

Attachment 13

Pass through events

2020-25 Revised
Regulatory Proposal
10 December 2019

This section outlines:

- › the additional pass through events proposed by SA Power Networks for the 2020-25 Regulatory Control Period.



Company information

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Disclaimer

This document forms part of SA Power Networks' Regulatory Proposal to the Australian Energy Regulator for the 1 July 2020 to 30 June 2025 regulatory control period. The Proposal and its attachments were prepared solely for the current regulatory process and are current as at the time of lodgement.

This document contains certain predictions, estimates and statements that reflect various assumptions concerning, amongst other things, economic growth and load growth forecasts. The Proposal includes documents and data that are part of SA Power Networks' normal business processes and are therefore subject to ongoing change and development.

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Note

This attachment forms part of our Proposal for the 2020-25 Regulatory Control Period. It should be read in conjunction with the other parts of the Proposal.

Our Proposal comprises the overview and attachments listed below, and the supporting documents that are listed in Attachment 18:

Document	Description
	Regulatory Proposal overview
Attachment 1	Annual revenue requirement and control mechanism
Attachment 2	Regulatory Asset Base
Attachment 3	Rate of Return
Attachment 4	Regulatory Depreciation
Attachment 5	Capital expenditure
Attachment 6	Operating expenditure
Attachment 7	Corporate income tax
Attachment 8	Efficiency Benefit Sharing Scheme
Attachment 9	Capital Expenditure Sharing Scheme
Attachment 10	Service Target Performance Incentive Scheme
Attachment 11	Demand management incentives and allowance
Attachment 12	Classification of services
Attachment 13	Pass through events
Attachment 14	Alternative Control Services
Attachment 15	Negotiated services framework and criteria
Attachment 16	Connection Policy
Attachment 17	Tariff Structure Statement Part A
Attachment 17	Tariff Structure Statement Part B - Explanatory Statement
Attachment 18	List of Proposal documentation

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13 Pass through events

This Attachment sets out:

- the additional pass through events proposed by SA Power Networks for the 2020–25 regulatory control period (**RCP**);
- a summary of the Australian Energy Regulator's (**AER's**) Draft Decision for SA Power Networks Distribution Determination 2020 to 2025 (**Draft Decision**) concerning the additional pass through events proposed by SA Power Networks in its Regulatory Proposal for the 2020-25 RCP (**Original Proposal**);
- SA Power Networks' response to the AER's Draft Decision concerning the additional pass through events proposed by SA Power Networks in its Original Proposal;
- proposed amendments to the insurance cap pass through event wording to cater for the issues we have had to deal with, and are expecting to have to continue to deal with, when sourcing bushfire liability insurance during the 2020-25 RCP;
- a summary of the procurement and governance processes which SA Power Networks followed when sourcing its bushfire liability insurance program for the 12 month period ending on 30 September 2020 (the **2019-20 insurance year**);
- the consultation process which SA Power Networks is proposing to adopt during the 2020-25 RCP to demonstrate to the AER that its bushfire liability insurance program continues to reflect the level of insurance cover that an efficient and prudent Network Service Provider would obtain in respect of bushfire liability; and
- a new additional pass through event that was flagged in our Original Proposal¹, and is designed to address the impact of the AER's recent decision concerning the manner in which the estimated cost of corporate income tax is calculated.

13.1 Overview

Table 13-1: Summary of pass through events

Original Proposal	AER Draft Decision	Revised Proposal
SA Power Networks proposed the following additional pass through events:	The AER's Draft Decision accepted and rejected the following events:	SA Power Networks response to the AER's Draft Decision:
<ul style="list-style-type: none"> • natural disaster event 	Accepted, and made minor amendments to the definition	Substantively accept but propose an amendment to the definition and to one of the considerations (see section 0)
<ul style="list-style-type: none"> • insurance cap event 	Accepted, and made minor amendments to the definition	Generally accepted, but propose amendments to the definition and provide additional information to clarify the reasons (see section 13.6.1)
<ul style="list-style-type: none"> • insurer credit risk event 	Accepted, and made minor amendments to the definition	Accept
<ul style="list-style-type: none"> • terrorism event 	Accepted, and made minor amendments to the definition, and added an additional assessment factor.	Accept
<ul style="list-style-type: none"> • major cyber event 	Rejected	Accept
<ul style="list-style-type: none"> • Signalled a possible new 'corporate income tax event' 	No decision	Propose a 'corporate tax change event'.

¹ SA Power Networks, 2020-25 Regulatory Proposal, Attachment 13 – Pass through events, pages 12-13.

13.2 Reasons for pass through event

Attachment 13: Pass through events of our Original Proposal summarises the regulatory framework governing the assessment and approval of additional pass through events. We have not repeated that summary in this Attachment 13: Pass through events, Revised Regulatory Proposal.

However, we endorse the AER's comments² concerning the purpose of the nominated pass through event considerations and the fact that the AER will only accept nominated pass through events where the AER is satisfied that event avoidance, mitigation, commercial insurance and self-insurance under approved forecasts of prudent and efficient opex and capex are either unavailable or inappropriate.

This reflects the commentary of the Australian Energy Market Commission (**AEMC**) when describing the purpose of the nominated pass through event considerations and the overriding objective that a pass through event should only be accepted when it is the least inefficient option. In other words, where it reflects the most efficient allocation of risk between a Network Service Provider (**NSP**) and end customers³.

The AEMC also noted that:

... the Commission recognises that in order to provide network businesses with a reasonable opportunity to recover their efficient costs for providing direct control network services, network businesses should be able to recover the costs associated with events that are outside their reasonable control.

As we noted in our Original Proposal, in some cases insurance is an appropriate and efficient means of addressing the risks of these types of cost changes. However, in some circumstances insurance coverage will only be partial, uneconomic to procure or impossible to obtain. The availability of insurance cover will also change over time as exogenous events impact upon the cost, level of insurance cover and availability of insurance cover on reasonable commercial terms.

