Establishing a small claims compensation scheme for small electricity customers in South Australia

Consultation Paper

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SOUTH AUSTRALIA

Government of South Australia

Department for Energy and Mining



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Acknowledgement of Country
As guests here on Kaurna land, we acknowledge everything this department does impacts on Aboriginal country, the sea, the sky, its people, and their spiritual and cultural connection which have existed since the first sunrise. Our responsibility is to share our collective knowledge, recognise a difficult history, respect the relationships made over time, and create a stronger future. We are ready to walk, learn and work together.

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Proposal

Part 7 of the National Energy Retail Law (NERL) provides for a small claims compensation scheme framework (the small claims scheme). The small claims scheme:

- enables household and small business electricity customers to make small claims for compensation from electricity distributors who provide customer connection services to their premises, where a "claimable incident" has occurred.
- does not involve having to establish fault, negligence, or bad faith on the part of a electricity distributor to receive compensation from the distributor under the scheme.

For the small claims scheme to apply in South Australia and ensure its settings are suitable for South Australia, amendments are required to the *National Energy Retail Law (Local Provisions) Regulations 2013* (the Regulations).

The state government is proposing to introduce these amendments via the *National Energy Retail Law (Local Provisions) (Small Compensation Claims Regime) Amendment Regulations 2024* (the draft Regulations). It is seeking community and stakeholder feedback on these regulations only.

As a result of these amendments, South Australia will be the first jurisdiction in Australia to establish the small claims scheme under the National Energy Customer Framework, that provides compensation for property damage to households and small businesses who previously could not recover losses suffered due to electrical infrastructure equipment failure.

SA Power Network (SAPN) is currently South Australia's only electricity distributor under the National Electricity Law (NEL). References to SAPN in this paper would similarly apply to any future additional South Australian distributors defined under the NEL.

Background

Failures of electrical infrastructure that cause damage to household electrical appliances, mainly resulting from voltage variations, have resulted in costs to householders and small businesses.

Electricity distributors under the NEL, including SAPN, can currently deny compensation claims lodged with them if their obligations regarding inspection and maintenance of their network infrastructure are met. Under the NERL, distributors are not liable for a failure to supply electricity unless this is due to an act or omission of the distributor done in bad faith or negligence.

Part 7 of the NERL provides for a compensation scheme to enable small customers to make claims for compensation from distributors, regardless of fault or negligence. To date, Queensland, Tasmania, the Australian Capital Territory, New South Wales, and South Australia have opted not to adopt this framework. Victoria is not subject to the NERL but has its own small claims compensation scheme under Schedule 4 of the Victorian Electricity Distribution Code of Practice.

The Energy and Water Ombudsman of South Australia (EWOSA) has investigated more than 300 overvoltage/surge damage cases since mid-2016, peaking at 69 in 2019-20. More recently, 47 cases were recorded in 2022-23 and 32 cases were recorded in 2023-24.

EWOSA has identified many incidents as non-compensable because SAPN had not acted negligently or in bad faith. This has highlighted the need to activate this scheme in South Australia to supplement existing consumer protections, including:

- SAPN's current dispute resolution process (for incidents arising from negligence or bad faith).
- The EWOSA complaint resolution process.

- SAPN's obligations under the Essential Services Commission of South Australia (ESCOSA) Electricity Distribution Code Guaranteed Service Level (GSL) scheme.

How will the small claims scheme operate?

The small claims scheme will operate in South Australia and will enable households and small businesses to make claims for compensation in respect of claimable incidents from electricity distributors who provide customer connection services to their premises. Claimants will be able to make these claims without needing to establish the distributor's fault or negligence. If a customer suffers property damage on its premises caused by a failure of electricity infrastructure owned or operated by a distributor, that customer may be eligible for compensation.

SAPN would administer the scheme, investigate and assess claims, and provide compensation to successful claimants. It would recover the costs of claims and scheme administration through the Australian Energy Regulator's (AER) regulation of the revenue that network businesses can earn from customers.

Subject to public consultation, the state government is proposing that the draft Regulations and the scheme commence later in 2024.

What is a "claimable incident"?

The NERL requires the draft Regulations to prescribe an event or circumstance that will comprise a "claimable incident" for the purpose of the scheme. Small customers are only entitled to make a claim under the scheme in respect of claimable incidents.

