



Request for jurisdictional scheme determination (small compensation claims regime)

March 2025

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**Attachment 1 – National Energy Retail Law (Local Provisions) (Small Compensation Claims Regime)
Amendment Regulations 2025**

Attachment 2 – Proclamation

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1. Introduction

SA Power Networks is the distribution network service provider (**DNSP**) in respect of the South Australian distribution system. SA Power Networks operates that distribution system pursuant to a distribution licence issued under the *Electricity Act 1996 (SA)* and subject to, and in accordance with, the National Electricity Rules (**NER**).

In operating the South Australian distribution system, SA Power Networks is also subject to, amongst other things, the *National Energy Retail Law (South Australia) Act 2011 (NERL Act)* and the National Energy Retail Law set out in the Schedule to the NERL Act (**NERL**).

Part 7 of the NERL establishes a small compensation claims regime to enable small customers to make small claims for compensation from distributors who provide customer connection services to their premises (**Small Claims Regime**). However, under section 22 of the NERL Act, the Small Claims Regime only applies in a jurisdiction, and forms part of the NERL, from a date fixed by proclamation. Furthermore, for the Small Claims Regime to apply in a jurisdiction, it is necessary for certain elements of the Small Claims Regime to first be prescribed or addressed in an appropriate legislative instrument (**Additional Regime Matters**).

On 12 March 2025, the *National Energy Retail Law (Local Provisions) Regulations 2013 (Local Provisions Regulations)* made under the NERL Act were amended by the *National Energy Retail Law (Local Provisions) (Small Compensation Claims Regime) Amendment Regulations 2025 (Amendment Regulations)*. The purpose of the Amendment Regulations was to set out the Additional Regime Matters. The Amendment Regulations were proclaimed to come into operation on 13 March 2025. Accordingly, the Small Claims Regime has applied in South Australia since that date.

Under the Small Claims Regime, SA Power Networks is required, amongst other things, to pay compensation to small customers who make claims for property damage caused by a *designated claimable incident* (including a *transitional designated claimable incident*). Such incidents, together with related expressions, are defined in the Amendment Regulations as follows:

designated claimable incident means a failure of electricity infrastructure owned or operated by a distributor where the failure causes a *relevant voltage variation*, provided that the failure is not caused (whether wholly or partly) by any of the following:

- (a) lightning, a storm, an earthquake, a flood, a fire or another natural event;
- (b) a person, other than the distributor or an employee, contractor or agent of the distributor, damaging the electricity infrastructure;
- (c) property of a person, other than property of the distributor or an employee, contractor or agent of the distributor, damaging the electricity infrastructure; or
- (d) fauna or flora coming into contact with the electricity infrastructure.

electricity infrastructure and *Technical Regulator* have the same respective meanings as in the *Electricity Act 1996*.

relevant voltage variation means a relevant voltage variation caused by a failure of electricity infrastructure owned or operated by a distributor which occurs when there is a change in the voltage of electricity supplied to the premises of a small customer such that the voltage is outside the standard voltage range determined by the distributor, with the approval of the Technical Regulator, from time to time and published on a website determined by the distributor.

transitional designated claimable incident means a *designated claimable incident* that occurred between 1 July 2022 and the *relevant day*.

relevant day means the day on which the Amendment Regulations came into operation.

The purpose of this submission is to request the Australian Energy Regulator (**AER**) to determine that the Small Claims Regime now in effect in South Australia is a jurisdictional scheme under clauses 6.18.7A(l) and 6.18.7A(n) of the NER.

The AER is required to determine that the Small Claims Regime is a jurisdictional scheme under clauses 6.18.7A(l) and 6.18.7A(n) of the NER if it considers that the scheme meets the jurisdictional scheme eligibility criteria set out in clause 6.18.7A(x) of the NER. The NER do not provide the AER with any residual discretion to determine that a scheme is not a jurisdictional scheme if the jurisdictional scheme eligibility criteria are satisfied.

This submission sets out the following information as required by clause 6.18.7A(g) of the NER:

- (1) the name and address of the person making the request;
- (2) details of the law of the participating jurisdiction under which the Small Claims Regime is established;
- (3) the commencement date of the Small Claims Regime; and
- (4) an explanation of how the Small Claims Regime meets the jurisdictional scheme eligibility criteria.

If the AER determines that the Small Claims Regime is a jurisdictional scheme, SA Power Networks will incorporate jurisdictional scheme amounts into its annual pricing proposals from the 2025-2026 regulatory year in accordance with clauses 6.18.2(b)(6A) and 6.18.7A of the NER.

