubmitted ringfencing rules the *Authority* may do so in accordance with the *expedited consultation process*; and

- (b) if following an assessment of the resubmitted *ringfencing rules*, the *Authority* determines that the amended *ringfencing rules* do not effectively address the requirements of this Chapter 8, then the *Authority* must –
    - (i) *publish* a determination to that effect; and
    - (ii) draft *ringfencing rules* for the purpose of ensuring that the requirements of this Chapter 8 are adequately addressed, which rules must be consistent with the requirements of section 135(5), and provide those *ringfencing rules* to the *NSP* at the same time as the *Authority's* determination under section 135(6)(b)(i); and
    - (iii) *publish* a determination ("**ringfencing approval**") approving the *ringfencing rules* drafted and provided under section 135(6)(b)(ii);
  - and
  - (c) if the *NSP* does not submit amended *ringfencing rules* within the time required by section 135(6)(a) – the *Authority* must *publish* a determination that the *NSP's* proposed *ringfencing rules* do not effectively address the requirements of this Chapter 8.
- (7) The *Authority* must not make a determination which would require an *NSP* or other person to engage in an act or omit to engage in an act which would contravene a *written law* or a *statutory instrument*.
  - (8) Subject to section 135(7), the *Authority* has *limited discretion* under this section 135.
  - (9) The effect of a ringfencing approval by the *Authority* under this section 135 is to bind the *arbitrator* in respect of an *access dispute* regarding the effectiveness of the *ringfencing rules* to address the requirements of this Chapter 8.

Limited discretion is defined in section 10(1) of the Code:

#### 10. Limited discretion for decision makers in certain circumstances

- (1) If a provision of this Code states that a *decision maker* has "**limited discretion**" in respect of a matter, then the *decision maker* must not *require changes* to an *NSP proposal* in respect of that matter, if the *decision maker* is satisfied that the proposal –
  - (a) complies with applicable requirements of this Code and the Act; and
  - (b) is consistent with applicable criteria (if any) prescribed by or under this Code and the Act.

Section 13 of the Code requires the ERA to consider the Pilbara electricity objective when performing a function under the Code and the matters set out in regulation 4 of the *Electricity Industry (Pilbara Network) Regulations 2021*.

The Pilbara electricity objective is set out in section 119(2) of Part 8A of the *Electricity Industry Act 2004*:

#### 119 Purposes and objective of this Part

...

- (2) The objective of this Part (the **Pilbara electricity objective**) is to promote efficient investment in, and efficient operation and use of, services of Pilbara networks for the long-term interests of consumers of electricity in the Pilbara region in relation to –
  - (a) price, quality, safety, reliability and security of supply of electricity; and
  - (b) the reliability, safety and security of any interconnected Pilbara system.

The matters set out in regulation 4 of the Regulations are:

**4. Matter to have regard to when performing functions under Part 8A of the Act (Act s. 119)**

...

- (a) the contribution of the Pilbara resources industry to the State's economy;
- (b) the nature and scale of investment in the Pilbara resources industry;
- (c) the importance to the Pilbara resources industry of a secure and reliable electricity supply;
- (d) the nature of electricity supply in the Pilbara region, including whether or not regulatory approaches used outside the Pilbara region are appropriate for the region, Pilbara network users and Pilbara networks;
- (e) any other matter the person or body considers relevant.

### 3. Network descriptions

The Code applies to covered networks in the Pilbara region. The networks currently covered under the Code are the:

- Alinta Port Hedland network.
- Horizon Power coastal network.

Both networks form part of the North-West Interconnected System (NWIS), which comprises several interconnected electricity networks with different owners.

The three largest participants in the NWIS are Horizon Power, Alinta and Rio Tinto. Other large mining companies, including Roy Hill, BHP and Fortescue Metals Group, own major energy infrastructure in the NWIS and the broader Pilbara region to service their individual operations.

#### 3.1 Alinta Port Hedland network

The Alinta Port Hedland network is owned and operated by ADEWAP, a subsidiary of Alinta Energy. A map of the Alinta Port Hedland network, which is about 22.5 kms in length, is provided at Figure 1.

