



Restricted Asset Exemption Guideline

Electricity distribution network service providers

September 2018

© Commonwealth of Australia 2018

This work is copyright. In addition to any use permitted under the Copyright Act 1968, all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence, with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration, diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright, but which may be part of or contained within this publication. The details of the relevant licence conditions are available on the Creative Commons website, as is the full legal code for the CC BY 3.0 AU licence.

Requests and inquiries concerning reproduction and rights should be addressed to the:

Director, Corporate Communications
Australian Competition and Consumer Commission
GPO Box 4141, Canberra ACT 2601

or publishing.unit@acc.gov.au.

Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne Vic 3001

Tel: (03) 9290 1444

Fax: (03) 9290 1457

Email: AERinquiry@aer.gov.au

AER reference: D18/124404

Contents

1	Nature and authority	4
1.1	Introduction.....	4
1.2	Authority.....	4
1.3	Context	4
1.4	Guideline objective	4
1.5	Confidentiality.....	4
1.6	Definitions and interpretation	5
1.7	Processes for revision	5
1.8	Version history and effective date.....	5
2	Exemption applications and assessment process	6
2.1	Submitting an exemption application	6
2.2	Information that must be included in exemption applications	6
2.3	AER assessment process	7
3	Exemption decisions and reasons	8
4	Length of exemptions	9
	Glossary	10

1 Nature and authority

1.1 Introduction

In accordance with the requirements of Clause 6.4B.1 of the **NER**, this publication sets out the **AER's Restricted Asset Exemption Guideline (Guideline)** for **distribution network service providers (DNSPs)**.

DNSPs may request an asset exemption from the **AER** in respect of a specific asset or class of assets by submitting a written request in accordance with the requirements of 6.4B of the **NER** and this **Guideline**.

1.2 Authority

Clause 6.4B.1(c) of the **NER** requires the **AER** to develop, maintain and publish the **Guideline** in accordance with the **distribution consultation procedures**.

1.3 Context

Clause 6.4B.1(b) of the **NER** requires the **AER** to consider the following when making an **asset exemption** decision:

- the likely impacts to the development of competition in markets for **energy related services**
- this **Guideline**.

Clause 6.4B.1(c) requires that the **Guideline** specify:

- the content required to be included in asset exemption applications, and
- the AER's process for assessing exemption applications.

1.4 Guideline objective

Subject to an exemption given under clause 6.4B.1(a) and in accordance with this **Guideline**, **restricted assets** may not be included in a **DNSP's** regulated asset base.

The objective of this **Guideline** is to:

- provide a transparent and fair process for **DNSPs** to request, and the **AER** to determine, exemptions from the prohibition on including restricted assets in the **DNSP's regulated asset base**
- promote the **National Electricity Objective**
- preserve and promote conditions for the development of competition, where appropriate, in the provision of **energy related services**.

1.5 Confidentiality

The **AER** will assess confidentiality claims by **DNSPs** arising under this **Guideline** in accordance with the Distribution Confidentiality Guidelines, the Competition and Consumer Act 2010 (Cth) and the National Electricity Law (NEL).

1.6 Definitions and interpretation

(1) In this **Guideline**, unless a contrary intention appears:

- A term in bold type that is expressly defined in the glossary of this **Guideline** has the meaning set out in the glossary.
- A term in bold type that is not expressly defined in the glossary of this **Guideline** has the same meaning it has in the **NEL** or the **NER**.
- The words 'shall' and 'must' indicate mandatory requirements.
- The singular includes the plural, and vice versa.
- A reference to any legislation, legislative instrument or other instrument is a reference to that legislation or instrument as in force from time to time.
- Explanations in this **Guideline** about why certain information is required are provided for guidance only. They do not limit in any way the AER's objectives, functions or powers.
- Any example, figure, or explanatory box in this **Guideline** is for guidance only.

For the purposes of the application of this **Guideline** in the Northern Territory, the reference to 'national electricity system' in section 7 of the **NEL** must be taken to mean a reference to a 'local electricity system' or to all 'local electricity systems', as the case requires.

1.7 Processes for revision

The **AER** may amend or replace this **Guideline** from time to time in accordance with clause 6.4B.1(c) of the **NER** and the **distribution consultation procedures**.

1.8 Version history and effective date

A version number and an effective date of issue will identify every version of this **Guideline**.

2 Exemption applications and assessment process

2.1 Submitting an exemption application

- (1) A **DNSP** may request an **asset exemption** from the **AER** in respect of a specific asset or class of asset by submitting a written request (**exemption application**) under Clause 6.4B.
- (2) Pursuant to Clause 6.4B.2 of the **NER**, all asset **exemption applications** must be made in writing and include the information required by this **Guideline**.