The draft Regulations prescribe a "designated claimable incident" as a failure of electricity infrastructure owned or operated by a distributor where the failure causes a relevant voltage variation (see below for more information).

The draft Regulations also propose that small customers will be able to make claims regarding historical claimable incidents that occurred between 1 July 2022 and the 'relevant day' on which the scheme commences (whether a claim was previously made under SAPN's existing 'at fault' compensation scheme in respect of that incident). Where a claim was previously made but was unsuccessful, a new claim would need to be submitted and assessed by SAPN under this scheme.

Who is eligible?

Only small customers receiving customer connection services from SAPN can claim. As defined in the NERL, these customers are:

- residential customers, being customers who purchase electricity principally for personal, household, or domestic use at premises, to whom SAPN provides customer connection services.
- business customers (non-residential customers) who consume less than 160 MWh of electricity per year at business premises (premises not used solely or principally for personal, household, or domestic use), to whom SAPN provides customer connection services.

The scheme is not intended to allow consumers to be compensated twice for the same event. Claimants who have previously been compensated in respect of a claimable incident (including because of a decision of the distributor or the energy ombudsman under the NERL) cannot make a claim under the scheme in respect to the same incident.

For historical claimable incidents that occurred on and from 1 July 2022 until the commencement of the scheme, it is proposed that claimants have a period of two years from scheme commencement to claim.

When is compensation payable?

Compensation is payable in respect to claims properly made under the scheme, when it can be established that:

- the distributor provided customer connection services to the premises of the small customer at the relevant time.
- the claimable incident occurred.
- the claim is for a “compensable matter” arising from or connected with the claimable incident.
- the amount claimed and the amount payable are within the range between the minimum amount and the maximum amount.

Part 7 of the NERL limits compensation to “compensable matters” – namely, property damage caused by a claimable incident. Property damage is defined as damage to tangible property located on the premises of a small customer and includes loss or destruction of that property.

Compensation may also be available for property damage beyond direct damage to electrical appliances, including (but not limited to) food spoilage, crop damage and livestock loss caused by the claimable incident. This may be subject to assessment by SAPN and claimants being able to substantiate these claims with evidence, consistent with the requirements of the scheme.

A claimant, in making a claim for compensation under the small claims scheme, will have to provide evidence to the distributor of the property damage caused by the claimable incident. The distributor will then assess whether the claimable incident involving property damage did affect the small customer's premises in the manner claimed.

In the event of a disputed claim, customers will retain the right to seek intervention by EWOSA.

When is compensation not payable?

Reflecting incidents commonly covered under insurance, compensation will not be payable under the scheme:

- where there is failure of the distributor’s electricity infrastructure caused by:
    - lightning, a storm, an earthquake, a flood, a fire or another natural event.
    - a person, other than the distributor or an employee, contractor or agent of the distributor, damaging the electricity infrastructure.
    - property of a person, other than property of the distributor or an employee, contractor or agent of the distributor, damaging the electricity infrastructure.
    - fauna or flora contacting the electricity infrastructure.
- where there is death or personal injury, economic loss, or damage to, loss of or destruction of intangible property caused by a claimable incident – as specified in section 179(2) of the NERL,

or where SAPN is otherwise entitled to reject a claim in accordance with Part 7 of the NERL.

The scheme also includes provision that gives SAPN the discretion to reject a claim or reduce the payable amount where the small customer making the claim is a “repeat claimant” and SAPN reasonably considers that the claim is an abuse of the scheme. Repeat claimants are defined by section 183 of the NERL as a small customer who exceeds the prescribed number of claims within a particular period, as determined by the Australian Energy Regulator (AER).

How will SA Power Networks calculate compensation for claims?

Section 187(2)(f) of the NERL requires any claim for property damage to provide suitable evidence for the amount claimed. The claimant will need to submit to the distributor a completed claim form that will include relevant details of the applicant, the incident and the property damage, and also include estimates of:

- the cost of replacing the property with property of substantially the same age, functionality, and appearance; or
- the cost of repairing the property to substantially the same functionality and appearance.