**Figure 1: ADEWAP Network**



Source: ADEWAP, *Ringfencing Rules ADEWAP Network*, July 2021, p.6

The Alinta Port Hedland network comprises three 66kV conductors that provide:

- Transmission between the Boondarie and Port Hedland Power Stations (~5kms).
- Transmission from Port Hedland Power Station to the Horizon-owned Wedgefield Zone Substation (~7kms).
- Transmission from Port Hedland Power Station to the Horizon-owned Murdoch Drive Zone Substation (~10.5kms).

ADEWAP operates the Boondarie and Port Hedland power stations with a combined installed nameplate capacity of 175MW. The network does not include any distribution substations, customer metering or low voltage distribution.

Currently, ADEWAP has power purchase agreements with three large-use customers. ADEWAP's power purchase agreements with its customers are bundled contracts for power supply including network services. The management of these agreements is performed by authorised ADEWAP individuals, who provide both network and generation services within the ADEWAP entity.

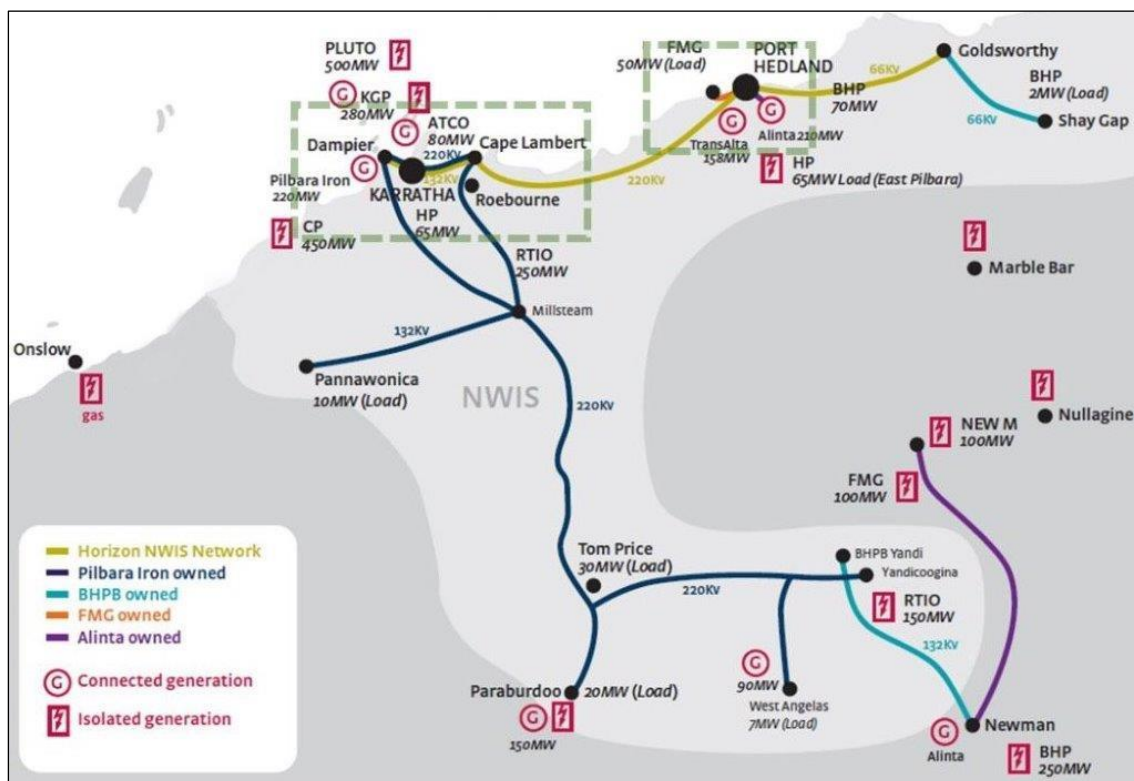
ADEWAP considers that there is a deemed associate arrangement between the ADEWAP network business and ADEWAP generation business.

