

# Final Decision

## AusNet Services Transmission Determination 2022 to 2027 Attachment 13 Pass through events

January 2022

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## Note

This attachment forms part of the AER's final decision on AusNet Services' 2022–27 transmission determination. It should be read with all other parts of the final decision.

As a number of issues were settled at the draft decision stage or required only minor updates, we have not prepared all attachments. The final decision attachments have been numbered consistently with the equivalent attachments to our draft decision. In these circumstances, our draft decision reasons form part of this final decision.

The final decision includes the following attachments:

Overview

Attachment 1 – Maximum allowed revenue

Attachment 2 – Regulatory asset base

Attachment 3 – Rate of return

Attachment 4 – Regulatory depreciation

Attachment 5 – Capital expenditure

Attachment 6 – Operating expenditure

Attachment 7 – Corporate income tax

Attachment 8 – Efficiency benefit sharing scheme

Attachment 9 – Capital expenditure sharing scheme

Attachment 10 – Service target performance incentive scheme

Attachment 12 – Pricing methodology

Attachment 13 – Pass through events

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# 13 Pass through events

During the regulatory control period, a service provider can apply to us to pass material changes in its costs arising from pre-defined exogenous events through to customers, in the form of higher or lower network charges. These events are called cost pass through events. Positive pass throughs exist in the rules as a mechanism to allow service providers to recover their efficient costs incurred as a result of events that could not be forecast as part of their proposal that otherwise would have a significant financial effect on the ability of networks to invest in and operate their networks.<sup>1</sup>

The National Electricity Rules (NER) include the following pass through events for all transmission determinations:<sup>2</sup>

- a regulatory change event,
- a service standard event,
- a tax change event,
- an insurance event,
- an inertia shortfall event<sup>3</sup>, and
- a fault level shortfall event.

In addition to these prescribed events, other (nominated) pass through events may be specified in a determination for a regulatory control period.<sup>4</sup>

Our final decision must include a decision on the nominated pass through events that are to apply for the regulatory control period.<sup>5</sup>

This attachment sets out our final decision on the nominated pass through events that will apply to AusNet Services for the 2022–27 regulatory control period.

## 13.1 Final decision

Our final decision is that the following nominated pass through events will apply to AusNet Services for the 2022–27 regulatory control period:

- insurance coverage event
- terrorism event
- natural disaster event

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<sup>1</sup> AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 2.

<sup>2</sup> NER, cl. 6A.7.3(a1)(1)–(4) and (6)–(7). Each of these prescribed events is defined in Chapter 10 (Glossary) of the NER.

<sup>3</sup> This type of event does not apply in Victoria (see NER, cl 5.20B.4(a)).

<sup>4</sup> NER, cl. 6A.7.3(a1)(5).

<sup>5</sup> NER, cl. 6A.14.1(9).

- insurer credit risk event
- Victorian Energy Minister’s power to direct augmentation event.

These events are defined in Table 13.1. The reasons for our decisions are set out in Section 13.4. We accepted the minor amendments AusNet Services proposed to the definitions for the insurance coverage event, terrorism event and natural disaster event. These were to correct an error in the draft decision and ensure the event definitions refer to prescribed transmission services.

Our final decision is to not accept the contamination remediation event AusNet Services re-proposed in its revised proposal. Our reasons for this decision are set out in section 13.4.2

We also note that AusNet Services accepted the draft decision to not accept the nominated major cyber cost pass through, subject to the AER approving its cyber security step change.<sup>6</sup> As set out in section 6.4.4.5 of Attachment 6 of this final decision, based on the fuller justification and updated information provided by AusNet Services on the cyber security operating expenditure (opex) step change, we included a cyber security step change of \$29.7 million (\$2020–21) in our alternative estimate for the final decision. We have also included capital expenditure (capex) associated with cyber security requirements in the final decision.<sup>7</sup> Consistent with the draft decision, we expect AusNet Services would have appropriate safeguards or contingency plans to substantially mitigate the risks and cost impacts of major cyber-attacks. This will be supported by the additional expenditure included in this final decision. Therefore, consistent with our draft decision we have not included a major cyber cost pass through in this final decision.

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<sup>6</sup> AusNet Services, *Revised revenue proposal 2023–27*, 1 September 2021, pp. 160-61.

<sup>7</sup> AER, *Final Decision, AusNet Services transmission determination 2022–27, Attachment 5 – Capital Expenditure*, January 2022, p. 21.