The compensation payable will depend on factors including (but not limited to):

- the distributor's independent assessment of the claim.
- the cost of repairing or replacing the property on a like-for-like basis – that is, to a standard of substantially the same age, functionality, and appearance.
- the minimum, median and maximum claim amounts defined in the scheme.

The NERL also requires the draft Regulations to prescribe minimum, median and maximum claim amounts which provide additional parameters around when claims can be accepted or rejected and the amount of compensation that may be payable under the scheme (see below for more information). For claims above the median amount, compensation payable to small businesses may be limited if the business customer has not taken reasonable precautions to minimise the risk of damage to their property.

Proposed Regulations

Part 7 of the NERL provides the framework for the small claims scheme (see Appendix 1 below).

As noted above, for the small claims scheme to apply in South Australia and to introduce accompanying settings, amendments are required to the *National Energy Retail Law (Local Provisions) Regulations 2013* (the Regulations). The state government is proposing to do this via the draft Regulations that are attached separately to this consultation paper.

We are seeking your feedback on the matters included in the draft Regulations, as set out below. The operation of the scheme as contained in Part 7 of the NERL is already prescribed at a legislative level and is not subject to consultation at this time.

Claimable incidents

The NERL requires the draft Regulations to prescribe an event or circumstance that will comprise a "claimable incident" for the purpose of the scheme. Small customers are only entitled to make a claim under the scheme in respect of claimable incidents.

The draft Regulations define a "designated claimable incident" as 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 incidents commonly covered by insurance:

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

Here, a relevant voltage variation occurs when there is a change in the voltage in the powerlines that supply electricity to premises such that the voltage is outside the standard voltage range.

This standard voltage range is determined by the distributor, approved by the Technical Regulator, and published on the distributor's website.

Minimum amount that can be claimed

The NERL requires the draft Regulations to prescribe a minimum amount that can be claimed under the scheme. A distributor may reject a claim for compensation if the amount claimed is less than the minimum amount. The draft Regulations propose a minimum amount of $100.

Median amount that determine mandatory and discretionary ranges

Under the NERL, where a successful claim is for the cost of repair or replacement that is to a standard of substantially the same age, functionality and appearance as the damaged property, is between the minimum amount and median amount (referred to as the "mandatory range"), and it is

established that the claimable incident occurred and a compensable matter exists, the distributor must pay the amount claimed without reducing or disputing the amount.

Where a successful claim is between the median amount and the maximum amount (referred to as the "discretionary range"), and it is established that the claimable incident occurred and a compensable matter exists, the distributor may carry out its own assessment of the claim. It may pay a lesser amount than claimed on the basis that it is sufficient to compensate the customer in relation to the claimable event and premises concerned.

The NERL requires the draft Regulations to prescribe the "median amount." for the purpose of separating the mandatory range and the discretionary range. The draft Regulations propose a median amount of $1000.

Maximum amount that can be claimed

The NERL requires the draft Regulations to prescribe a maximum amount that can be claimed. If a claim for compensation is more than the maximum amount, the distributor must advise the customer that the claim can be revised so that it does not exceed that amount (upon request of the customer) or the distributor will reject the claim. The draft Regulations propose a maximum amount of $15,000.

Retrospective claims

The draft Regulations propose that small customers will be able to make claims regarding historical claimable incidents that occurred before the scheme commences. These are referred to as 'transitional designated claimable incidents' and must have occurred between 1 July 2022 and the 'relevant day' on which the Regulations commence operation.

A small customer will only be entitled to make a claim under the scheme in respect of a transitional designated claimable incident that affected particular premises if:

- the customer has not, before the relevant day, been compensated (whether because of a decision of the distributor or a decision of the relevant energy ombudsman) in respect of the incident as affecting those premises; and
- the claim is made within 2 years after the commencement of the scheme (regardless of whether the customer made a claim in respect of the incident as affecting those premises before the scheme commenced).

How you can provide feedback

Please provide your submission on the draft Regulations by **11.59pm ACDT on Sunday 27 October 2024** via one of the following:

1. **Submit via YourSAy website:** Upload your submission on the consultation page on the South Australian government YourSAy website: yoursay.sa.gov.au/smallclaims

2. **Submit via email:** Send your submission to dem.consultation@sa.gov.au with the subject line "Small claims amendments".