ADEWAP states that one of its power purchase agreements is with Alinta Sales. However, Alinta Sales does not currently have any retail customers. As Alinta Sales is a separate legal entity within Alinta Energy, ADEWAP has identified this as an associate arrangement.

## 3.2 Horizon Power coastal network

The Horizon Power coastal network is owned and operated by Horizon Power, a government trading enterprise. A map of the Horizon Power coastal network, which is about 1,925 km in length, is provided at Figure 2.<sup>3</sup>

**Figure 2: Horizon Power coastal network within the North West Interconnected System**



Source: Horizon Power, *Overview of Horizon Power's network and customers in the Pilbara Region*, 26 July 2021, p. 7.

<sup>3</sup> Horizon Power, *Overview of Horizon Power's network and customers in the Pilbara Region*, 26 July 2021, p. 16.

The Horizon Power coastal network comprises:

- Infrastructure in the West Pilbara area, which supplies customers located in and around Karratha, including the connections to the Port of Dampier, Cape Lambert, Point Samson and Roebourne.
- Infrastructure in the East Pilbara area, which supplies customers in and around greater Port Hedland, including the connections to the port operations of BHP and Fortescue Metals Group.
- The transmission line that connects Horizon Power's network infrastructure in the West Pilbara and East Pilbara areas.
- The transmission line that runs from Port Hedland to the site of the former mining town of Goldsworthy.

The Horizon Power coastal network provides services to 16,050 low voltage retail customers in the townships of Karratha, Roebourne, Point Samson and Port Hedland. In addition, it supplies 35 high voltage customers, of which three are very large loads.

Horizon Power indicates that:

In accordance with section 131 of the Code, there is to be a deemed associate arrangement between the Horizon Power Pilbara Network Business and those parts of Horizon Power that provide or market contestable services in the Pilbara region.<sup>4</sup> The deemed associate arrangement sets out the terms and conditions of the arrangement by which the Horizon Pilbara Network Business provides covered services to those parts of Horizon Power that provide or market contestable services in the Pilbara region.

---

<sup>4</sup> Horizon Power, *Ringfencing Rules Part 2 Competition protection measures for the Horizon Power Pilbara Network Business*, June 2021, p. 17.

## 4. Content of ringfencing rules

The ringfencing rules proposed by both NSPs included additional information to provide context or justify the proposed rules.

The ERA considered that the inclusion of this additional information within the ringfencing rules, rather than in a separate supporting submission, reduced the clarity of the rules.

The ERA provided suggested amendments to each NSP to ensure that the ringfencing rules clearly identified the regulatory measures designed to meet the ringfencing requirements in the Code, including the associated regulatory obligations for relevant staff.

Both NSPs incorporated the ERA's suggested amendments in the ringfencing rules re-submitted under 135(6)(a) of the Code.

## 5. Protecting commercially sensitive information

Section 134(1)(a) of the Code requires that ringfencing rules contain measures to ensure that commercially sensitive information and any information received by the NSP in respect of a function under the Pilbara network rules is kept confidential and only used within the network business for the purpose that it was acquired or developed.

The Code defines commercially sensitive information as:

- ... all confidential or commercially sensitive information in relation to, as applicable —
- (a) an *applicant* or *customer* which is developed by or comes into the possession of a NSP including a *network business's* present and future dealings with the *applicant*, or *customer*, but excludes aggregated information that does not relate to an identifiable *applicant* or *customer*; or
  - (b) an NSP which comes into the possession of another NSP for the purposes of performing a function under *the Pilbara networks rules*; or
  - (c) an NSP which is developed by or comes into the possession of an *applicant* or *customer*, but excludes information required by this Code to be *published* or aggregated information that does not relate to the identifiable NSP.

Both NSPs proposed a combination of physical controls (restrictions to data and separation of staff) and administrative processes and procedures to ensure staff understand and comply with obligations in relation to commercially sensitive information.

