

**NECA / NSW DNSPs – GUIDELINE FOR INVESTIGATION AND APPEALS  
PROCESS FOR ASP AUTHORISATION CORRECTIVE OR DISCIPLINARY ACTION**

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**Purpose**

This document has been developed by the three NSW Distribution Network Service Providers (DNSPs) in conjunction with the National Electrical and Communications Association (NECA) and the NSW Department of Industry. The purpose of the guideline is to provide a clear and consistent framework for the DNSPs and ASPs to utilise when an ASP is involved in a safety breach while performing contestable services on or near the DNSP's network or a need for corrective action is identified in their contestable services work. The process introduces a clear path for appeal should the ASP wish to contest the DNSP's decision regarding corrective or disciplinary action following an incident which has resulted in the ASP being suspended.

Note: This is a high level discussion paper and the individual DNSPs may differ with the implementation of its various processes.

**Background**

DNSPs have a legal obligation to deal with significant safety incidents and incidents which require corrective action on their networks. The NSW Department of Industry, NSW DNSPs, ASPs and customers may all have some duties as a Person Conducting a Business or Undertaking (PCBU) under NSW Work Health and Safety legislation.

ASPs are concerned that DNSPs have the ability to suspend ASP authorisations without independent oversight. An appeals process for ASPs was identified at the combined NECA/Networks NSW (NNSW) forum as a key area requiring attention and a working group was established to develop a consistent appeals process across the three DNSPs.

The working group aimed to build on the existing processes and introduce a fair and consistent method for ASPs to appeal decisions made by DNSPs about their authorisation. The process introduces the option for an independent review of the decision should the ASP decide to appeal the DNSP's decision.

The intention is for this guideline to be implemented, where possible, into NSW DNSP procedures and communicated to ASPs to assist in understanding the framework for appeal. The DNSPs will endeavour to incorporate this into their systems, however they are not bound to do so, and may continue to make changes to their systems in future.

This guideline has been endorsed by the following members of the NECA/NNSW forum:


**Endorsed 16 September 2016 by:**



Pamela Henderson  
GM – Customer & Corporate Services, Ausgrid  
NECA/NSW Distributor Forum Chair



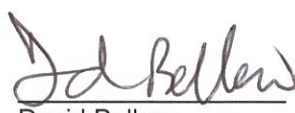
Robert Reid  
Mgr - Electrical Safety & Authorisations (Acting), Ausgrid



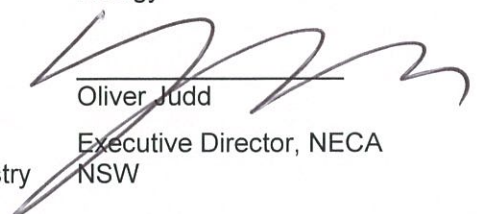
Rick Wallace  
Mgr - Electrical Safety, Authorisations & Compliance, Endeavour Energy



Michael Flannery  
Mgr - Electrical Safety & Authorisations, Essential Energy



David Bellew  
Mgr – Energy Networks & ASPs, NSW Dept of Industry



Oliver Judd  
Executive Director, NECA NSW

## **1. NSW DNSP suspends an ASP's authorisation following an incident and initiates an investigation**

The NSW DNSPs may suspend, cancel or downgrade the authorisation of a person at any time if it is determined that that worker has performed unsafe work practices, breached the conditions of their authorisation or breached the company's Electrical Safety Rules. These breaches are referred to as incidents and may be investigated to determine if corrective or disciplinary action is required.

### *1.1. Examples of incidents that may initiate the investigation procedure*

The following is a non-conclusive high level list of examples of breaches related to contestable work that may initiate the investigation process outlined in Annexure A:

- completing contestable work without the required authorisation and/or accreditation;
- unsafe work practices;
- any breach of the Service and Installation Rules;
- any breach of the DNSP's Electrical Safety Rules or other specified standards/procedures;
- any breach of the DNSP's safety systems and standards that apply to ASPs; or
- any incident deemed a 'notifiable incident' by SafeWork NSW.

Examples of 'notifiable incidents' can be found on SafeWork NSW website:

<http://www.safework.nsw.gov.au/media/publications/health-and-safety/whs-incident-notification-fact-sheet>

## **2. NSW DNSP investigations and associated charges**

### *2.1. Guideline for incident investigation process*

The agreed guideline for the investigation process following an incident involving an ASP can be found in Annexure A. This process includes target timeframes and paths for appealing a DNSP's decision following corrective or disciplinary action. Further information on the appeals process can be found below.