All submissions will be published on the state government website including your name and organisation (if applicable). Your contact details will not be published. **Please indicate clearly on the front of your submission if you would like it to be treated as confidential, in full or part, and the reason why it should not be made publicly available.**

Under the *Freedom of Information Act 1991*, the state government may also be required by law to release your submission to a third party. If a request is made under the Act, you will be contacted prior to the release of any material.

To discuss the draft Regulations further, please contact Justin Ward, Senior Policy Officer, Strategic Policy, and Delivery, on **08 8429 0707**.

Appendix 1: National Energy Retail Law (Part 7)

Note that we are providing Appendix 1 for your information only. Part 7 of the NERL sets out the legislative framework for the small claims scheme and is not the focus of this consultation. **This consultation seeks your feedback on the matters included in the draft Regulations. The draft Regulations are provided separately to this consultation paper.**

Part 7—Small compensation claims regime

Division 1—Preliminary

176—Small compensation claims regime

(1) This Division 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.

(2) The regime does not involve having to establish fault, negligence or bad faith on the part of a distributor in order to receive compensation from the distributor under the regime.

177—Definitions

In this Division—

claimable incident—see section 178;

compensable matter—see section 179;

discretionary range means the range of amounts between the maximum amount and the median amount (inclusive of the former but not the latter);

mandatory range means the range of amounts between the minimum amount and the median amount (inclusive of both);

maximum amount—see section 180;

median amount—see section 182;

minimum amount—see section 181;

property damage means damage to tangible property located on the premises of a small customer, and includes loss or destruction of tangible property located on those premises;

repeat claimant—see section 183.

Note—

The discretionary and mandatory ranges, and the maximum, median and minimum amounts, can be represented as follows:

(Maximum amount) .....

Discretionary range

(Median amount) .....

Mandatory range

(Minimum amount) .....

178—Claimable incidents—meaning

(1) A claimable incident is—

(a) an event or circumstance of a kind prescribed by the National Regulations; or

(b) an event or circumstance of a kind prescribed by a local instrument of this jurisdiction for small customers in this jurisdiction.

(2) A kind of event or circumstance may be so prescribed by reference to any one or more of the following:

(a) a description of the kind of incident;

(b) a description of the applicable parameters, a variation outside of which will amount to a claimable incident;

(c) a distributor service standard by which a claimable incident is to be determined;

(d) other factors specified in the National Regulations or a local instrument of this jurisdiction.

179—Compensable matters—meaning

(1) Subject to subsection (2), compensable matters are—

(a) except to the extent (if any) provided by the National Regulations or a local instrument of this jurisdiction—property damage caused by a claimable incident; or

(b) to the extent (if any) provided by the National Regulations or a local instrument of this jurisdiction—other matters related to a claimable incident.

(2) The following are not compensable matters for the purposes of this Division:

(a) the death of a person; or

(b) personal injury to a person (including any pre-natal injury, any impairment of the person's physical or mental condition and any disease); or

(c) except to the extent (if any) provided by the National Regulations or a local instrument of this jurisdiction—

(i) economic loss; or

(ii) damage to, loss of or destruction of intangible property; or

(d) any matters prescribed by the National Regulations or a local instrument of this jurisdiction as not being compensable matters.

Note—

Matters that are not compensable matters for the purposes of this Division may be able to be dealt with under the general law or in other ways.

180—Maximum amount—meaning

(1) The purpose of this section is to provide for maximum amounts, so that a distributor is not liable to pay compensation to a small customer under this Division if the amount claimed is more than the relevant maximum amount (see section 189).

(2) The maximum amount for a claim is—

(a) the amount or amounts prescribed by a local instrument of this jurisdiction for small customers in this jurisdiction; or

(b) to the extent the amount is not determined under paragraph (a) for a kind of claimable incident—the amount determined from time to time by the AER, which may differ between jurisdictions and according to the kinds of claimable incidents.

181—Minimum amount—meaning

(1) The purpose of this section is to provide for minimum amounts, so that a distributor is not liable to pay compensation to a small customer under this Division if the amount claimed is less than the relevant minimum amount (see section 188).

(2) The minimum amount for a claim is—

(a) the amount or amounts prescribed by a local instrument of this jurisdiction for small customers in this jurisdiction; or

(b) to the extent the amount is not determined under paragraph (a) for a kind of claimable incident—the amount determined from time to time by the AER, which may differ between jurisdictions and according to the kinds of claimable incidents.