Horizon Power's proposal did not adequately differentiate between the general provisions in the Code about confidential information and the specific requirements for the protection of commercially sensitive information in chapter 8 of the Code.

Regarding separation of staff, the ERA noted that:

- ADEWAP's existing power purchase agreements are bundled contracts for both power supply and network access that are managed by authorised ADEWAP individuals who, therefore, undertake network and generation functions for the ADEWAP entity.
- Horizon Power staff involved in the provision and marketing of covered network services are co-located with staff involved in the provision and marketing of contestable generation or retail services in the Karratha and Port Hedland offices, and for a small number of shared functions in its Perth offices.

Sharing or co-locating staff involved in the network business with staff involved in an "other business" presents a risk that commercially sensitive information could be used outside the network business or not for the purpose for which it was acquired or developed.

However, based on the current circumstances and having due regard to the secondary ringfencing objective, the potential harms the ringfencing rules are intended to address, and the costs that would be incurred by ADEWAP or Horizon Power, the ERA considered the costs of implementing stricter staff separation arrangements would outweigh the public benefit resulting from compliance.

Alternatively, the ERA suggested that both NSPs implement the following lower-cost measures:

- A declaration that is signed by all staff authorised to access commercially sensitive information, which clearly specifies that this information will be kept confidential and only used within the network business for the purposes that was intended.



- Periodic audits to ensure commercially sensitive information is only used within the network business and for the purposes that was intended.

The ERA also suggested that Horizon Power ensure the ringfencing rules adequately address the protection of commercially sensitive information.

Both NSPs incorporated the ERA's suggested amendments in the ringfencing rules re-submitted under 135(6)(a) of the Code. Based on the current circumstances of each NSP, the ERA is satisfied that the resubmitted ringfencing rules effectively address the requirements of chapter 8 of the Code in relation to protecting commercially sensitive information.

As required under section 137 of the Code, if an event occurs that is likely to have a material effect on the operation of the ringfencing rules, the NSP must review its ringfencing rules within three months of the event occurring. In any case, both NSPs are required to review the ringfencing rules by no later than 31 March 2023.

## 6. Cost allocation

Section 134(1)(b) of the Code requires that the ringfencing rules contain measures to ensure that the NSP allocates or attributes costs relating to its covered network business in a way that:

- (i) provides a true and fair view of:
  - A. the *network business* as distinct from any *other business* carried on by the *NSP* or any associate of the *NSP*; and
  - B. income derived from, and expenditure relating to, the network business; and
  - C. the NSP's assets and liabilities so far as they relate to the network business; and
  - D. the percentage of any corporate overhead costs applied to the network business for services that provide the network business with necessary resources;
- and
- (ii) enables all revenue received by the NSP from the provision of goods or services to an associate of the network business to be separately identified; and
- (iii) enables all expenditure by the NSP on goods or services provided by an associate of the network business to be separately identified;

The cost allocation measures proposed by both NSPs went beyond the scope of the requirements necessary to effectively meet section 134(1)(b)(i). The ERA considered that the level of information that both NSPs included on cost allocation methods was unnecessary and reduced the clarity of the measures to address section 134(1)(b).

Rather, the ERA suggested the ringfencing rules should contain the following principles:

- Income, expenditure, corporate overheads, assets and liabilities are allocated to the network business based on the following principles:
  - Items that are directly attributable are allocated accordingly.
  - Items that are not directly attributable are allocated, where practicable, on a causation basis.
  - Items that are not directly attributable and cannot be practicably allocated on a causation basis must be allocated in a reasonable manner. Details must be provided for each such item indicating:
    - The basis of allocation.
    - The reason for choosing that basis.
    - An explanation for why no causal relationship could be established.
- Revenue received by the network business from the provision of goods or services to an associate or deemed associate is separately identified in the network business accounts.
- Expenditure by the network business on goods or service provided by an associate or deemed associate is separately identified in the network business accounts.

Both NSPs incorporated the ERA's suggested amendments in the ringfencing rules re-submitted under 135(6)(a) of the Code. On that basis, the ERA is satisfied that the resubmitted ringfencing rules effectively address the requirements of chapter 8 of the Code in relation to cost allocation.

