



# Business case: National Energy Retail Law Claims Regime

2025-30 Regulatory Proposal

Supporting document 6.5

January 2024



Empowering South Australia

# Contents

<b>Glossary</b> .....	<b>3</b>
<b>1 About this document</b> .....	<b>4</b>
1.1 Purpose.....	4
1.2 Expenditure category .....	4
1.3 Related documents.....	4
<b>2 Executive summary</b> .....	<b>5</b>
<b>3 Background</b> .....	<b>6</b>
3.1 The scope of this business case.....	6
3.2 Our performance to date.....	6
3.3 Drivers for change .....	6
3.4 Industry practice.....	7
3.5 The identified need .....	8
3.6 Stakeholder engagement.....	8
<b>4 Cost build-up</b> .....	<b>9</b>
4.1 Backdating of No-fault regime .....	10
[REDACTED] .....	<b>11</b>

## Glossary

<b>Acronym / term</b>	<b>Definition</b>
<b>AER</b>	Australian Energy Regulator
<b>Capex</b>	Capital expenditure
<b>DER</b>	Distributed energy resources
<b>FTE</b>	Full-time equivalent
<b>ICT</b>	Information and Communication Technology
<b>LV</b>	Low voltage
<b>NECF</b>	National Energy Customer Framework
<b>NEL</b>	National Electricity Law
<b>NER</b>	National Electricity Rules
<b>NERL</b>	National Energy Retail Law
<b>NPV</b>	Net present value
<b>Opex</b>	Operating expenditure
<b>RCP</b>	Regulatory Control Period

# 1 About this document

## 1.1 Purpose

This document sets out the business case for the expenditure required to meet a new regulatory obligation relating to customer claims and damages that must be paid by SA Power Networks over the 2025-30 Regulatory Control Period (**RCP**).

## 1.2 Expenditure category

Opex category specific forecast (no associated capital expenditure)

## 1.3 Related documents

The National Energy Retail Law (**NERL**) Part 7 “Small compensation claims regime”

## 2 Executive summary

This business case details the justification of \$17.66 million of operating expenditure<sup>1</sup> (**opex**) required to allow SA Power Networks to meet an expected change in regulatory obligations relating to claims and damages that will apply to SA Power Networks from 1 July 2025.

The SA Government has been consulting with SA Power Networks about enacting the Part 7—Small compensation claims regime of the National Energy Retail Law (**NERL**) in South Australia which would increase the amount of claims and damages that would have to be paid by SA Power Networks. Based on indications from the SA Government we expect it will be enacted from 1 July 2025 and made retroactive from 1 July 2022. The proposed claims and damages regime will not replace the 'At-fault' regime that SA Power Networks currently operates under, but operate side by side and in addition to it as a separate and new regulatory obligation.

Given this is a new regime, there is a degree of uncertainty as to the forecast number and value of claims that we would expect to receive over 2025-30. Therefore, we are proposing this as a category specific forecast with estimates for the required expenditure, providing greater transparency and review as part of the 2030-35 Distribution Determination. This is an initial cost estimate based on a forecast of expected claims given the current discussions with the SA Government. We expect to develop a final cost estimate for the revised proposal as the details of the regime become clearer during 2024.

The expenditure proposed for the 2025-30 RCP has three components:

- an estimated \$10.19 million (annually \$2.04 million) to account for the additional claims that will be received under the new regime;
- \$1.41 million (annually \$0.28 million) for two additional resources to administer the larger volume of claims; and
- an additional \$6.05 million in 2025/26 only to account for the retroactive backdating of claims to 1 July 2022, as obligated.

The proposed increase in opex is to ensure we are provided with the operating expenditure required to meet this new regulatory obligation as required by the operating expenditure objective stipulated under clause 6.5.6(a)(2) of the National Electricity Rules (**NER**).

---

<sup>1</sup> Unless otherwise stated expenditure in this business case will be in \$ June 2022.

## 3 Background

### 3.1 The scope of this business case

This business case responds to an expected change in regulatory obligations relating to customer claims and damages that we expect will apply to SA Power Networks from 1 July 2025.