182—Median amount—meaning

(1) The purpose of this section is to provide for median amounts for the purpose of separating the discretionary range and the mandatory range.

(2) The median amount for a claim is—

(a) the amount or amounts prescribed by a local instrument of this jurisdiction for small customers in this jurisdiction; or

(b) to the extent the amount is not determined under paragraph (a) for a kind of claimable incident—the amount determined from time to time by the AER and notified to the distributors concerned, which may differ between jurisdictions and according to the kinds of claimable incident.

183—Repeat claimant—meaning

(1) The purpose of this section is to define the meaning of the term repeat claimant, by reference to a number determined under this section as the repeated claims maximum number, so that a distributor who receives equal to or more than the maximum number of claims for compensation from a small customer has a number of options for dealing with the claims (see section 193).

(2) The repeated claims maximum number is the number determined from time to time by the AER and notified to the distributors concerned, which may differ between jurisdictions and according to the kinds of claimable incidents.

(3) The repeated claims maximum number is to be determined by reference to a particular period or periods, which may be either a set period (for example, a year commencing on 1 January) or a moveable period (for example, any year commencing on any date).

(4) A small customer who makes a number of claims equal to or exceeding the repeated claims maximum number in a particular period becomes a repeat claimant for the purposes of this Division.

(5) A small customer continues to be a repeat claimant until the end of 2 periods after becoming a repeat claimant, being consecutive periods each of the same length as the particular period referred to in subsection (3).

184—AER determinations of minimum amount, median amount and repeated claims maximum number

(1) This section applies in relation to this jurisdiction only if and to the extent a local instrument of this jurisdiction declares that this section applies in relation to this jurisdiction.

(2) If the AER decides to determine an amount or number under section 180, 181, 182 or 183 for a jurisdiction, the AER must do so—

(a) after consultation with responsible officers for the jurisdiction; and

(b) having regard to the following so far as they are relevant:

(i) the current or proposed maximum amount for the jurisdiction;

(ii) the current or proposed minimum amount for the jurisdiction;

(iii) the current or proposed median amount for the jurisdiction; and

(c) having regard to—

(i) the nature and number of relevant claimable incidents for the jurisdiction; and

(ii) any other relevant matters.

Division 2—Compensation generally

185—When compensation is payable

(1) Compensation is payable under this Division to a small customer by a distributor under a claim for compensation properly made in respect of a claimable incident when—

(a) it is established that—

(i) the distributor provided customer connection services to the premises of the small customer at the relevant time; and

(ii) the claimable incident occurred; and

(iii) the claim is for a compensable matter arising from or connected with the claimable incident; and

(iv) the amount claimed and the amount payable are within the range between the minimum amount and the maximum amount (inclusive of both amounts); and

(b) any applicable requirements of this Division and the Rules are satisfied.

(2) Compensation is monetary in nature.

186—Duty of distributor to provide information and advice

(1) Each distributor must develop and publish on its website—

(a) a summary of the small compensation claims regime in a form that will be readily understood by the average small customer; and

(b) a copy of a claim form that complies with section 187 that is able to be downloaded.

(2) A distributor must, within 2 business days of a person making contact with the distributor in relation to a potential claimable incident—

(a) inform the person of the existence of the small compensation claims regime and that the regime provides for small customers affected by certain events to seek compensation; and

(b) advise the person that the distributor's summary of the small compensation claims regime, and a copy of a claim form, is available on its website; and

(c) send to the person a copy of its claim form on request and at no charge.

Division 3—Claims process

187—Making of claims

(1) A small customer may make a claim for compensation in respect of a claimable incident from a distributor who provides customer connection services to the premises of the customer.

(2) A completed claim form must include the following:

(a) the name and contact details of the small customer;

(b) the address of the premises that were affected by the claimable incident and that are the subject of the claim;

(c) the time and date of the claimable incident;

(d) a description of the compensable matter in respect of which the claim is made;

(e) the amount of compensation the customer claims is necessary to compensate the customer in respect of the compensable matter;

(f) for claims for property damage, justification for the amount claimed, being—

(i) the cost of replacing the property with property of substantially the same age, functionality and appearance; or

(ii) the cost of repairing the property to substantially the same functionality and appearance,

which must be supported by quotes, receipts or other evidence.