2. Person making the request

Clause 6.18.7A(g)(1) of the NER requires the name and address of the person requesting the AER to determine that a scheme is a jurisdictional scheme. Those details are as follows:

Name and contact details	
Person making the request	SA Power Networks
Contact person	Richard Sibly Head of Regulation
Address	1 Anzac Highway, Keswick SA 5035
Postal address	GPO Box 77 Adelaide SA 5001
Telephone	[REDACTED]
Email	[REDACTED]

3. Details of the law establishing the scheme

Clause 6.18.7A(g)(2) of the NER requires that a request for the AER to determine whether a scheme is a jurisdictional scheme must include details of the law of the participating jurisdiction under which the relevant scheme is established.

Participating jurisdiction

The Small Claims Regime is established under the NERL. South Australia is a participating jurisdiction by virtue of section 9(1)(a) of the NERL.

Jurisdictional scheme obligations - definition

The jurisdictional scheme eligibility criteria are defined in clause 6.18.7A(x) of the NER by reference to the 'jurisdictional scheme obligations'.

The term 'jurisdictional scheme obligations' is defined in Chapter 10 of the NER as:

'Obligations imposed on a Distribution Network Service Provider under:

- (a) an Act of a participating jurisdiction or an instrument, direction or order made under an Act of a participating jurisdiction (other than the NEL and the Rules); or*
- (b) a condition of a distribution licence or authority held by a Distribution Network Service Provider in a participating jurisdiction.'*

Amended regulations under the NERL

The Amendment Regulations were proclaimed to come into operation in South Australia from 13 March 2025. A copy of the Amendment Regulations is provided in Attachment 1 to this application. A copy of the proclamation is provided in Attachment 2 to this application.

The Amendment Regulations inserted new regulations 13A and 13B into the Local Provisions Regulations.

Regulation 13A(1) prescribes *designated claimable incidents* including *transitional designated claimable incidents* as being claimable incidents for the purposes of the application of the Small Claims Regime in Part 7 of the NERL to small customers in South Australia.

Jurisdictional scheme obligations - satisfaction

As:

- the framework for the Small Claims Regime, and the obligations that are imposed on SA Power Networks as a distributor under the Small Claims Regime, are contained in Part 7 of the NERL;
- the NERL is made under the NERL Act;
- the NERL Act is an Act of South Australia and the NERL is an instrument made under the NERL Act;
- the application of the Small Claims Regime in South Australia has been enlivened by the making of a proclamation under section 22(2) of the NERL Act;

- the meaning of various terms used in the Small Claims Regime, as it applies in South Australia, are prescribed by a South Australian local instrument, namely the Amendment Regulations; and
- South Australia is a ‘participating jurisdiction’,

the Small Claims Regime imposes obligations on SA Power Networks to make compensation payments for claimable incidents and meets the requirements of paragraph (a) of the definition of ‘jurisdictional scheme obligations’.

4. Commencement date

Clause 6.18.7A(g)(3) of the NER requires that a request for the AER to determine whether a scheme is a jurisdictional scheme must specify the commencement date of the relevant scheme.

The Amendment Regulations were proclaimed to come into operation from 13 March 2025, thereby applying the Small Claims Regime in South Australia by virtue of section 22(2) of the NERL Act.

Accordingly, the Small Claims Regime commenced in South Australia on 13 March 2025.

5. Eligibility criteria

Clause 6.18.7A(g)(4) of the NER requires that an explanation be provided in relation to how the Small Claims Regime meets the jurisdictional scheme eligibility criteria.

The jurisdictional scheme eligibility criteria are set out in clause 6.18.7A(x) of the NER as follows:

- ' (x) *The following are the jurisdictional scheme eligibility criteria:*
- (1) *the jurisdictional scheme obligations require a Distribution Network Service Provider to:*
 - (i) *pay a person;*
 - (ii) *pay into a fund established under an Act of a participating jurisdiction;*
 - (iii) *credit against charges payable by a person; or*
 - (iv) *reimburse a person, an amount specified in, or determined in accordance with, the jurisdictional scheme obligations*
 - (2) *the jurisdictional scheme obligations are imposed on a Distribution Network Service Provider in its capacity as a Distribution Network Service Provider;*
 - (3) *the amount referred to in subparagraph (1) is not in the nature of a fine, penalty or incentive payment for the Distribution Network Service Provider; and*
 - (4) *except as provided in these Rules, the Distribution Network Service Provider has no right to recover the amount referred to in subparagraph (1) from any person.'*

The table below sets out how the Small Claims Regime satisfies all of the jurisdictional scheme eligibility criteria. Accordingly, the AER must determine that the Small Claims Regime is a jurisdictional scheme for the purposes of the NER.