## 7. Preventing discriminatory treatment

Section 134(1)(c) of the Code requires that ringfencing rules contain measures that ameliorate the potential for the NSP to engage in discriminatory treatment either in favour of its associate or other businesses or against its competitors.

Both NSPs proposed a combination of physical controls (separation of staff) and administrative processes and procedures to ensure staff understand and comply with obligations in relation to preventing discriminatory treatment.

As noted in the section on the protection of commercially sensitive information:

- ADEWAP's power purchase agreements are bundled contracts for both power supply and network access that are managed by authorised ADEWAP individuals who, therefore, undertake both network and generation functions for the ADEWAP entity.
- Horizon Power staff involved in the provision and marketing of covered network services are co-located with staff involved in the provision and marketing of contestable generation or retail services in the Karratha and Port Hedland offices, and for a small number of shared functions in its Perth offices.

The sharing or co-location of staff involved in the network business with staff involved in an "other business" raises the potential that the NSP could engage in discriminatory treatment.

However, for the same reasons as outlined in the section on the protection of commercially sensitive information, the ERA did not suggest stricter staff separation.

Rather, the ERA considered that additional measures to strengthen the protection of commercially sensitive information and ensure effective compliance monitoring and reporting would sufficiently address the requirements of section 134(1)(c) of the Code.

Both NSPs incorporated the ERA's suggested amendments in the ringfencing rules re-submitted under 135(6)(a) of the Code. On that basis, the ERA is satisfied that the resubmitted ringfencing rules effectively address the requirements of chapter 8 of the Code in relation to preventing discriminatory treatment.

## 8. Compliance monitoring and reporting

Section 134(1)(e) of the Code requires that the NSP establishes, maintains and keeps records that provide sufficient information to enable an assessment of compliance with its ringfencing rules, and to detect any non-compliance.

Section 141(1)(a) and (b) of the Code outlines the NSP's compliance monitoring and reporting obligations:

### 141. Compliance monitoring and compliance reporting

- (1) An NSP must —
  - (a) establish, maintain and implement effective procedures to ensure and monitor its compliance with the ringfencing rules; and
  - (b) report to the Authority details of any breach of section 133(1)(b) within 5 business days of determining that the breach has occurred.

Both NSPs proposed a range of administrative processes and procedures to monitor and report compliance with its ringfencing rules, and to detect non-compliance. These included ringfencing declarations and/or registers; audit processes; investigation and reporting procedures; and ringfencing training.

Horizon Power's proposed ringfencing rules lacked detail about the processes and procedures that it proposed to use to manage, enforce and monitor compliance with the ringfencing rules. The ERA suggested Horizon Power should provide additional detail on:

- The content of the ringfencing declaration to be signed by staff.
- Audit processes and procedures for:
  - Registers identified in the ringfencing rules.
  - Training requirements.
  - Cost allocation requirements.
- Procedures and processes for identifying, reporting and investigating breaches of the ringfencing rules.

ADEWAP proposed that the Alinta Energy WA Wholesale Regulation Manager would be responsible for monitoring compliance. The ERA considered this to be reasonable but suggested that the relevant staff member should be subject to a ringfencing declaration as they may have access to commercially sensitive information in the course of their duties.

Neither of the NSPs had included measures to ensure that written records of associate and deemed associate arrangements would be established and maintained. In addition, Horizon Power had not included a measure to procure an associate of the network business to comply with any applicable ringfencing rules.

The ERA suggested both ADEWAP and Horizon Power should amend the ringfencing rules to include measures to establish, maintain and keep written records of associate and deemed associate arrangements and that Horizon Power should include a measure to ensure compliance of associates with the ringfencing rules.

Both NSPs incorporated the ERA's suggested amendments in the ringfencing rules re-submitted under 135(6)(a) of the Code. On that basis, the ERA is satisfied that the resubmitted ringfencing rules effectively address the requirements of chapter 8 of the Code in relation to compliance monitoring and reporting.