Finally, we noted that the AEMC recognised in August 2012⁴ that pass through events are in the long-term interests of consumers of electricity (ie when the relevant events are not well suited to incentive regulation and it is cheaper, or the only way, to manage the relevant risk). In particular, the AEMC stated that:

... providing factors for consideration by the AER when approving nominated pass through events should help ensure that pass through events are only used in situations where commercial insurance or self-insurance were not available on a reasonable basis or the NSP is not able to mitigate or avoid the event without creating unacceptable risk. This should protect the incentive regime under the NER and better promote the efficient investment in, an efficient operation and use of, network services for the long-term interests of consumers of electricity with respect to price. [Emphasis added]

These comments and overarching objectives are reflected in our response to the AER's Draft Decision.

13.3 AER's Draft Decision

The AER accepted four of the SA Power Networks proposed pass through events in its Draft Decision, being the terrorism, natural disaster, insurance cap and insurer credit risk events.⁵

² AER, *Draft Decision for SA Power Networks Distribution Determination 2020-2025*, Attachment 14: Pass through events (**Attachment 14**), pages 9 to 11.

³ AEMC (2012), *Cost pass through arrangements for Network Service Providers, Rule Determination*, 2 August 2012, p. 20.

⁴ Ibid, p. 8.

⁵ Attachment 14, page 5.

The AER did not accept SA Power Networks' proposed 'major cyber' pass through event.

The Draft Decision sets out minor amendments to the definitions of terrorism, natural disaster, insurance cap and insurer credit risk events. The AER has stated that these amendments provide consistency between SA Power Networks and other NSPs.⁶

The AER also included an additional factor that it will have regard to when assessing whether a terrorism event has occurred.

Each of the four proposed pass through events that were accepted by the AER are addressed briefly below:

13.3.1 Terrorism event

The AER accepted that a terrorism event is consistent with the nominated pass through event considerations⁷. However, the AER amended the proposed definition to read as follows⁸:

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 or in connection with any organisation or government), which:

- *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*
- *increases the costs to SA Power Networks in providing direct control services.*

Note: In assessing a terrorism event pass through application, the AER will have regard to, amongst other things:

- *whether SA Power Networks has insurance against the event,*
- *the level of insurance that an efficient and prudent NSP would obtain in respect of the event, and*
- *whether a declaration has been made by a relevant government authority that a terrorism event has occurred.*

13.3.2 Insurance cap event

The AER accepted that an insurance cap event is consistent with the nominated pass through event considerations⁹. However, the AER amended the proposed definition to read as follows¹⁰:

An insurance cap event occurs if:

- *SA Power Networks makes a claim or claims and receives the benefit of a payment or payments under a relevant insurance policy,*
- *SA Power Networks incurs costs beyond the relevant policy limit, and*
- *the costs beyond the relevant policy limit materially increase the costs to SA Power Networks in providing direct control services.*
- *For this insurance cap event:*

⁶ Ibid.

⁷ Ibid, page 11.

⁸ Ibid, page 13.

⁹ Ibid, page 11.

¹⁰ Ibid, page 12.

- *A relevant insurance policy is an insurance policy held during the 2020-25 regulatory control period or a previous regulatory control period in which SA Power Networks was regulated*
- *SA Power Networks will be deemed to have made a claim on a relevant insurance policy if the claim is made by a related party of SA Power Networks in relation to any aspect of the network or SA Power Networks' business.*
- *Note: In assessing an insurance cap event cost pass through application under rule 6.6.1(j), the AER will have regard to, amongst other things:*
 - *the relevant insurance policy for the event, and*
 - *the level of insurance that an efficient and prudent NSP would obtain in respect of the event.*

13.3.3 Insurer credit risk event

The AER accepted that an insurer credit risk event is consistent with the nominated pass through event considerations¹¹. However, the AER amended the proposed definition to read as follows¹²:

An insurer credit risk event occurs if:

- *An insurer of SA Power Networks becomes insolvent, and as a result, in respect of an existing or potential claim for a risk that was insured by the insolvent insurer, SA Power Networks:*
 - *is subject to a higher or lower claim limit or a higher or lower deductible than would have otherwise applied under the insolvent insurer's policy; or*
 - *incurs additional costs associated with funding an insurance claim, which would otherwise have been covered by the insolvent insurer.*

Note: In assessing an insurer credit risk event pass through application, the AER will have regard to, amongst other things:

- *SA Power Networks' attempts to mitigate and prevent the event from occurring by reviewing and considering the insurers track record, size, credit rating and reputation, and*
- *in the event that a claim would have been made after the insurer became insolvent, whether SA Power Networks had reasonable opportunity to insure the risk with a different insurer.*

13.3.4 Natural disaster event

The AER accepted that a natural disaster event is consistent with the nominated pass through event considerations¹³. However, the AER amended the proposed definition to read as follows¹⁴:

Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2020–25 regulatory control period that increases the costs to SA Power Networks in providing direct control services, provided the fire, flood or other event was not a consequence of the acts or omissions of the service provider.

Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:

- *whether SA Power Networks has insurance against the event,*
- *the level of insurance that an efficient and prudent NSP would obtain in respect of the event, and*
- *whether a relevant government authority has made a declaration that a natural disaster has occurred.*

¹¹ Attachment 14, page 11.

¹² Ibid, page 13.

¹³ Ibid, page 11.

¹⁴ Ibid, page 13.

13.4 SA Power Networks' response to AER Draft Decision

SA Power Networks accepts the AER's revised definitions for insurer credit risk and terrorism events. SA Power Networks accepts the AER's rejection of a major cyber event. Our reasons for doing so are set out in section 0.

SA Power Networks has concerns about:

- the AER's proposed amendment to our natural disaster event definition to remove the word 'negligent' from before the words 'acts or omissions of the service provider'; and
- the inclusion of whether a declaration by a relevant government authority has been made for a natural disaster as one of the factors the AER will take into consideration when assessing whether a pass through event has occurred.

These concerns and our proposed response are detailed in the following sections.

SA Power Networks has proposed various amendments to the definition of insurance cap event to address our concerns in relation to the tightening bushfire liability insurance market. In the following sections we have:

- provided further details in relation to the issues we raised in our Original Proposal concerning the tightening of the international insurance market for bushfire liability insurance cover and the resulting impact on the availability and cost of bushfire liability insurance cover;
- explained how these issues impacted upon our bushfire liability insurance program for the 2019-20 insurance year; and
- set out our proposal for dealing with the changing international market for bushfire liability insurance cover during the 2020-25 RCP.