(3) A small customer may make only one claim in respect of a claimable incident, but the customer may, with the concurrence of the distributor, substitute a revised claim (which is then taken to be the only claim made by the customer in respect of the incident).

(4) If a distributor receives more than one claim from a small customer in respect of a claimable incident, then (subject to subsection (3))—

(a) the distributor may reject all the claims other than the first claim received; and

(b) the distributor may (for the purposes of paragraph (a)) treat one of two or more of the claims received on the first or only day claims are received from the customer as being the first claim received.

(5) A claim for property damage may relate to property not owned by the small customer, as well as to property owned by the customer.

(6) A claim may relate to one or more items.

(7) A distributor must use its best endeavours to deal with claims in a timely manner.

188—Claims for less than the minimum amount

(1) A distributor may reject a claim for compensation if the amount claimed is less than the minimum amount for the claimable incident.

(2) This section does not limit the grounds on which a claim can be rejected.

189—Claims for more than the maximum amount

(1) If a claim for compensation is for more than the maximum amount, the distributor must advise the small customer that—

(a) the distributor will revise the claim to reduce it so that it does not exceed the maximum amount if the customer so requests within a specified period of at least 5 business days; or

(b) the distributor will reject the claim if no such request is received within that period.

(2) If the small customer makes the request within the specified period, the distributor must revise the claim in accordance with the request.

(3) If the small customer does not make the request within the specified period, the distributor may reject the claim.

(4) This section does not limit the grounds on which a claim can be rejected.

190—Confirmation of claims involving property damage

(1) If a distributor is not able to confirm that a claimable incident involving property damage did affect the small customer's premises in the manner claimed, the distributor may request the customer to provide the distributor with a statement by a suitably qualified person that the property damage claimed was caused by or is consistent with a claimable incident having occurred.

(2) The distributor must accept the statement as a satisfactory statement, unless the distributor believes on reasonable grounds that—

(a) the person giving it is not suitably qualified in relation to the claimable incident; or

(b) the statement is on its face false, misleading or inaccurate in a material particular.

(3) If the claim is for an amount within the mandatory range, the distributor must (subject to subsection (2)) accept the statement as proof that the property damage was likely to be caused by or is consistent with the occurrence of a claimable incident.

(4) If the claim is for an amount within the discretionary range, the distributor may make reasonable requests for other information or evidence for the purpose of determining the claim.

191—Claims for amounts within the mandatory range

(1) This section applies where—

(a) a small customer provides—

(i) a completed claim form in accordance with the requirements of section 187; and

(ii) a satisfactory statement, if relevant and if requested, under section 190; and

(b) the amount claimed is within the mandatory range; and

(c) it is established that the claimable incident occurred; and

(d) it is established that the claim is a compensable matter; and

(e) the claim is not rejected; and

(f) section 193 does not apply to the claim.

(2) The distributor must pay the customer the amount claimed without reducing or disputing the quantum of the amount.

192—Claims for amounts in the discretionary range

(1) This section applies where—

(a) a small customer provides—

(i) a completed claim form in accordance with the requirements of section 187; and

(ii) a satisfactory statement and other information or evidence, if relevant and if requested, under section 190; and

(b) the amount claimed is within the discretionary range; and

(c) it is established that the claimable incident occurred; and

(d) it is established that the claim is a compensable matter; and

(e) the claim is not rejected; and

(f) section 193 does not apply to the claim.

(2) The distributor may carry out its own assessment of the claim.

(3) The distributor must—

(a) pay the small customer the amount claimed; or

(b) pay the small customer a lesser amount (whether within or below the discretionary range), on the basis that a lesser amount is sufficient to compensate the customer in relation to the claimable incident and premises concerned.

(4) In the case of property damage, the lesser amount referred to in subsection (3)(b) must be such as to ensure that the customer should be no worse off, by being either—

(a) the cost of replacing the property with property of substantially the same age, functionality and appearance; or

(b) the cost of repairing the property to substantially the same functionality and appearance.

(5) A distributor is not obliged to compensate a business customer above the median amount where the business customer has not taken reasonable precautions to minimise the risk of property damage.