Eligibility criteria	How the criteria are met by the Small Claims Regime
<p>The jurisdictional scheme obligations require a distribution network service provider to:</p> <ol style="list-style-type: none"> (i) pay a person; (ii) pay into a fund established under an Act of a participating jurisdiction; (iii) credit against charges payable by a person; or (iv) reimburse a person, <p>an amount specified in, or determined in accordance with, the jurisdictional scheme obligations.</p>	<p>As explained earlier in this document, the obligation imposed on SA Power Networks by Part 7 of the NERL and the Amendment Regulations is to pay amounts to 'small customers' in accordance with the Small Claims Regime.</p> <p>Section 5(1) of the NERL defines a 'customer' as a person (a) to whom energy is sold for premises by a retailer, or (b) who proposes to purchase energy for premises from a retailer. Section 5(2) of the NERL defines a 'small customer' as a 'customer' (a) who is a residential customer, or (b) who is a business customer who consumes energy at business premises below the upper consumption threshold.</p> <p>The expression 'person' is defined in the National Electricity Law (NEL) to mean a body politic or body corporate as well as an individual¹. Small customers are either individuals or bodies corporate.</p>

¹ Clause 10 of Schedule 2 of the NEL. That definition applies to the NER by reason of section 3 of the NEL.

Eligibility criteria	How the criteria are met by the Small Claims Regime
	<p>As small customers are persons, the jurisdictional scheme eligibility criterion of there being an obligation to 'pay a person' is satisfied.</p> <p>The Small Claims Regime specifies that compensation amounts ranging from a minimum of \$100 to a maximum of \$15,000 per claim be paid to small customers in respect of claimable incidents, which satisfies the requirement in clause 6.18.7A(x)(1) of the NER that the jurisdictional scheme obligation requires a DNSP to pay 'an amount specified in ... the jurisdictional scheme obligations'.</p>
<p>The jurisdictional scheme obligations are imposed on a distribution network service provider in its capacity as a distribution network service provider.</p>	<p>Chapter 10 of the NER defines 'Distribution Network Service Provider' as 'a person who engages in the activity of owning, controlling, or operating a distribution system'. 'Distribution system' is defined (in part) as 'a distribution network, together with the connection assets associated with the distribution network, which is connected to another transmission or distribution system'. The South Australian distribution network and its associated connection assets are a distribution system as defined. Accordingly, SA Power Networks is registered by AEMO as the owner, controller and operator of the South Australian distribution system is therefore a Distribution Network Service Provider.</p> <p>Through Part 7 of the NERL and the Amending Regulations, the Small Claims Regime imposes obligations on a 'distributor' in South Australia. 'Distributor' is defined in the NERL as meaning (relevantly²) a 'regulated distribution system operator' within the meaning of the NEL. 'Regulated distribution system operator' is defined in the NEL as meaning 'an owner, controller or operator of a distribution system (a) who is a Registered participant, and (b) whose revenue from, or prices that are charged for, the provision of electricity network services are regulated under a distribution determination'. SA Power Networks meets both of these criteria and is therefore a regulated distribution system operator.</p> <p>The definition of 'Distribution Network Service Provider' in the NER clearly includes a 'regulated distribution system operator' under the NEL and the NERL. The jurisdictional scheme obligations are therefore clearly imposed on SA Power Networks in its capacity as a Distribution Network Service Provider, and not in any other capacity thereby meeting the requirement in clause 6.18.7A(x)(2) of the NER.</p>

² The definition has other categories, but that is, in part, because the NERL has application in the gas industry as well as the electricity industry.

Eligibility criteria	How the criteria are met by the Small Claims Regime
<p>The amounts are not in the nature of a fine, penalty or incentive payment for the distribution network service provider.</p>	<p>The amounts payable by SA Power Networks under the Small Claims Regime relate solely to 'designated claimable incidents' and are not in the nature of a fine, penalty or incentive payment for SA Power Networks thereby meeting the requirement in clause 6.18.7A(x)(3) of the NER.</p>
<p>Except as provided in the NER, the distribution network service provider has no right to recover the amounts from any person.</p>	<p>SA Power Networks has no right to recover the amounts payable by it under the Small Claims Regime from any person, except as provided in the NER thereby meeting the requirement in clause 6.18.7A(x)(4) of the NER.</p>

Attachment 1 – National Energy Retail Law (Local Provisions) (Small Compensation Claims Regime) Amendment Regulations 2025

12 March 2025

THE SOUTH AUSTRALIAN GOVERNMENT GAZETTE

No. 15 p. 291

REGULATIONS

South Australia

National Energy Retail Law (Local Provisions) (Small Compensation Claims Regime) Amendment Regulations 2025

under the *National Energy Retail Law (South Australia) Act 2011*

Contents

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Part 1—Preliminary

1—Short title

These regulations may be cited as the *National Energy Retail Law (Local Provisions) (Small Compensation Claims Regime) Amendment Regulations 2025*.