Finally, as flagged in our Original Proposal, we have proposed below a new 'corporate income tax change event' to address the potential gap in the application of the tax change event to the process for determining the estimated cost of corporate income tax.

13.5 Factors impacting on the availability and level of insurance cover for bushfire liability

SA Power Networks noted in its Original Proposal that there existed a real possibility that it would be unable to secure:

- the same level of insurance cover with respect to liability for causing bushfires as it had been able to secure during previous regulatory years (and, in particular, during the 2018-19 base year); and
- insurance cover for all of its bushfire liabilities on reasonable commercial and economic terms.

At the time of submitting our Original Proposal, we had just commenced our procurement process for the placing of our insurance program for the 2019-20 insurance year. Initial discussions with our insurance brokers at the time highlighted a number of existing and emerging trends in the international insurance market that were likely to adversely impact upon the level, terms and availability of bushfire liability insurance cover. In particular, the 2018 Californian fires and the increasing frequency of major fire events in the United States, Europe and Australia were both:

- limiting the availability and scope of insurance cover for bushfire liability; and
- significantly increasing premiums for the insurance cover for bushfire liability that was available in the insurance market.

Specifically, we noted that:¹⁵

SA Power Networks is currently in discussions with its brokers and insurers concerning the renewal of its bushfire insurance policy. It has become clear from those discussions that the availability and cost of bushfire insurance in the international market is tightening due to the recent wildfire events in California and the resulting impacts on utility providers. The group of insurers who are prepared to offer bushfire insurance cover is decreasing, resulting in lower levels of cover and higher premiums.

These developments in the international insurance market will impact upon '... the level of insurance that an efficient and prudent NSP would obtain in respect of this type of event'.

As the AER would appreciate, this insurance market is evolving at a rapid pace and we expect to be in a better position to assess the availability, cost and level of bushfire insurance later in 2019. We will keep the AER updated concerning any relevant developments in relation to this issue as they become clear. However, it appears clear that moving forward we will be unable to secure the same level of insurance as we have in the past and the cost of any top-up insurance will be prohibitive and not efficient or prudent.

Consistent with these statements, SA Power Networks has investigated all possible avenues for bushfire liability insurance cover during the last nine months in an attempt to secure bushfire liability insurance cover which:

- reflects the level of bushfire liability insurance cover we were able to obtain during our 2018-19 base year;
- is available on reasonable commercial and economic terms; and
- is consistent with the level of insurance cover that an efficient and prudent NSP would obtain in respect of bushfire liability events.

We consulted with the Essential Services Commission of South Australia (**ESCoSA**), the South Australian Government and AER in the lead up to placing our final bushfire liability insurance program for the 2019-20 insurance year. During these meetings we outlined the challenges we were facing in sourcing 2018-19 base year equivalent bushfire liability insurance cover on reasonable commercial and economic terms.

During these meetings we also explained:

- the procurement and governance processes we followed when investigating and analysing possible sources and levels of insurance cover; and
- the criteria we were proposing to use to guide our final decision concerning the form and level of our bushfire liability insurance program.

In the end, we were able to obtain bushfire liability insurance cover on reasonable commercial and economic terms (albeit the final premium was materially higher than the previous year's premium) with:

- the same general scope of cover as applied under our bushfire liability insurance program for the 2018-19 base year (eg the same level of deductibles, no gaps in the layers of insurance cover, no additional material exclusions or limits but with a gap in our overall reinstatement rights); and
- a maximum level of cover which was not materially lower than the base year's maximum level of cover.

Set out in confidential Annexure A to this Attachment 14 is a detailed explanation of the procurement and governance processes we followed when:

- investigating the current availability of bushfire liability insurance cover; and
- reaching our final decision concerning our bushfire liability insurance program for the 2019-20 insurance year.

¹⁵ SA Power Networks, Attachment 13, page 8.

That Annexure also provides confidential details concerning our previous and current bushfire liability insurance programs and the challenges we faced in obtaining a similar level of bushfire liability insurance cover on reasonable commercial and economic terms for the 2019-20 insurance year.

We have been advised by our insurance brokers (and the insurance market in general) that these challenges are expected to worsen during the 2020-25 RCP as the available capacity in the international insurance market continues to tighten and increasing severity and frequency of extreme weather events results in larger and more frequent levels of insurance claims.

If these expectations turn out to be correct, our ability to obtain insurance cover for liability for causing bushfires on reasonable commercial and economic terms and for the layers of insurance cover that we have historically been able to insure for, is likely to be severely impacted.

13.5.1.1 Process for confirming the efficient and prudent level of bushfire liability insurance cover

As noted in our Original Proposal, the proposed definitions of 'natural disaster event' and 'insurance cap event' currently provide that the AER will have regard to '... the level of insurance that an efficient and prudent NSP would obtain in respect of the event' when assessing a natural disaster event or insurance cap event cost pass through application under NER 6.6.1(j). It follows that determining what constitutes the level of insurance that an efficient and prudent NSP would obtain in respect of a bushfire caused by SA Power Networks is critical to our annual insurance procurement and governance processes.

Obviously, the level of insurance cover that an efficient and prudent NSP would obtain in respect of this type of event will depend in part upon the actual availability on reasonable commercial terms (including the extent of availability in terms of liability limits) of insurance against this type of event. It is clear that the reference to 'reasonable commercial terms' in the definition of nominated pass through event considerations extends beyond liability limits and includes other terms which define the scope or outer boundary of the insurance cover and the costs of the resulting insurance. In other words, the prudence and efficiency of the insurance cover that is available in relation to the relevant type of event.

It follows that the level of insurance cover that an efficient and prudent NSP would obtain in respect of this type of event sets the benchmark against which SA Power Networks is required to measure its annual bushfire liability insurance program. If current insurance market conditions result in historic levels of bushfire liability insurance cover being unavailable on reasonable commercial terms, SA Power Networks will need to assess what alternative level and scope of insurance cover an efficient and prudent NSP would obtain in respect of that event, taking into account the then existing insurance market conditions and the NSPs regulatory obligations with respect to insurance for bushfire liability.