The SA Government has been consulting with SA Power Networks about enacting Part 7—Small compensation claims regime of the NERL in South Australia which would increase the amount of claims and damages that would have to be paid by SA Power Networks to customers. Based on indications from the SA Government we expect it will be enacted from 1 July 2025 and made retroactive from 1 July 2022.

### 3.2 Our performance to date

Under the deemed standard connection contract clause 8<sup>2</sup>, SA Power Networks is only required to compensate customers for an incident relating to our distribution system where fault and negligence or bad faith has been established on the part of the distributor (ie SA Power Networks). This current regime will be referred to as the 'at-fault' regime.

Under the at-fault regime, SA Power Networks assesses a customer's claim for compensation to determine whether SA Power Networks was at fault (ie negligent or acted in bad faith). Where SA Power Networks is deemed at fault, the claim is then assessed to ensure that the customer is appropriately compensated for their loss. Under the At-fault regime, most customer's claims are rejected as SA Power Networks are not normally deemed at fault.

Through the At-fault regime from 1 July 2018 to 30 June 2023, SA Power Networks has received claims from customers to the value of \$8.54 million and paid out \$3.11 million (\$ June 2022).

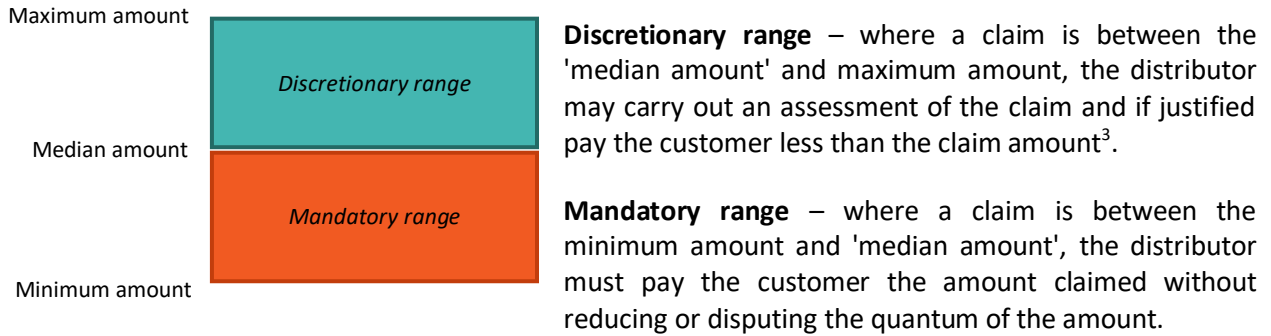
### 3.3 Drivers for change

In response to significant dissatisfaction and frustration from customers impacted by damaging events that fall outside of SA Power Networks' control, the SA Government is investigating the enacting of the NERL 'Part 7 - Small compensation claims regime' (referred to as the 'No-fault' regime) from 1 July 2025 in South Australia. The No-fault regime enables small customers to make claims for compensation from distributors who provide customer connection services to their premises in relation to certain claimable incidents. Once enacted small customers would be entitled to, and SA Power Networks would be obligated (see S185 of the NERL) to pay to small customers, compensation for damage to their property caused by certain claimable incidents without needing to demonstrate fault, negligence or bad faith. The enactment of the No-fault regime will not replace the current At-fault regime but operate side by side and in addition to that regime.

Under the No-fault regime compensation is only payable where the amount claimed is more than the 'minimum amount' and less than the 'maximum amount'. The regime also sets a 'median amount' which determines how a distributor is required to assess the claim:

---

<sup>2</sup> NERL, Schedule 2, Model terms and conditions for deemed standard connection contracts, clause 8 – our liability.



If an individual claim is more than the maximum amount or less than the minimum amount the distributor can reject the claim. Where the claim exceeds the maximum amount, the distributor must advise the customer that the claim will be reduced (see S189 of NERL) so that it does not exceed the maximum amount if the customer so requests within a specified period of at least five business days, otherwise the distributor will reject the claim.

