

Appendix 15: Proposed amendments to the cost pass through definitions (clean)

This appendix outlines the Relevant Pass Through Event definitions we are proposing in the forthcoming access arrangement period. Unlike Chapter 13, where proposed deletions and insertions are marked, this appendix provides a clean version of the proposed definitions we intend to adopt.¹

Insurer Credit Risk Event

Proposed definition

The proposed definition of an Insurer Credit Risk Event is:

Insurer Credit Risk Event means if an insurer of the Service Provider becomes insolvent and, as a result in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, the Service Provider:

- (a) is subject to a materially higher or materially lower claim limit or a materially higher or materially lower deductible than would have otherwise apply under the insolvent insurer's policy; or
- (b) incurs material additional costs associated with funding an insurance claim which would have otherwise been covered by the insolvent insurer.

Note: In assessing an Insurer Credit Risk Event, the Regulator will have regard to, amongst other things:

- (c) the Service Provider's attempts to mitigate and prevent the event from occurring by reviewing and considering the insurer's track record, size, credit rating and reputation; and
- (d) in the event that a claim would have been covered by the insolvent insurer's policy, whether the Service Provider had reasonable opportunity to insure the risk with a different insurer.

Insurance Coverage Event

Proposed definition

The proposed definition of an insurance coverage event is:

Insurance Coverage Event means an event whereby:

- (a) the Service Provider:
 - (1) makes a claim or claims and receives the benefit of a payment or payments under that a relevant insurance policy or set of insurance policies;
 - (2) 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
- (b) the Service Provider incurs costs:
 - (1) beyond a relevant policy limit for that policy or set of insurance policies; or
 - (2) that are unrecoverable under that policy or set of insurance policies due to changed circumstances; and
- (c) the costs referred to in paragraph (b) materially increase the costs to the Service Provider of providing Reference Services.

For the purposes of this Insurance Coverage Event:

¹ As per Chapter 12, we are not proposing amendments to the Change in Taxes Event, the Regulatory Change Event or the Retailer Insolvency Event.

- (d) 'changed circumstances' means movements in the relevant insurance liability market that are beyond the control of the Service Provider, where those movements mean that it is no longer possible for the Service Provider 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 (b) above within the scope of that insurance policy or set of insurance policies;
- (e) 'costs' means the costs that would have been recovered under the insurance policy or set of insurance policies had:
 - (1) the limit not been exhausted; or
 - (2) those costs not been unrecoverable due to changed circumstances;
- (f) a relevant insurance policy or set of insurance policies is an insurance policy or set of insurance policies held during the Sixth Access Arrangement Period or a previous period in which access to the pipeline services was regulated;
- (g) the Service Provider 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 the Service Provider in relation to any aspect of the Distribution System or the Service Provider's business; and
- (h) the Service Provider 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 the Service Provider in relation to any aspect of the Distribution System or the Service Provider's business.

Note: In making a determination on an Insurance Coverage Event, the Regulator will have regard to:

- (1) the relevant insurance policy or set of insurance policies for the event;
- (2) the level of insurance that an efficient and prudent Service Provider would obtain, or would have sought to obtain, in respect of the event; and
- (3) any information provided by the Service Provider to the Regulator about the Service Provider's actions and processes; and
- (4) any guidance published by the Regulator on the matters the Regulator will likely have regard to in assessing any Insurance Coverage Event that occurs.

Natural Disaster Event

Proposed definition

The proposed definition of a Natural Disaster Event is:

Natural Disaster Event means any natural disaster including, but not limited to cyclone, fire, flood or earthquake that occurs during the Sixth Access Arrangement Period and materially increases the costs to the Service Provider of providing Reference Services, provided the cyclone, fire, flood or other event was:

- (a) a consequence of an act or omission that was necessary for the Service Provider to comply with a Regulatory Instrument; or
- (b) not a consequence of any other acts or omission of the Service Provider.

Note: In assessing a Natural Disaster Event pass through application, the Regulator will have regard to, amongst other things:

- (c) whether the Service Provider has insurance against the event;
- (d) the level of insurance that an efficient and prudent Service Provider would obtain in respect of the event.

Service Standard Event

Proposed definition

The proposed definition of a service standard event is:

Service Standard Event means a legislative or administrative act or decision that:

- (a) has the effect of:
 - (1) substantially varying, during the course of an access arrangement period, the manner in which the Service Provider is required to provide a Reference Service;
 - (2) imposing, removing or varying, during the course of an access arrangement period, minimum service standards applicable to Reference Services; or

- (3) altering, during the course of an access arrangement period, the nature or scope of the Reference Services, provided by the Service Provider; and
- (b) materially increases or materially decreases the costs to the Service Provider of providing Reference Services.

Terrorism Event

Proposed definition

The proposed definition of a Terrorism event is:

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 in connection with any organisation or government), which:

- (a) 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
- (b) which materially increases the costs to the Service Provider of providing Reference Services.

Note: In making a determination on a Terrorism Event, the Regulator will have regard to, amongst other things:

- (c) whether the Service Provider has insurance against the event;
- (d) the level of insurance that an efficient and prudent service provider would obtain in respect of the event; and
- (e) whether a declaration has been made by a relevant government authority that a Terrorism Event has occurred.

Relevant Pass Through Event

We also propose to amend the definition of Relevant Pass Through Event to reflect the renaming and subsequent re-ordering (in alphabetical order) of our event definitions.

The amended definition we have proposed is:

Relevant Pass Through Event means:

- (a) a Change in Taxes Event;
- (b) an Insurance Coverage Event;
- (c) an Insurer Credit Risk Event;
- (d) a Natural Disaster Event;
- (e) a Regulatory Change Event;
- (f) a Retailer Insolvency Event;
- (g) a Service Standard Event; or
- (h) a Terrorism Event.

For the purpose of any Relevant Pass Through Event that includes a reference to materiality, an event is considered to materially increase or materially decrease costs where that event has an impact which is equal to or greater than one per cent of the smoothed forecast revenue specified in the Regulator's Final Decision, in one or more of the years for the Access Arrangement Period in which the costs are incurred.