**Table 13.1 AER nominated pass through event definitions**

Proposed event	Definition
Insurance coverage event	An insurance coverage event occurs if:
	1. AusNet Services:
	a) makes a claim or claims and receives the benefit of a payment or payments under a relevant insurance policy or set of insurance policies; or
	b) would have been able to make a claim or claims under a relevant insurance policy or set of insurance policies but for changed circumstances; and
	2. AusNet Services incurs costs:
	a) beyond a relevant policy limit for that policy or set of insurance policies; or
	b) that are unrecoverable under that policy or set of insurance policies due to changed circumstances; and
	3. The costs referred to in paragraph 2 above materially increase the costs to AusNet Services in providing prescribed transmission services.
	For the purposes of this insurance coverage event:
	'changed circumstances' means movements in the relevant insurance liability market that are beyond the control of AusNet Services, where those movements mean that it is no longer possible for AusNet Services to take out an insurance policy or set of insurance policies at all or on reasonable commercial terms that include some or all of the costs referred to in paragraph 2 above within the scope of that insurance policy or set of insurance policies.
'costs' means the costs that would have been recovered under the insurance policy or set of insurance policies had:	
i. the limit not been exhausted; or	
ii. those costs not been unrecoverable due to changed circumstances.	
A relevant insurance policy or set of insurance policies is an insurance policy or set of insurance policies held during the regulatory control period or a previous regulatory control period in which AusNet Services was regulated; and	
AusNet Services will be deemed to have made a claim on a relevant insurance policy or set of insurance policies if the claim is made by a related party of AusNet Services in relation to any aspect of AusNet Services' network or business; and	
AusNet Services will be deemed to have been able to make a claim on a relevant insurance policy or set of insurance policies if, but for changed circumstances, the claim could have been made by a related party of AusNet Services in relation to any aspect of AusNet Services' network or business.	
Note for the avoidance of doubt, in assessing an insurance coverage event through application under rule 6A.7.3(j), the AER will have regard to:	
i. the relevant insurance policy or set of insurance policies for the event	
ii. the level of insurance that an efficient and prudent TNSP would obtain, or would have sought to obtain, in respect of the event;	
iii. any information provided by AusNet Services to the AER about AusNet Services' actions and processes; and	
iv. any guidance published by the AER on matters the AER will likely have regard to in assessing any insurance coverage event that occurs.	

Proposed event	Definition
Terrorism event	<p>Terrorism event means an act (including, but not limited to, the use of force or violence or the threat of force or violence) of any person or group of persons (whether acting alone or on behalf of or in connection with any organisation or government), which:</p> <p>from its nature or context is done for, or in connection with, political, religious, ideological, ethnic or similar purposes or reasons (including the intention to influence or intimidate any government and/or put the public, or any section of the public, in fear); and changes the costs to AusNet Services in providing prescribed transmission services.</p> <p>Note: In assessing a terrorism event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>i. whether AusNet Services has insurance against the event;</li> <li>ii. the level of insurance that an efficient and prudent NSP would obtain in respect of the event; and</li> <li>iii. whether a declaration has been made by a relevant government authority that a terrorism event has occurred.</li> </ul>
Natural disaster event	<p>Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2022–27 regulatory control period that changes the costs to AusNet Services in providing prescribed transmission services, provided the cyclone, fire, flood, earthquake or other event was:</p> <ul style="list-style-type: none"> <li>a) a consequence of an act or omission that was necessary for the service provider to comply with a regulatory obligation or requirement or with an applicable regulatory instrument; or</li> <li>b) not a consequence of any other act or omission of the service provider.</li> </ul> <p>Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>(1) whether AusNet Services has insurance against the event;</li> <li>(2) the level of insurance that an efficient and prudent NSP would obtain in respect of the event.</li> </ul>
Insurer credit risk event	<p>An insurer credit risk event occurs if an insurer of AusNet Services becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, AusNet Services:</p> <ul style="list-style-type: none"> <li>a) is subject to a higher or lower claim limit or a higher or lower deductible than would have otherwise applied under the insolvent insurer's policy; or</li> <li>b) incurs additional costs associated with funding an insurance claim, which would otherwise have been covered by the insolvent insurer.</li> </ul> <p>Note: in assessing an insurer credit risk event pass through application, the AER will have regard to, amongst other things:</p> <ul style="list-style-type: none"> <li>i. AusNet Services' attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer's track record, size, credit rating and reputation; and</li> <li>ii. in the event that a claim would have been covered by the insolvent insurer's policy, whether AusNet Services had reasonable opportunity to insure the risk with a different provider.</li> </ul>
Victorian Energy Minister's power to direct augmentation event	<p>Victorian Energy Minister's power to direct augmentation event occurs if each of the following conditions are satisfied:</p> <ul style="list-style-type: none"> <li>a) the Minister makes an order under section 16Y(1) of the National Electricity (Victoria) Act 2005 (Vic) (Order);</li> <li>b) complying with the Order, increases the cost to AusNet Services of providing prescribed transmission services and AusNet Services is unable to recover such costs from any other prevailing cost recovery arrangements.</li> </ul>