SA Power Networks is in discussion with the SA Government about the details of the No-fault regime, including:

- the definition of a 'claimable incident', with discussions looking to limit it to 'any unexplained or unexpected equipment failure that leads to voltage variation on SA Power Networks' distribution network';
- the minimum amount ( [REDACTED] );
- the median amount ( [REDACTED] );
- the maximum amount (either \$10,000, \$15,000 or \$20,000); and
- the definition of a 'repeat claimant'.

These details will ultimately be determined by the SA Government and prescribed in local regulations.

The minimum amount, median amount and definition of a 'repeat claimant' are expected to be kept confidential to the SA Government, SA Power Networks and the Energy and Water Ombudsman to ensure that the regime is not abused to the detriment (and cost) of other consumers.

### 3.4 Industry practice

The NERL Part 7 - Small compensation claims regime was included in legislation at commencement of the National Energy Customer Framework (NECF). To date, no jurisdiction has adopted the Small claims compensation regime, but a similar more mature regime is operating in Victoria under the Victorian Electricity Distribution Code of Practice Schedule 4<sup>4</sup>.

<sup>3</sup> Claims are generally received with an expectation of full replacement value for a damaged appliance however a claim for property damage can only reflect the cost of replacing or repairing the property with property of substantially the same age, functionality and appearance (NERL s 187). Depreciation may therefore need to be applied to reflect the age of an appliance to place the claimant as close as possible to the position of value prior to when the appliance failed.

<sup>4</sup> Schedule 4 replaced Guideline No. 11: Electricity Industry – Voltage Variation Compensation from 1 October 2022. The Guideline operated from April 2001.

### **3.5 The identified need**

The expected enactment by the SA Government of Part 7 of the NERL in South Australia from 1 July 2025, will require SA Power Networks to comply with the No-fault regime from that date (as well as continuing to comply with the At-fault regime). This will create a new obligation on SA Power Networks to compensate customers for certain claimable incidents that occur as a result of an event on the distribution system even where no fault is found on behalf of SA Power Networks.

We considered the regulatory framework under the NER and the National Electricity Law (**NEL**) and, in particular how the expenditure is required to achieve the opex objectives and reasonably reflects the opex criteria, having regard to relevant opex factors. We also considered our regulatory obligations and requirements under the NER, the NEL and jurisdictional instruments. As a result of these considerations, the identified need is to ensure that we can prudently and efficiently meet this new regulatory obligation as an obligation associated with the provision of standard control services as required by the operating expenditure objective under clause 6.5.6(a)(2) of the NER.

As this is a new regime, in order to build greater transparency, we are proposing this as a category specific forecast which will allow for review at the 2030-35 reset with several years of experience in administering the new regime.

### **3.6 Stakeholder engagement**

Focused Conversations with customers and stakeholders had recommended to the People's Panel that SA Power Networks should itself institute a new claims regime ahead of being formally obligated to do so. However, the People's Panel did not achieve consensus on this topic, and instead urged us to engage in discussions with the SA Government in relation to an expanded claims and damages regime as a matter of government policy.

SA Power Networks has also directly engaged with the Energy and Water Ombudsman SA on this proposal, and they are strongly supportive of the regime.



## 4 Cost build-up

This is an initial cost estimate that we will continue to refine as more information becomes available in 2024. A final cost estimate will be shared with the AER during the Proposal review process, or incorporated into our Revised Proposal, should one be required.

Through our consultation with the SA Government, we were required to estimate the value of claims we would expect to receive and pay-out under the No-fault claims regime. We used historic claims data (including claims that were denied under the At-fault regime) however, it is expected that the historic At-fault data would underestimate the number of claims we would receive under a No-fault claims regime for the following reasons:

1. under the At-fault claims regime the number of claims received may be suppressed as a customer would not always submit a claim for compensation where their neighbour's claim had already been denied;
2. customers who had previously had claims denied under the At-fault regime may be less likely to submit a claim under future events; and
3. under the No-fault regime, when a neighbour's claim is accepted it would prompt more people to submit a claim for damages.