This last factor is of particular relevance to SA Power Networks because SA Power Networks is required under Condition 19 of its distribution licence¹⁶ to maintain adequate and appropriate insurance against liability for causing a bushfire. The adequacy and appropriateness of its insurance is determined by reference to the nature of SA Power Networks operations carried out under the distribution licence.

In accordance with the requirements of Condition 19, SA Power Networks provides to ESCoSA each year confirmation from its insurance brokers concerning the adequacy and appropriateness of SA Power Networks insurance cover for liability for causing bushfires. A copy of the confirmation for the 2019-20 bushfire liability insurance program is set out in Annexure A to this Attachment 14.

It is implicit from this requirement that the adequacy and appropriateness of SA Power Networks bushfire liability insurance cover will be assessed by reference to how it will respond if a bushfire event was to

¹⁶ A copy of the current Distribution Licence is attached as Annexure B to this Attachment 14.

occur. In other words, the adequacy and appropriateness will be assessed independently of the probability of a bushfire occurring or the past frequency of bushfire occurrences.

The fact that there has not been a major bushfire in the Adelaide Hills for over 30 years does not mean that the level of bushfire liability insurance can be reduced. The adequacy and appropriateness of bushfire liability insurance cover can only be judged by reference to how it will respond to a bushfire event. It is for this reason that maximum probable loss analysis is used – ie what would be the maximum probable loss that would be expected to be incurred if a catastrophic bushfire was to occur.

The only element where probability is a factor is the assessment concerning the possibility of two bushfires occurring in the same insurance period. However, recent experience in other States has indicated that the conditions that are likely to cause a bushfire in one area are likely to extend across other areas and increase the risk of further bushfires.

This regulatory obligation also impacts upon the assessment of the level of insurance cover that an efficient and prudent NSP in SA Power Networks' circumstances would obtain in respect of bushfire liability.

Given:

- the changing nature of the international insurance market for bushfire liability insurance cover;
- SA Power Networks regulatory obligations with respect to obtaining and maintaining appropriate bushfire liability insurance cover; and
- the importance of correctly assessing the level of insurance cover an efficient and prudent NSP would obtain in respect of bushfire liability when placing SA Power Networks' annual insurance program,

SA Power Networks is proposing to adopt the following process in the lead up to the placing of its bushfire liability insurance program for each insurance year during the 2020-25 RCP:

- SA Power Networks will use the limits, scope and other terms of its bushfire liability insurance program for the 2018-19 base year as the target benchmark for its bushfire insurance program for each insurance year during the 2020-25 RCP.
- If it becomes clear to SA Power Networks that the 2018-19 base year target benchmark no longer reflects the level of insurance cover that an efficient and prudent NSP would obtain under the then current insurance market conditions, SA Power Networks will consult with the AER concerning the adjustment that should be made to its target benchmark for its bushfire insurance program for the relevant insurance year.
- At least 30 days prior to the date on which the bushfire liability insurance program for an insurance year is required to be placed, SA Power Networks will provide to the AER relevant details concerning insurance market conditions and the bushfire liability insurance program SA Power Networks believes it will be able to secure on reasonable commercial terms for the relevant insurance year.
- SA Power Networks will then consult with the AER concerning its proposed bushfire liability insurance program for the relevant insurance year and explain why that insurance program is consistent with the level of insurance cover that an efficient and prudent NSP in SA Power Networks then current circumstances would obtain in respect of bushfire liability.

SA Power Networks believes that following this type of consultation process will be in the long-term interests of consumers of electricity with respect to price. In particular, this process will enable SA Power Networks to satisfy its regulatory obligations and avoid imprudent, inefficient and unreasonable commercial terms with respect to its bushfire liability insurance program which may result from maintaining previous levels of insurance cover where the cost of obtaining that historical limit has become inefficient and imprudent.

We have provided some examples in Annexure A to this Attachment 14 where insurance for certain levels of risk is available in other insurance markets for a cost which is equivalent to 25% of the additional insurance policy coverage. Clearly obtaining top-up insurance coverage for this level of premium would not be efficient or prudent and would not be in the long-term interests of consumers with respect to price because this increased cost level will eventually be reflected in the opex for subsequent base years.

SA Power Networks believes that by adopting this consultation process, SA Power Networks can proactively manage the impact of changing conditions in the global insurance market and ensure that SA Power Networks' annual bushfire liability insurance program satisfies its regulatory obligations whilst being fixed at a level which is consistent with the level of insurance cover that an efficient and prudent NSP would obtain in respect of bushfire liability.

13.6 Revised Proposal

13.6.1 Insurance cap event

Recent developments in the international insurance market for bushfire liability insurance cover have highlighted a number of potential issues in relation to the current drafting of the insurance cap event.

In particular, the current drafting does not expressly recognise that a NSP's insurance program will comprise numerous separate insurance policies covering different layers of risk, resulting in an overall package of insurance policies which define the outer boundary of the NSP's overall insurance coverage. This outer boundary is recorded in the commercial terms of each insurance policy.

For example:

- the level of the deductible under the available insurance policies may change over time, thereby increasing or narrowing the scope of the insurance cover provided by the relevant insurance policies (this is a real risk given the increase in the number of overall bushfire claims leading to increased insurer losses in relation to the lower levels of cover);
- the terms of the available insurance policies may change as the insurance market continues to tighten (see Annexure A for details concerning how this has impacted our insurance program for the 2019-20 insurance year) such that the insurance cover provided by the available insurance policies is less than what was previously available (for example, insurance cover at certain levels that include a reinstatement right may be unavailable on reasonable commercial terms); and
- it may not be possible to obtain insurance cover on reasonable commercial terms for some layers of risk.

Each of these events can impact upon the scope of the insurance cover of the SA Power Networks' bushfire liability insurance (and hence the potential uninsured loss) in the same manner as a reduction in the maximum available claims limit will impact upon the scope of the insurance cover of the SA Power Networks bushfire liability insurance.

Our experience during the procurement process for our 2019-20 bushfire liability insurance program has highlighted the possibility that gaps in insurance cover may arise in relation to defined layers of risk located between the overall level of the deductible and maximum claim limit. The reduction in the number and available capacity of insurers prepared to offer bushfire liability insurance cover means that it may in the future not be possible to obtain insurance cover for some of the specific layers of risk.