Source: AER analysis



## 13.2 AusNet Services' revised proposal

In its revised proposal, AusNet Services:

- accepted our draft decision in relation to the insurance coverage event, terrorism event, natural disaster event, insurer credit risk event and Victorian Energy Minister's power to augment event<sup>8</sup>
- proposed a minor amendment to each of the insurance coverage, terrorism and natural disaster events to correct an error in the draft decision and ensure the event definitions refer to prescribed transmission services<sup>9</sup>
- accepted our draft decision in relation to the nominated major cyber cost pass through event, subject to us approving its re-proposed cyber security opex step change of \$28.2 million<sup>10</sup>
- did not accept our decision on the contamination remediation event and re-proposed it with additional information.<sup>11</sup>

## 13.3 Assessment approach

The NER set out how we must assess nominated pass through events proposed by a service provider, and how we must assess an application from a service provider to pass through changes in costs where an event occurs.<sup>12</sup>

Our approach to assessing nominated pass through events proposed by service providers is guided by the National Electricity Objective and the Revenue and Pricing Principles. These provide the service provider with a reasonable opportunity to recover at least the efficient costs incurred in providing services and complying with its obligations.<sup>13</sup> They also provide incentives to promote economic efficiency.<sup>14</sup> Together, they promote a balance between the economic costs and risks of the potential for under and over investment by a service provider, to promote efficient investment.<sup>15</sup> In the context of pass through events, we have particular regard to the impact on price, quality, reliability and security of supply that may arise as a result of any change in the efficient operation of, and ability and incentive of, a service provider to invest in its network.<sup>16</sup>

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<sup>8</sup> AusNet Services, *Revised revenue proposal 2023–27*, 1 September 2021, pp. 156-57, 161.

<sup>9</sup> AusNet Services, *Revised revenue proposal 2023–27*, 1 September 2021, pp. 156-57.

<sup>10</sup> AusNet Services, *Revised revenue proposal 2023–27*, 1 September 2021, p. 161.

<sup>11</sup> AusNet Services, *Revised revenue proposal 2023–27*, 1 September 2021, pp. 157–60.

<sup>12</sup> NER, cl. 6A.7.3; NER, cl. 6A.6.9.

<sup>13</sup> NEL, s. 7A(2).

<sup>14</sup> NEL, s. 7A(3).

<sup>15</sup> NEL, s. 7A(6).

<sup>16</sup> NEL, s. 7; AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 6.

In determining whether we accept a nominated pass through event, we must take into account the nominated pass through event considerations:<sup>17</sup>

The *nominated pass through event considerations* are:

- (a) whether the event proposed is an event covered by a category of *pass through event* specified in clause 6.6.1(a1)(1) to (4) (in the case of a distribution determination) or clause 6A.7.3(a1)(1) to (4) (in the case of a *transmission determination*);
- (b) whether the nature or type of event can be clearly identified at the time the determination is made for the service provider;
- (c) whether a prudent service provider could reasonably prevent an event of that nature or type from occurring or substantially mitigate the cost impact of such an event;
- (d) whether the relevant service provider could insure against the event, having regard to:
  - (1) the availability (including the extent of availability in terms of liability limits) of insurance against the event on reasonable commercial terms; or
  - (2) whether the event can be self-insured on the basis that:
    - (i) it is possible to calculate the self-insurance premium; and
    - (ii) the potential cost to the relevant service provider would not have a significant impact on the service provider's ability to provide *network services*; and
- (e) any other matter the AER considers relevant and which the AER has notified *Network Service Providers* is a nominated pass through event consideration.