2.2 Information that must be included in exemption applications

- (1) Exemption applications must include:¹
 - (a) details of the type of asset exemption which is being sought by the **DNSP** under clause 6.4B.1(a),
 - (b) a description of the asset or class of assets in respect of which the proposed **asset exemption** would apply, including the location and anticipated or known cost of the proposed asset or class of assets,²
 - (c) the **standard control services** that would be provided by the asset or class of assets in respect of which the proposed **asset exemption** would apply, and the means by which the asset would provide those services,³
 - (d) any other services that could reasonably be provided by the asset or class of assets, and the means by which the asset or class of assets would provide those services,
 - (e) where relevant, a proposed definition of the markets, for **energy related services** which the asset or class of assets will or could impact,⁴
 - (f) description of the likely impacts on the development of competition in markets for **energy related services** if the **DNSP** invests in the assets the subject of the asset exemption,⁵
 - (g) with reference to clause 3(2) of this **Guideline**, information regarding the benefits to customers delivered by the assets or class of assets to which the expenditure the subject of the proposed exemption relates, and

¹ NER, cl. 6.4B.1(c)(2) and 6.4B.2(c).

² NER, cl. 6.4B.2(c)(1).

³ NER, cl. 6.4B.2(c)(3).

⁴ Markets may be defined in terms of their product, functional, time or geographic dimensions. It may also be necessary to present information relating to the ability or tendency of customers to seek a substitute product in a given market.

⁵ NER, cl. 6.4B.2(c)(4).

(h) any other matters the applicant seeks to raise.

2.3 AER assessment process

- (1) The **AER** will publish its decisions, draft and final, in respect of an **asset exemption** application in conjunction with the **expenditure determination** to which the **asset exemption** application relates.
- (2) **Asset exemption** decisions will be subject to the same consultation procedures set out in the **NER** as the **expenditure determination** to which the **asset exemption** relates.

3 Exemption decisions and reasons

- (1) The **AER** will grant an **asset exemption** where it is either:
 - (a) Satisfied that, if the **DNSP** invests in the assets the subject of the **exemption application**, that investment is not likely to have any negative impact on the development of competition in a market for **energy related services**, or
 - (b) Satisfied that any likely negative impact on the development of competition in markets for **energy related services** (identified in paragraph 3(1)(a)) is outweighed by the benefits delivered to customers by the **expenditure for a restricted asset** for one or more of the purposes that are listed in 3(2).
- (2) In considering an **asset exemption** under 3(1)(b), the **AER** will only consider expenditure for a restricted asset for the purposes listed below:
 - (a) Increasing the efficiency or effectiveness of service delivery for rural, regional, or remote customers,
 - (b) Efficient and effective provision of safety services that are necessary in order for the **DNSP** to meet the requirements of **good electricity industry practice**, or
 - (c) Strengthening a **DNSP's** ability to respond to a force majeure event.
- (3) Expenditure for the purposes of 3.2(a) is expenditure to address issues resulting from the particular circumstances of rural, regional, or remote customers that could not be addressed without **DNSP** investment in the assets the subject of the **asset exemption**.
- (4) Expenditure for the purposes of 3.2(b) is expenditure to enable the **DNSP** to comply with all relevant safety requirements in a cost effective and timely manner.
- (5) Expenditure for the purposes of 3.2(c) is expenditure to address instances where a force majeure event requires an immediate response from the **DNSP** that could not be delivered without **DNSP** investment in the assets the subject of the **asset exemption**.
- (6) The **AER** will make its determination based on the information in the asset exemption application, submissions received and the **AER's** own inquiry.
- (7) The **AER** may place conditions on an **asset exemption** granted to a **DNSP**.
- (8) The **AER** may grant an **asset exemption** that is narrower in scope than that proposed by the **DNSP** in applying for the asset exemption.
- (9) The **AER** will make a determination on the **exemption application** as part of the **expenditure determination** to which the **exemption application** applies.

4 Length of exemptions

- (1) The **AER** may grant an **asset exemption** for a term that coincides with part or all of the DNSP's current regulatory control period, next regulatory control period, or both periods.
- (2) In determining the term of an **asset exemption**, amongst other things, the **AER** will take into account the type of asset exemption that the DNSP is seeking under clause 6.4B.1(a) and the duration of the **expenditure determination** to which the proposed **asset exemption** is to apply.
- (3) For clarity, **DNSPs** may submit **asset exemption** applications that relate to investment that is similar or identical to investment that was the subject of a previous **asset exemption** but the **AER** will take into account changes in circumstances since the previous determination in assessing such applications.

Glossary

Shortened form or term	Extended form or definition
AER	Australian Energy Regulator
confidentiality guideline	Means the document published by the AER entitled "Confidentiality Guideline, November 2013", as amended or replaced by the AER from time to time
Expenditure Determination	Means either: <ul style="list-style-type: none"> (a) a distribution determination made under clause 6.11.1 of the NER, (b) a determination of a contingent project under clause 6.11.1 of the NER⁶ (c) a positive pass through determination made under clause 6.6.1(d) of the NER, or (d) a determination to revoke and substitute a distribution determination under clause 6.6.5(c) of the NER.
Energy Related Services	Energy Related Services are not direct control services. Energy related services are contestable services which include; <ul style="list-style-type: none"> • distribution services other than direct control services, and • other energy services that are not transmission services or distribution services.

⁶ See also NER, cl. 6.6A.1(a) and 6.12.1(4A).