In order to account for this underestimation, a sensitivity analysis was performed over four and half years of historical At-fault claim regime data which varied the proportion of customers (30%, 40% and 50%) connected to the same transformer that could have also made a claim on top of those that claimed under the At-fault regime. Each scenario was tested across three options which dictated different median and maximum amounts currently being considered by the SA Government:

1. Minimum amount of [REDACTED], median amount of [REDACTED] and a maximum amount of \$10,000
2. Minimum amount of [REDACTED], median amount of [REDACTED] and a maximum amount of \$15,000
3. Minimum amount of [REDACTED], median amount of [REDACTED] and a maximum amount of \$20,000

This analysis made the following assumptions:

- was limited to claims for property damage that would have been caused by an unexplained or unexpected equipment failure that lead to voltage variation on SA Power Networks' distribution network only;
- where the actual historical number of claimants was greater than the forecast estimates (30%, 40%, 50%), the actual number of claims was used; and
- we have used our current At-fault claims regime data to forecast the quantum of claims likely to be paid per event under the No-fault regime. The amount paid per claim was determined using the following methodology;
  - customers were compensated commensurate with the value of the damaged item prior to when the loss occurred (i.e. cost of replacing or repairing the property with property of substantially the same age, functionality and appearance);
  - depreciation was applied to the value of items valued at greater than \$250, where replacement was required, at a rate of 8% per annum (max 80%) for white goods and general household appliances, and 16% per annum (max 80%) for computers; and
  - full recovery of repair costs, including labour and transport were paid.

It is expected that the SA Government will proceed with option 2 (as listed above).

For the purpose of this initial forecast, SA Power Networks is taking the conservative view that 30% of customers connected to a transformer which has a fault will make a claim under the No-faults regime, which will result in an estimated \$2.19 million paid annually to claimants. In addition to the expenditure required to payout the claims, an additional two full-time equivalent (**FTE**) resources will be required to administer and investigate equipment failure related claims as required by the No-fault regime.

In order to forecast the expected total claim value under the No-fault claim regime, we must remove the claims that would be made under the At-fault regime. This was estimated at \$0.15 million per annum which is the average of four and half years of historical At-fault claims regime data, based on the same parameters as the sensitivity analysis.

Given this analysis the expected annual cost over 2025-30 of both claims regimes and the additional FTEs required to administer the No-fault regime is shown in Table 1.

**Table 1: Estimated annual expenditure 2025-30 related to claims and damages paid by SA Power Networks, \$m, June \$2022**

At-fault regime	\$0.15
No-fault regime	\$2.04
2 x additional FTE	\$0.28

#### 4.1 Backdating of No-fault regime

The SA Government indicated that should the No-fault regime be enacted it could be backdated to 1 July 2022. We have estimated the additional costs for the No-fault regime for 2022/23 to be \$1.98 million (\$ June 2022) based on the actual claims we have received for that year. We have then used the forecast average annual claims (see table 4) for 2023/24 and 2024/25. The expenditure required as a result of the backdating is assumed to be paid in 2025/26.

A summary of the total expenditure required to facilitate the No-fault regime is summarised in Table 2.

**Table 2: Proposed category specific forecast, (\$m, June 2022)**

Cost Type	2025-26	2026-27	2027-28	2028-29	2029-30	Total 2025 - 30
Capex	0.0	0.0	0.0	0.0	0.0	0.0
Opex	\$8.37	\$2.32	\$2.32	\$2.32	\$2.32	\$17.66
Backdating requirement	6.05	0.0	0.0	0.0	0.0	6.05
No-fault regime	2.04	2.04	2.04	2.04	2.04	10.19
FTEs	0.28	0.28	0.28	0.28	0.28	1.41
<b>TOTAL COST</b>	<b>8.37</b>	<b>2.32</b>	<b>2.32</b>	<b>2.32</b>	<b>2.32</b>	<b>17.66</b>