Each of the 'potential gaps' listed above represent an uninsured risk (ie a risk in respect of which insurance is not available on reasonable commercial terms), and could materially increase the costs to SA Power Networks in providing direct control services, in the same way as costs that are incurred beyond the relevant maximum claim limit are also uninsured losses and could materially increase the cost to SA Power Networks in providing direct control services.

The current wording of the insurance cap event does not clearly extend to cover these other potential gaps even though an uninsured loss arising from one of these potential gaps is no different from a claim which exceeds the relevant maximum policy limit. They all have the potential to materially increase the costs to SA Power Networks in providing direct control services.

There appears to be two options for addressing these potential gaps. They are:

- amend the current wording of 'insurance cap event' to clarify that the definition extends to cover the other additional gaps referred to above; or
- seek confirmation from the AER that it will apply the current insurance cap event as if it extends to cover the other potential gaps in a NSPs insurance cover identified above (ie in addition to a claim exceeding the maximum claim limit).

Our preference would be to make minimal changes to the current insurance cap event wording so as to clarify the application of the insurance cap event to the 'other' potential causes of a material uninsured losses. Our proposed amendments are shown in mark-up as against the AER's preferred wording for an insurance cap event in its Draft Decision.

An insurance cap event occurs if:

- SA Power Networks makes a claim or claims and receives the benefit of a payment or payments under a relevant insurance policy *or program of insurance policies;*
- SA Power Networks incurs costs *which fall outside of the scope of the cover provided under the relevant insurance policy or policies beyond the relevant policy limit;* and
- the costs *which fall outside of the scope of the cover provided under the relevant insurance policy or policies beyond the relevant policy limit* materially increase the costs to SA Power Networks in providing direct control services

For this insurance cap event:

- a relevant insurance policy is an insurance policy held during the 2020–25 regulatory control period or a previous regulatory control period in which SA Power Networks was regulated.
- SA Power Networks will be deemed to have made a claim on a relevant insurance policy if the claim is made by a related party of SA Power Networks in relation to any aspect of the network or SA Power Networks' business.

Note: in assessing an insurance cap event cost pass through application under rule 6.6.1(j), the AER will have regard to, amongst other things:

- the relevant insurance policy *or policies* for the event; ~~and~~
- the level *and scope* of insurance *cover* that an efficient and prudent NSP would obtain in respect of the event; *and*
- *the outcome from the consultation process required to be undertaken by SA Power Networks in accordance with the requirements of the 2020-25 distribution determination with respect to each annual placement of SA Power Networks insurance policies.*

13.6.1.1 Reasoning for revised drafting of insurance cap event

As noted above, we are proposing to clarify the wording of the definition of insurance cap event to ensure that the definition addresses the changing nature of the insurance market that SA Power Networks is facing

with respect to its insurance cover for liability for causing bushfires. Set out below are further reasons in support of the proposed amendments.

Multiple insurance policies

We have amended the drafting of the definition to reflect the layered composition of most NSP's insurance cover for liability for causing bushfires.

However, we recognise that NER 1.7.1(b) will apply to deem that words importing the singular include the plural and vice versa. It follows that the AER may take the view that the current wording already covers multiple interacting insurance policies. If this is correct, we would welcome the AER's confirmation to this effect.

Costs that fall outside of the scope of the cover of the relevant insurance policies

As noted above, the scope or outer boundary of the insurance cover provided under a group of insurance policies (and consequently the potential uninsured loss) will be defined by the level of the deductible, the maximum policy limit of each insurance policy and the other terms of the insurance policy that limit the scope of the insurance cover provided by the insurance policy. Under a layered program of insurance cover costs may be uninsured because they are beyond the scope of the insurance cover of one of the layered insurance policies but are not covered by the next insurance policy in the layered coverage.

Alternatively, costs may be uninsured because a reinstatement is unavailable on reasonable commercial terms or insurance cover for all related risks is not available on reasonable commercial terms.

As explained in Annexure A to this Attachment 14, there exists a real risk that insurance cover for bushfire liability will be unavailable on reasonable commercial terms in future insurance periods for levels of risk that fall between the upper and lower limits of the overall insurance program (in addition to the unavailability on reasonable commercial terms of insurance cover up to the historic maximum claims limit or with the current level of deductible).

Once again, the AER may take the view that the term 'policy limit' already covers this type of uninsured loss because the reference to policy limit means the outer boundary of the losses covered by the relevant insurance policy. If this is correct, we would welcome the AER's confirmation to this effect.

Consultation concerning level of insurance cover

We have added a third matter which the AER will have regard to when assessing an insurance cap event cost pass through application under NER 6.6.1(j), being '... the outcome from the consultation process required to be undertaken by SA Power Networks in accordance with the requirements of the 2020-25 distribution determination with respect to each annual placement of SA Power Networks insurance policies.'

These words have been drafted to link into the proposed annual consultation process in relation to the availability of bushfire liability insurance cover for an insurance year on reasonable commercial terms. As noted above, that consultation process is aimed at providing the AER with some guidance concerning the level of insurance cover that an efficient and prudent NSP facing the same circumstances and obligations as SA Power Networks would obtain in the then current insurance market in respect of bushfire liability.

The proposed wording also generally reflects the wording that was added to the end of the definition of insurance cap event in the 2016-20 AusNet Services distribution determination¹⁷ (ie the AER will have regard to '...any assessment by the AER of the NSP's insurance in making its distribution determination for the relevant period)'). This additional wording has been included in the definition of insurance cap event in

¹⁷ AER, Final Decision for AusNet Services' Distribution Determination 2016 to 2020, Attachment 15: Pass through events, page 7.

a number of subsequent distribution and transmission determinations¹⁸. In each case, the additional wording requires the AER to have regard to any assessment by the AER of the NSP's insurance for the purposes of the relevant determination when assessing an insurance cap event cost pass through application under NER 6.6.1(j).

Our proposed wording better promotes the national electricity objective because it provides for an annual (rather than a 5 yearly) assessment of the efficiency and prudence of the SA Power Networks bushfire liability insurance procurement process. The annual assessment of SA Power Networks' bushfire liability insurance procurement process will better promote the efficient investment in, an efficient operation and use of, network services for the long-term interests of consumers of electricity with respect to price.