### *2.2. Charges associated with ASP investigations*

From July 2015, the AER approved fees allowing the NSW DNSPs to recover their costs associated with the investigation review and implementation of remedial actions associated with work performed by ASP's.

Should it be determined that an incident will attract these fees, the ASP will be notified prior to the commencement of the investigation.

The hourly rate for these investigations as at 1 July 2016 for each DNSP is:

- Ausgrid - \$246.66 per hour
- Endeavour Energy - \$166.87 per hour
- Essential Energy - \$193.80 per hour

Prices are inclusive of GST and may change each year in line with the AER approved price adjustments.

Where the investigation determines that other parties may have contributed to the incident, including the DNSP, the distribution of costs will be available for discussion and any disputes or appeals on the decision will be in accordance with this procedure.

### *2.3. Incident Cause Analysis Method (ICAM) investigation workshops*

Depending on the severity of an incident or near miss, the DNSP may hold an ICAM workshop as part of the investigation. Should an incident require an ICAM workshop, all intended target timeframes listed in the flowchart will be revised.

## **3. ASP Appeals and Independent Review**

### *3.1. Contacts for appeal with the DNSP*

The DNSP procedure and contact for appeal, including role title, will be clearly communicated in the disciplinary letter and include the required timeframe that the appeal must be made within. This is normally five (5) business days unless otherwise agreed upon. Where possible, a secondary contact within the DNSP should be included.

### *3.2. Approved bodies for independent review*

If all reasonable steps have been exhausted with the DNSP to resolve the dispute, then the dispute or difference arising out of or in connection with the decision shall be submitted to arbitration in accordance with, and subject to, The Institute of Arbitrators and Mediators Australia (IAMA) Arbitration Rules.

Please visit <https://www.iama.org.au/> for further information.

### *3.3. Charges for independent review*

The fees for cases vary widely and are up to the individual Arbitrator/Mediator/Expert to appraise and the parties to set. The cost of the dispute arbitration will be proportioned to the parties by the arbiter.

## **4. NSW DNSP Incident Sharing**

In the event where a DNSP has taken action to suspend or cancel an individual(s) Authorisation, the DNSP shall distribute to the other NSW DNSPs and the Department of Industry, a Factual Incident Report and ASP Incident Notification form within three working days of the incident being notified from the ASP (where possible).

This report will contain the necessary verified facts that supported the DNSP's decision to suspend the individual's Authorisation and the re-instatement criteria if known.

The recipient NSW DNSPs on receiving this advice will also temporarily suspend the individual(s) Authorisation until advice has been provided that the individual(s) Authorisation has been re-instated. The other DNSPs will mirror the suspension from the first DNSP, but will not participate in the investigation.

**5. Targeted Report Preparation Timeframes**

Details of investigation reporting requirements and target timeframes for each level of report (as required through the NSW DNSP’s Incident Management Framework) are set out below.

Level of investigation	Requirement	Time frames (from incident date)
<p><b>Level 2</b></p> <ul style="list-style-type: none"> <li>• Workplace injury/illness requiring medical treatment by a doctor while working on or near the network.</li> <li>• Workplace near miss with potential of serious illness/injury while working on or near the network.</li> <li>• Breach of safe work practice (eg, workplace instruction, SWMS, control measures identified in the risk assessment) that had potential to result in serious illness/injury while working on or near the network.</li> </ul>	<p>Final sign off and distribution</p>	<p>20 working days</p>
<p><b>Level 3</b></p> <ul style="list-style-type: none"> <li>• Electrical shock from electrical energy resulting in injury.</li> <li>• WorkSafe NSW notifiable incident requiring immediate treatment as an inpatient in a hospital or immediate treatment for serious head, eye, burn, separation of skin, spinal, loss of bodily functions or lacerations.</li> <li>• WorkSafe NSW notifiable “dangerous incident” (s 37 WHS Act).</li> </ul> <p><b>Level 4</b></p> <ul style="list-style-type: none"> <li>• FATALITY</li> <li>• WorkSafe NSW notifiable incident resulting in permanent illness or injury - amputation, head injury, eye injury, burn, separation of skin, spinal injury, loss of a bodily function (s 36 WHS Act).</li> </ul>	<p>Investigation report completed including sign off</p>	<p>45 working days</p>



**Annexure 1 – ASP Incident Investigation and Appeals Process**