The Australian Energy Market Commission (AEMC) described the purpose of the nominated pass through event considerations as:

- to incorporate and reflect the essential components of a cost pass through regime in the NER. It was intended that in order for appropriate incentives to be maintained, any nominated pass through event should only be accepted when event avoidance, mitigation, commercial insurance and self-insurance are unavailable. That is, a cost pass through event is the least efficient option for managing the risk of unforeseen events.<sup>18</sup>
- that a pass through event should only be accepted when it is the least inefficient option and event avoidance, mitigation, commercial insurance and self-insurance

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<sup>17</sup> NER, cl. 6A.6.9(b); NER Chapter 10: Glossary, definition of 'nominated pass through event considerations'.

<sup>18</sup> AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 19.

are found to be inappropriate. That is, it is included after ascertaining the most efficient allocation of risks between a service provider and end customers.<sup>19</sup>

In turn, this protects the incentive regime under the NER by limiting the erosion of incentives on service providers to use market based mechanisms to mitigate the cost impacts that would arise.<sup>20</sup> This promotes the efficient investment in, and efficient operation and use of, network services for the long term interests of consumers with respect to price.<sup>21</sup>

As a matter of good regulatory practice, one additional matter<sup>22</sup> we take into account is consistency in our approach to assessing nominated pass through events across our electricity determinations and gas access arrangements.<sup>23</sup>

### 13.3.1 Interrelationships

The pass through mechanism is not the only way in which service providers can manage their risks under a transmission determination. It is interrelated with other parts of this decision, in particular with the forecast opex and capex and rate of return included in our revenue determination. These interrelationships require us to balance the incentives in the various parts of our decision.

For systemic risks, service providers are compensated through the allowed rate of return. Service providers also face business-specific, or residual, risks. Service providers are compensated for the prudent and efficient management of these risks through the forecast opex and capex we include in our revenue determination for strategies such as:

- prevention (avoiding the risk)
- mitigation (reducing the probability and impact of the risk)
- insurance (transferring the risk to another party)
- self-insurance (putting aside funds to manage the likely costs associated with a risk event).

An efficient business will manage its risk by employing the most cost effective combination of these strategies. In order to maintain appropriate incentives under our determinations, we only accept nominated pass through events where we are satisfied that event avoidance, mitigation, commercial insurance and self-insurance under

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<sup>19</sup> AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 20.

<sup>20</sup> AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p.8.

<sup>21</sup> AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p.8.

<sup>22</sup> NER, Chapter 10: Glossary, definition of 'nominated pass through event considerations', cl. (e).

<sup>23</sup> AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, p. 18.

approved forecasts of prudent and efficient opex and capex are either unavailable or inappropriate.<sup>24</sup>

In general, in respect of smaller projects a service provider should be using up its existing expenditure allowance, or reprioritising or substituting its projects, to avoid seeking cost recovery through the pass through mechanisms.<sup>25</sup> This is reflected in the materiality threshold that applies to applications for cost pass through determinations.<sup>26</sup>

Cost pass through amounts approved in a regulatory control period are added to (or in the case of a negative pass through deducted from) forecast opex and capex for the purpose of calculating efficiency carryover amounts under the Efficiency Benefit Sharing Scheme (EBSS) and Capital Expenditure Sharing Scheme (CESS).<sup>27</sup>

Cost pass through amounts that have already been recovered in a regulatory control period cannot be recovered again in the roll-forward of the regulatory asset base for the next regulatory control period.<sup>28</sup>

## 13.4 Reasons for final decision

Consistent with our draft decision, our final decision accepts the following nominated pass through events, with a minor amendment as proposed by AusNet Services:

- insurance coverage event
- terrorism event
- natural disaster event
- insurer credit risk event, and
- Victorian Energy Minister's power to direct augmentation event.<sup>29</sup>

Consistent with our draft decision, we do not accept AusNet Services' re-proposed contamination remediation event. We also retain our draft decision position, which AusNet Services accepted in its revised proposal, to not include the major cyber event.<sup>30</sup>

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<sup>24</sup> AEMC 2012, *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, Sydney, pp. 19–20.

<sup>25</sup> AEMC 2012, *Economic Regulation of Network Service Providers, and Price and Revenue Regulation of Gas Services, Final Position Paper*, 29 November 2012, Sydney, p. 186.

<sup>26</sup> NER, Chapter 10: Glossary, definition of 'materially'.

<sup>27</sup> AER, *Efficiency Benefit Sharing Scheme for Electricity Network Service Providers*, November 2013, p. 7; AER, *Capital Expenditure Incentive Guideline for Electricity Network Service Providers*, November 2013, p. 18.

<sup>28</sup> NER, cl. S6A.2.1(f)(1)(ii).