13.6.1.2 Assessment of proposed amendment against nominated pass through event considerations

Set out in Table 13-2 below is SA Power Networks assessment as to how the nominated pass through event considerations are satisfied by the proposed amendments to the insurance cap event definition.

Table 13-2: Assessment of nominated pass through event considerations in respect of the modified Insurance Cap Event

Nominated pass through event consideration	SA Power Networks' assessment
Whether the event proposed is an event covered by the prescribed pass through events	<p>The proposed event is not covered by the prescribed pass through events for the following reasons:</p> <ul style="list-style-type: none"> there has not been a change in regulatory obligation or requirement; there has not been a legislative or administrative act or decision made that affects the manner in which SA Power Networks provides direct control services, nor the applicable minimum service standards, nor the nature or scope of the direct control services; there has not been a change, removal or imposition of a relevant tax; and there has not been a failure of a retailer to pay SA Power Networks an amount to which it is entitled for the provision of direct control services.
Whether the nature or type of event can be clearly identified at the time of the determination	<p>The nature and type of an insurance cap event can be clearly identified at the time of the AER's determination. SA Power Networks has also proposed a process for inclusion in the distribution determination which enhances the ability to clearly identify the application of the relevant event.</p>
Whether a prudent service provider could reasonably prevent an event of that nature or type from occurring or substantially mitigate the cost impact of such an event	<p>Current insurance market conditions mean that:</p> <ul style="list-style-type: none"> the availability of insurance is decreasing due to the mergers of insurers and the withdrawal of capacity; and existing insurers are increasing prices and/or reducing the scope of available insurance, <p>resulting in the unavailability of certain levels of insurance cover, or the availability of those levels of cover but at prices that are not commensurate with the accepted risks.</p> <p>A prudent network service provider cannot reasonably prevent either of the above events from occurring, nor can it substantially mitigate the cost impact of such events. A prudent network service provider can, however, use its reasonable endeavours to exhaust all options available to that network service provider, and we have accounted for this in our drafting.</p> <p>SA Power Networks has also proposed a process for inclusion in the distribution determination which enhances the AER's ability to confirm that SA Power Networks has exhausted all available mitigation options.</p>

¹⁸ See, for example, page 15-7 of Attachment 15 (Pass through events) to the AER's Final decision for the Powercor distribution determination 2016 to 2020 and page 33 of the AER's Final decision for the ElectraNet transmission determination 2018 to 2023.

Nominated pass through event consideration SA Power Networks' assessment

Whether the relevant service provider could insure against the event, having regard to the availability (including the extent of availability in terms of liability limits) of insurance against the event on reasonable commercial terms

SA Power Networks' proposed amendments to the insurance cap event definition covers circumstances where insurance is either not available, or insurance is available but it is not on reasonable commercial terms and is therefore not prudent and efficient.

SA Power Networks has also proposed a process for inclusion in the distribution determination which enhances the ability of the AER to assess the availability of insurance on reasonable commercial terms and the efficiency and prudence of the available insurance.

Whether the relevant service provider could insure against the event, having regard to whether the event can be self-insured on the basis that:

- it is possible to calculate the self-insurance premium; and
- the potential cost to the service provider would not have a significant impact on their ability to provide network services

SA Power Networks is unable to self-insure against bushfire liability as to do so would place it in breach of its regulatory obligation under its distribution licence.

In addition, the AER has previously expressed its concern about distribution network service providers self-insuring risks where commercial insurance markets have been unwilling to offer insurance, because risk-taking is not the core business of distribution network service providers. The AER has expressed the view that network service providers should be more conservative than an insurance company in its approach to self-insuring. In response to Energex and Ergon Energy's proposal to self-insure storm catastrophe damage to their networks, in circumstances where a commercial insurance company, with a diversified insurance portfolio is unwilling to take on the risks associated with damage to the networks, the AER considered that it was not prudent for a network service provider to self-insure, and internally fund, any losses arising from those events that damage the network. The AER did not consider that a reliable estimate for self-insurance premium could be determined given the ability of the Queensland distribution network service providers to predict and measure the risk events.¹⁹

SA Power Networks considers that the same reasoning applies to insurance against liability for causing a bushfire. SA Power Networks' proposed drafting allows for circumstances where SA Power Networks is unable to obtain insurance where commercial markets are unwilling to insure those risks. SA Power Networks does not consider that it is prudent for it to self-insure for the categories of events contemplated by the drafting, given the unpredictability of bushfire events and the magnitude of the potential costs to SA Power Networks and the resulting impact of those costs on SA Power Networks' ability to provide network services.

Any other matter the AER considers relevant and which the AER has notified the network service provider is a nominated pass through event consideration

SA Power Networks' proposed insurance cap event definition seeks to clarify rather than add to the scope of insurance cap events. It also generally reflects the approach adopted in a number of recent distribution determinations.

13.6.2 Natural disaster event

In its Draft Decision, the AER accepted that a natural disaster event is consistent with the nominated pass through event considerations.²⁰ However, the AER amended SA Power Networks' proposed definition to remove the word 'negligent' that appeared before the words 'acts or omissions of the service provider'.²¹

We do not agree with the AER's proposed definition in two respects:

¹⁹ AER, *Queensland electricity distribution network service providers Distribution Determination 2011-15*, Draft Decision November 2009, page 702.

²⁰ AER, Attachment 14, page 11.

²¹ Ibid, page 13.

- first, we propose that the word 'unlawful' should be added before the words '... acts or omissions of the service provider;' in the fourth line of the definition; and
- secondly, we propose that the consideration of whether a relevant government authority has made a declaration that a natural disaster event has occurred (called the **Declaration Consideration** in this Attachment), be removed from the definition, or at least tailored to fit the language used in the South Australian regulatory requirements.