193—Claims by repeat claimants

(1) This section applies to a claim for compensation where—

(a) the small customer making the claim for compensation to a distributor is a repeat claimant in relation to the distributor and the period during which it is made; and

(b) the distributor would, apart from this section, be liable to pay compensation (whether within the discretionary range or the mandatory range) under the claim in accordance with other provisions of this Division; and

(c) the distributor reasonably considers the claim forms part of an abuse of the small compensation claims regime.

(2) The distributor may—

(a) pay the small customer the amount claimed; or

(b) pay the small customer a lesser amount, which may be any amount at or above the minimum amount; or

(c) reject the claim.

194—Distributor to reimburse customer for reasonable costs of claim

If a distributor pays compensation to a small customer under this Division, the distributor must pay to the person the amount of any reasonable costs incurred by the person in providing any quotes or evidence to the distributor (such as obtaining a statement from a qualified person).

195—Rejection of claims

Without affecting other provisions of this Part providing for the rejection of claims, a distributor may reject a claim for compensation if the distributor reasonably believes—

(a) the occurrence of the claimable incident concerned was not established; or

(b) the occurrence or existence of the compensable matter was not established; or

(c) there are other grounds warranting rejection of the claim.

196—Distributor to advise customer of reasons for reducing or rejecting claim and of review rights

If the amount paid is less than the amount claimed by the person, or if the distributor has rejected the person's claim, the distributor must, as soon as practicable—

(a) provide the person with reasons; and

(b) inform the person that if they are dissatisfied with the decision, the person has a right to refer a complaint or dispute to the relevant energy ombudsman.

197—Small customer complaint or dispute resolution

A small customer who is dissatisfied with a decision of a distributor under this Division in relation to the customer's claim for compensation may lodge a complaint with the relevant energy ombudsman.

Division 4—Payment of compensation

198—Method of payment

A payment of compensation payable to a small customer under this Division is to be made by the distributor as soon as practicable, by—

(a) unless paragraph (b) applies—a credit on the customer's next bill from their retailer by arrangement with the relevant retailer; or

(b) at the customer's election—direct payment by the distributor to the customer by—

(i) cheque or electronic funds transfer; or

(ii) any other method agreed to by the customer.

199—Finality of payment of compensation

If a small customer is compensated (whether as a result of a decision of the distributor or a decision of the relevant energy ombudsman) in respect of a claimable incident that affected particular premises—

(a) the customer cannot make any further claim (under this Division or otherwise) against the distributor in respect of that incident as affecting those premises; and

(b) without limitation, the customer cannot commence or maintain proceedings for damages in respect of that incident as affecting those premises; and

(c) the distributor has no further liability (under this Division or otherwise) to that customer in respect of that incident as affecting those premises.

Division 5—Miscellaneous

200—Other remedies

(1) Apart from section 199, nothing in this Part prevents a small customer from commencing or maintaining proceedings for damages in respect of a claimable incident in a court of competent jurisdiction.

(2) If a small customer enforces or attempts to enforce any other right they have apart from this Part against the distributor in respect of a claimable incident, the distributor—

(a) is not obliged—

(i) to continue to deal with a claim for compensation already made under this Part; or

(ii) to deal with a claim for compensation subsequently made under this Part; and

(b) may reject the claim.

201—Payment of compensation not to be admission of fault, negligence or bad faith

In deciding to make a payment of compensation under this Part, a distributor does not admit fault, negligence or bad faith in respect of the claimable incident concerned.

202—Requirement to keep records on regime activities

(1) A distributor must—

(a) create a record of each claim for compensation made under this Part, including a record of how the claim was processed and determined; and

(b) retain the record for at least 2 years.

(2) The record must be in such a format and include such information as will enable—

(a) the AER to verify the distributor's compliance with the relevant requirements of this Part and the Rules relating to claims for compensation; and

(b) the distributor to answer any enquiries from a small customer relating to the customer's claim.

(3) A distributor must, on request by a small customer and at no charge, provide the customer with access to a copy of the record of any claim for compensation made by the customer under this Part and then retained by the distributor.

203—Rules

The Rules may make provision for or with respect to the small compensation claims regime, including—

(a) the period during which a claim for compensation may only be made; and

(b) the rejection of a claim for compensation made after that period.