<sup>29</sup> AER, *Draft decision AusNet Services transmission determination 2022–27, Attachment 13 - pass through events*, June 2021, pp. 4–5.

<sup>30</sup> AER, *Draft decision AusNet Services transmission determination 2022–27, Attachment 13 - pass through events*, June 2021, pp. 4–5.

In this section, we set out the reasons for our final decision on each of AusNet Services' proposed nominated pass through events.

### **13.4.1 Insurance coverage event, terrorism event, natural disaster event, insurer credit risk event and Victorian Energy Minister's power to direct augmentation event**

Our final decision accepts AusNet Services' proposed insurance coverage event, terrorism event, natural disaster event, insurer credit risk event and Victorian Energy Minister's power to direct augmentation event.

We are satisfied that these five nominated pass through events are consistent with the nominated pass through event considerations because:

- these events are not covered by the prescribed pass through events under the NER<sup>31</sup>
- the nature and type of events can be clearly identified at the time of our decision<sup>32</sup>
- while a prudent service provider could take steps to reduce the likelihood of these events and the cost impact of the events should they occur,<sup>33</sup> and could insure or self-insure against the event,<sup>34</sup> expenditure beyond a certain point (e.g. to eliminate, rather than manage, risk) is likely to be imprudent or inefficient. In such circumstances we consider a sharing of risk between AusNet Services and its customers is appropriate and more likely to be in the long term interest of consumers with respect to price.

In its revised proposal AusNet Services proposed a minor amendment to the definitions of the insurer credit risk event, terrorism event, natural disaster event and insurance cap event.<sup>35</sup> This amendment corrects an error in the draft decision and ensure the definitions for these events refer to prescribed transmission services. We accept this amendment.

### **13.4.2 Contamination remediation event**

Our final decision is to not include the contamination remediation event proposed by AusNet Services.

AusNet Services re-proposed a nominated pass through event due to the commencement on 1 July 2021 of the *Environment Protection Amendment Act 2018* (VIC) (which amended the *Environment Protection Act 2017* (VIC) (2017 Act) and

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<sup>31</sup> NER, Chapter 10: Glossary, definition of 'nominated pass through event considerations', cl. (a).

<sup>32</sup> NER, Chapter 10: Glossary, definition of 'nominated pass through event considerations', cl. (b).

<sup>33</sup> NER, Chapter 10: Glossary, definition of 'nominated pass through event considerations', cl. (c).

<sup>34</sup> NER, Chapter 10: Glossary, definition of 'nominated pass through event considerations', cl. (d).

<sup>35</sup> AusNet Services, *Revised Revenue Proposal 2023–27*, 1 September 2021, pp. 155–157.

repealed the *Environment Protection Act 1970 (VIC)*).<sup>36</sup> Consistent with its initial proposal, it considered the contamination remediation nominated pass through event will enable it to recover any material costs incurred as a result of managing a site found to be contaminated by the new proactive testing and monitoring regime under the 2017 Act. It provided further information to support its view that a contamination remediation event is the most appropriate regulatory mechanism to recover the cost of material contamination remediation costs. AusNet Services also re-proposed a related opex step change to establish a new proactive testing and monitoring regime as required under the 2017 Act. It revised its estimate of this step change down from \$3.2 million (\$2021–22) in its initial proposal to \$2.0 million (\$2021–22) in the revised proposal. We have included this step change in our alternative estimate for the final decision (see Attachment 6, Section 6.4.4.6).

In our draft decision, we considered it was not clear to us whether AusNet Services could reasonably prevent the event (contamination remediation) from occurring or substantially mitigate the cost of such an event.<sup>37</sup> Our understanding was that the obligations in the 2017 Act continue to put the onus of determining the appropriate risk-management control on the regulated entity and are not prescriptive about what activities may be required in order to discharge the obligation. Such obligations align with the way many businesses and industries already manage risk. We stated that this concept is familiar to businesses through the well-established model of protection provided by Victoria's Occupational Health and Safety laws, which are also centred around a general duty to take reasonably practicable measures to reduce the risk of harm.<sup>38</sup> The Environment Protection Authority in administering the framework adopts a proportionate, risk-based and evidence-based approach guided by historical knowledge of sites for businesses to discharge their obligations.<sup>39</sup>

Further, we stated that we understood that the 2017 Act largely carries over the existing quantitative thresholds for particular contaminants. The duty to manage contaminated land under section 39 of the 2017 Act involves obligations that are comparable to those under the previous environment protection framework (in particular, under the State Environment Protection Policy (Prevention and Management of Contamination of Land) clauses 18 and 21). We considered it was therefore reasonable to expect that most modern companies with existing environmental management systems would already be in a good place to manage these obligations going forward.