Accordingly, our proposed amended definition is as follows (with the amendments highlighted in red):

*'Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2020–25 regulatory control period that increases the costs to SA Power Networks in providing direct control services, provided the fire, flood or other event was not a consequence of the **unlawful** acts or omissions of the service provider.'*

Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:

- *whether SA Power Networks has insurance against the event, **and***
- *the level of insurance that an efficient and prudent NSP would obtain in respect of the event. ~~and~~*
- ~~*whether a relevant government authority has made a declaration that a natural disaster has occurred.'*~~

However, if our proposal that the Declaration Consideration be removed is not accepted by the AER, then, for the reasons set out below, we propose that it be amended so that the definition reads as follows (with the amendments highlighted in red):

*'Natural disaster event means any natural disaster including but not limited to cyclone, fire, flood or earthquake that occurs during the 2020–25 regulatory control period that increases the costs to SA Power Networks in providing direct control services, provided the fire, flood or other event was not a consequence of the **unlawful** acts or omissions of the service provider.'*

Note: In assessing a natural disaster event pass through application, the AER will have regard to, amongst other things:

- *whether SA Power Networks has insurance against the event,*
- *the level of insurance that an efficient and prudent NSP would obtain in respect of the event, and*
- *whether a relevant government authority has made a declaration that a natural disaster has occurred **(which may include a declaration of an identified major incident, a major emergency or a disaster under the Emergency Management Act 2004 (SA)).'***

13.6.2.1 'Unlawful'

In our Original Proposal, we proposed the wording '...provided the fire, flood or other event was not a consequence of the negligent acts or omissions of the service provider' (emphasis added).

We included the word 'negligent' in our Original Proposal because, without it, a natural disaster (such as a fire) that arises as a consequence of SA Power Networks acting (or not be able to act) in accordance with the regulatory requirements governing its actions and omissions, could result in the pass through event definition not being satisfied. That would be both an unreasonable and unfair outcome for SA Power Networks.

A good example of this arises in the context of vegetation clearance.

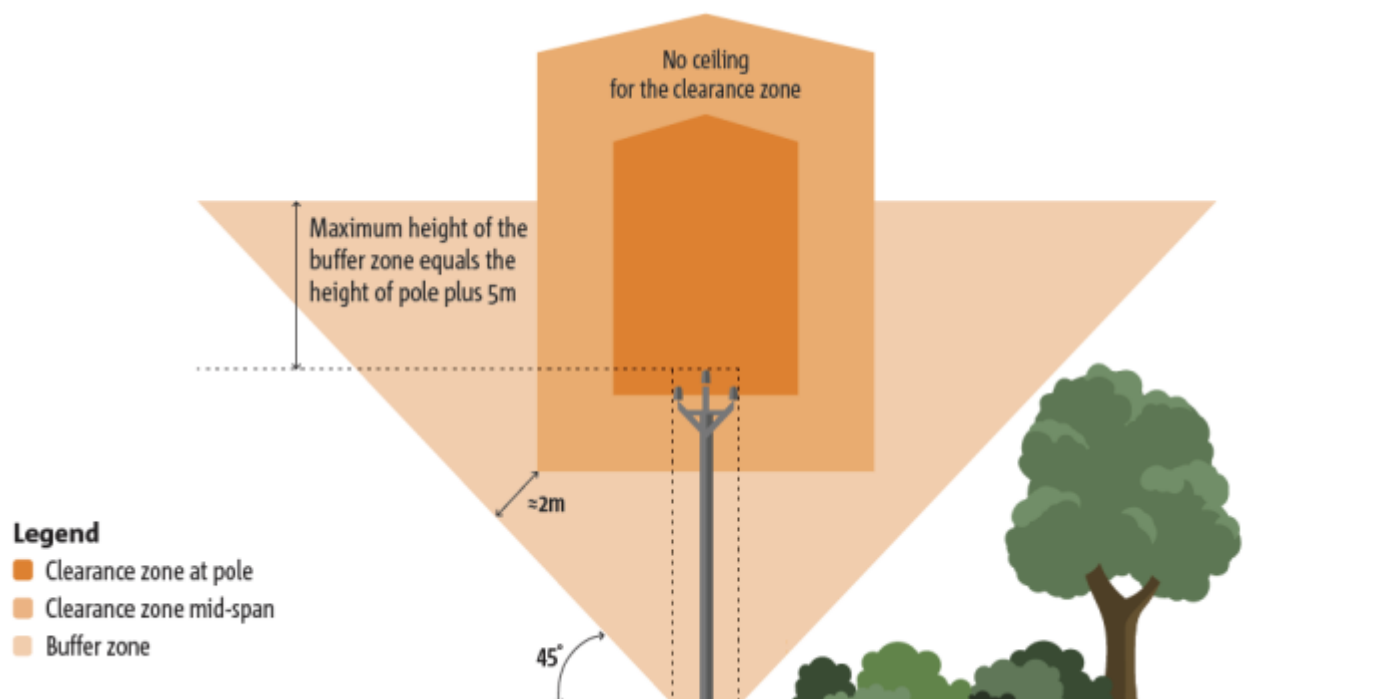
Managing and clearing vegetation near overhead powerlines is critical to mitigating bushfire risks and providing a reliable and safe supply of electricity to SA Power Networks' regional and metropolitan customers. SA Power Networks' obligations to undertake vegetation clearance are set out in the Electricity (Principles of Vegetation Clearance) Regulations 2010 (SA) (**Vegetation Clearance Regulations**). The Vegetation Clearance Regulations are detailed, lengthy and deal in slightly different ways with different types of powerlines, conductors and other electricity distribution infrastructure.

However, importantly, and particularly in the context of bushfire risk areas, the Vegetation Clearance Regulations are extremely prescriptive in terms of the nature and extent of the vegetation clearance that SA Power Networks is required/permited to carry out. For example, the Vegetation Clearance Regulations prescribe 'clearance zones' and 'buffer zones' in bushfire risk areas.

A clearance zone is a defined area around a powerline, ie a prescribed measure of distance (which varies from location to location and across different types and configurations of powerline). SA Power Networks has a statutory duty to ensure that, at least every three years, we clear vegetation so that no vegetation remains in the clearance zone and no growth or regrowth is likely to intrude into the clearance zone and that no vegetation or growth or regrowth is likely to bend into the clearance zone at the time of the next clearance.

However, SA Power Networks is also prohibited from clearing vegetation to a greater extent than is reasonably necessary to meet those requirements. However, if there is also a prescribed buffer zone (which is the case in bushfire risk areas), the 'reasonably necessary' limitation does not apply and SA Power Networks' is instead prohibited from clearing beyond the buffer zone. This is illustrated by the following diagram.