2—Commencement

These regulations come into operation on the date fixed by proclamation under section 22 of the *National Energy Retail Law (South Australia) Act 2011*.

Part 2—Amendment of *National Energy Retail Law (Local Provisions) Regulations 2013*

3—Insertion of regulations 13A and 13B

After regulation 13 insert:

13A—Small compensation claims regime

- (1) For the purposes of section 178(1)(b) of the *National Energy Retail Law (South Australia)*, and subject to subregulation (2), a designated claimable incident (including a transitional designated claimable incident) is prescribed as a claimable incident for small customers in this jurisdiction.

- (2) A small customer may only make a claim under Part 7 of the *National Energy Retail Law (South Australia)* in respect of a transitional designated claimable incident that affected particular premises (regardless of whether the customer made a claim in respect of the incident as affecting those premises before the relevant day) if—
- (a) the customer has not, before the relevant day, been compensated (whether as a result of a decision of the distributor, a decision of the relevant energy ombudsman or otherwise) in respect of the incident as affecting those premises; and
 - (b) the claim is made within 2 years after the relevant day.
- (3) For the purposes of section 180(2)(a) of the *National Energy Retail Law (South Australia)*, the amount of \$15 000 is prescribed as the maximum amount for a claim.
- (4) For the purposes of section 181(2)(a) of the *National Energy Retail Law (South Australia)*, the amount of \$100 is prescribed as the minimum amount for a claim.
- (5) For the purposes of section 182(2)(a) of the *National Energy Retail Law (South Australia)*, the amount of \$1 000 is prescribed as the median amount for a claim.
- (6) Section 184 of the *National Energy Retail Law (South Australia)* is declared to apply in relation to this jurisdiction to the extent that it relates to the repeated claims maximum number determined under section 183 in respect of this jurisdiction.
- (7) In this regulation—

designated claimable incident means a failure of electricity infrastructure owned or operated by a distributor where the failure causes a relevant voltage variation, provided that the failure is not caused (whether wholly or partly) by any of the following:

- (a) lightning, a storm, an earthquake, a flood, a fire or another natural event;
- (b) a person, other than the distributor or an employee, contractor or agent of the distributor, damaging the electricity infrastructure;
- (c) property of a person, other than property of the distributor or an employee, contractor or agent of the distributor, damaging the electricity infrastructure;
- (d) fauna or flora coming into contact with the electricity infrastructure;

electricity infrastructure and **Technical Regulator** have the same respective meanings as in the *Electricity Act 1996*;

relevant day means the day on which this regulation comes into operation;

relevant voltage variation—a relevant voltage variation caused by a failure of electricity infrastructure owned or operated by a distributor occurs when there is a change in the voltage of electricity supplied to the premises of a small customer such that the voltage is outside the standard voltage range determined by the distributor, with the approval of the Technical Regulator, from time to time and published on a website determined by the distributor;

transitional designated claimable incident means a designated claimable incident that occurred between 1 July 2022 and the relevant day.

13B—Review of small compensation claims regime

- (1) The Minister must cause a review of the operation of the small compensation claims regime in this jurisdiction to be conducted and a report on the results of the review to be submitted to the Minister.
- (2) The review must commence as soon as practicable after the expiry of 2 years from the commencement of regulation 13A.
- (3) The Minister must, as soon as practicable after receiving the report submitted under subregulation (1), cause a copy of the report to be published on a website maintained by the Technical Regulator.
- (4) In this regulation—

Technical Regulator has the same meaning as in the *Electricity Act 1996*.

Editorial note—

As required by section 10AA(2) of the *Legislative Instruments Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

with the advice and consent of the Executive Council
on 12 March 2025

No 7 of 2025

South Australia

National Energy Retail Law (South Australia) (Small Compensation Claims Regime) Proclamation 2025

under section 22(2) of the *National Energy Retail Law (South Australia) Act 2011*

1—Short title

This proclamation may be cited as the *National Energy Retail Law (South Australia) (Small Compensation Claims Regime) Proclamation 2025*.

2—Date from which Part 7 of National Energy Retail Law applies

For the purposes of section 22(2) of the *National Energy Retail Law (South Australia) Act 2011*, 13 March 2025 is fixed as the date from which Part 7 of the *National Energy Retail Law* will apply in this jurisdiction (and form part of the *National Energy Retail Law (South Australia)*).

Made by the Governor

with the advice and consent of the Executive Council
on 12 March 2025