We requested in the draft decision that AusNet Services make a clear case that it is appropriate that any future contamination remediation costs should be managed via a nominated pass through event.

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<sup>36</sup> AusNet Services, *Revised Revenue Proposal 2023–27*, 1 September 2021, pp. 157–160.

<sup>37</sup> AER, *Draft decision AusNet Services transmission determination 2022–27, Attachment 13 - pass through events*, June 2021, pp. 13-16.

<sup>38</sup> Environment, Water, Land and Planning Victoria, *Environment Protection Amendment Act 2018 – Fact Sheet*, p. 1.

<sup>39</sup> Environment Protection Authority Victoria, *1915: Contaminated land policy*, p. 7.

Overall, we consider the further information provided by AusNet Services in its revised proposal did not explain any potential material change in the impact / exposure to the contamination remediation risks, or why it would not be able to substantially mitigate any contamination remediation risks via existing measures. We are not persuaded that a nominated cost pass through event is required for the reasons set out in more detail below.

We acknowledge the new environment protection regime under the 2017 Act requires AusNet Services to be more proactive. As noted above, reflecting this additional requirement we have included this step change in our alternative estimate for opex in the final decision.

However, we are not satisfied that as a result of this additional proactive monitoring there will be a material impact on AusNet Services' business or that it will not be able to substantially mitigate the costs of any contamination remediation requirements that are identified through the additional monitoring.

AusNet Services considered it was not possible to identify with certainty those sites which may be affected by historic contamination and noted possible examples of legacy contamination that may be uncovered through enhanced testing.<sup>40</sup> However, our view is that AusNet Services as an electricity business is unlikely with a more proactive monitoring regime to discover contaminated land of the magnitude that cannot be managed via existing mitigation measures. Our technical advice suggests that, unlike major chemical and heavy machinery industries, the main contamination risks faced by energy utilities (like AusNet Services) relate to noise and oil leaks. These specific risks are unlikely to lead to unpredictable, high cost impacts, based on minimal historical public record of such events occurring, as well as the management, maintenance and design practices that are already applied to all power system facilities that pose a noise or oil contamination problem.

We consider AusNet Services would already hold extensive knowledge and information about the condition, performance and environmental risks of its sites and assets from its historical business as usual inspections and testing and maintenance of these sites. We consider it is reasonable to assume, in the absence of contrary information, that existing environmental management plans covering sites and assets under previous environmental protection obligations would continue to assist in managing and mitigating the type of exposures contemplated by the re-proposed nominated pass through event. We observe that AusNet Services' practices to date appear to have been effective in enabling it to prevent such an event from occurring or substantially mitigating the costs. As AusNet Services noted in its revised proposal, it is already exposed to the risk of contamination that has already occurred (including prior to privatisation and AusNet Services ownership)<sup>41</sup> and that the quantum of the expenditure on land management or remediation is, to some degree, within its

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<sup>40</sup> AusNet Services, *Revised Revenue Proposal 2023–27*, 1 September 2021, pp. 158–159.

<sup>41</sup> AusNet Services, *Revised Revenue Proposal 2023–27*, 1 September 2021, p. 158.

control.<sup>42</sup> We expect the existing risk management measures adopted by AusNet Services would continue to manage known and new exposures going forward.

As stated in the draft decision, we consider that cost pass through events should be the last option available for network businesses to recover costs in order to protect the incentive mechanisms of our framework. The NER cost pass through framework is intended to ensure pass through events should only be accepted when it is the least inefficient option and event avoidance, mitigation and insurance are found to be inappropriate. The incentive on AusNet Services and other service providers to proactively manage land contamination and remediation risks and adopt best practices would also likely be significantly reduced if we were to accept this pass through event.

Accordingly, our final decision is to not accept the contamination remediation pass through event proposed by AusNet Services.

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<sup>42</sup> AusNet Services, *Revised Revenue Proposal 2023–27*, 1 September 2021, p. 160.



## Shortened forms

Shortened form	Extended form
AEMC	Australian Energy Market Commission
AER	Australian Energy Regulator
capex	capital expenditure
CESS	capital expenditure sharing scheme
EBSS	efficiency benefit sharing scheme
NEL	National Electricity Law
NER	National Electricity Rules
NSP	network service provider
opex	operating expenditure
TNSP	transmission network service provider