Figure 13-1: A typical clearance zone and buffer zones for an 11,000 Volt (11kV) overhead powerline between 110-150m in length in a bushfire risk area



It is possible that vegetation which is located outside of the buffer zone (and which SA Power Networks is not permitted to clear) could under certain circumstances impact upon related distribution infrastructure.

In such circumstances, although SA Power Networks will have complied with its very prescriptive and legislated vegetation clearance obligations, it is possible that contact between (say) flying vegetation and

the distribution infrastructure could provide a source of ignition for a bushfire start. In such circumstances, the natural disaster event definition would not be met because it could be argued that the impact on the distribution infrastructure was a consequence of an 'omission' of SA Power Networks, ie not clearing the vegetation outside of the buffer zone.

In our view, this is not the intended application of a natural disaster pass through event. It is both reasonable and necessary that the 'acts or omissions' of SA Power Networks that are excluded from triggering the pass through event be qualified so that such lawful acts (and omissions) do not unfairly disadvantage SA Power Networks.

Accordingly, as noted above, we propose that the natural disaster pass through event definition be qualified through the insertion of the word 'unlawful' before 'acts or omissions'.

13.6.2.2 Declaration of a natural disaster

Consistency with recent determinations

We note that the AER will often amend the drafting of a NSP's proposed nominated pass through event for consistency with its recent decisions. For example, the AER removed the term 'negligent' from our proposed natural disaster event for consistency between SA Power Networks and other NSPs.²²

In our Original Proposal, we proposed and the AER accepted the following as a matter to which it must have regard when assessing a natural disaster event pass through application:

'...whether a relevant government authority has made a declaration that a natural disaster event has occurred'.

As noted above, we refer to this as the **Declaration Consideration**.

However, we note that, since submitting our Original Proposal, the AER has approved drafting for natural disaster pass through event definitions for other NSPs that does not include the Declaration Consideration.²³

Accordingly, in the interests of having drafting consistency for recently approved natural disaster pass through event definitions (except, of course, where there are circumstances specific to a particular NSP), we propose that reference to the Declaration Consideration be removed from our natural disaster pass through event definition.

Clarification to address South Australian legislation

However, if the AER determines that there are reasons why the SA Power Networks natural disaster pass through event definition must include the Declaration Consideration, we propose that the Declaration Consideration be amended to align with the terminology that is used in relevant South Australian legislation.

Under South Australian legislation, there is no power to declare an event to be a 'natural disaster'. Instead, there is a three-fold arrangement under which an 'identified major incident', a 'major emergency' or a 'disaster' can be declared.

The powers to make a declaration in respect of such events in South Australia are found in the *Emergency Management Act 2004 (SA)* (**Emergency Management Act**).

²² AER, Attachment 14, page 5.

²³ See, for example, the AER's Final Decision for TasNetworks Transmission and Distribution Determination 2019-24 and Final Decision for Evoenergy Distribution Determination 2019-24.

Under the Emergency Management Act, the State Coordinator may:

- (a) declare an emergency to be an identified major incident; or
- (b) declare an emergency to be a major emergency (whether or not that emergency has previously been declared to be an identified major incident).

The Governor may also declare an emergency to be a disaster (whether or not that emergency has previously been declared to be an identified major incident or a major emergency).

An 'emergency' is defined as an event (whether occurring in South Australia, outside South Australia or in and outside South Australia) that causes, or threatens to cause –

- the death of, or injury or other damage to the health of, any person; or
- the destruction of, or damage to, any property; or
- a disruption to essential services or to services usually enjoyed by the community; or
- harm to the environment, or to flora or fauna.

The note to that definition indicates that an 'emergency' is not limited to naturally occurring events (such as earthquakes, floods or storms) but includes, amongst other things, fires.

To the best of our knowledge, there have been no declared 'disasters' in South Australia.

However, certain events have been declared to be 'major incidents' or 'major emergencies'.

For example, in 2015, the Sampson Flat bushfire was the most destructive fire in the Adelaide Hills for more than 30 years and burned uncontrollably through more than 12,569 hectares of public and private lands for four days.²⁴ The fire required the resources of more than 3,500 firefighters, which included support from authorities in New South Wales and Victoria,²⁵ and injured 134 people.²⁶

That fire was declared to be a 'major emergency',²⁷ and we consider that a similar event in the future should fall within the scope of the natural disaster pass through event definition.

We therefore propose, as noted above, that the wording of the Declaration Consideration be amended to clarify that it may extend to declarations under the Emergency Management Act. We acknowledge that such declarations can cover events that are not 'natural' in their occurrence (for example, an explosion). However, we consider that the wording '*any natural disaster including but not limited to cyclone, fire, flood or earthquake*' quite clearly restricts the operation of the pass through event to events that are 'natural' in their nature.

If, despite our proposal, the AER considers that it is unnecessary to amend the wording of the Declaration Consideration, then we request confirmation from the AER that it considers that a declaration under the Emergency Management Act will fall within the scope of the Declaration Consideration.

²⁴ Refer to <https://www.bnhcrc.com.au/news/2016/sampson-flat-fire-research-findings>.

²⁵ Refer to https://www.cfs.sa.gov.au/site/about_cfs/history_of_the_cfs/bushfire_history.jsp.

²⁶ Refer to <https://knowledge.aidr.org.au/resources/bushfire-adelaide-hills-2015/>.

²⁷ Refer to https://www.cfs.sa.gov.au/site/about_cfs/history_of_the_cfs/bushfire_history.jsp.

13.6.3 Major cyber event

The AER did not accept our proposed 'major cyber' event as it considered that it does not meet the nominated pass through event considerations.²⁸

There is no need for us to respond to the AER's views, as we have decided not to pursue the major cyber event in our Revised Proposal.

Since lodging our Original Proposal, SA Power Networks has undertaken further investigations with our insurance brokers into the availability of, and the nature of the coverage that can be provided by, insurance in respect of cyber events.

Those investigations have shown that, although the cyber insurance market is still a developing market and still relatively 'immature', cyber event insurance can be obtained. Having said that, to the best of SA Power Networks' knowledge, there are no network service providers in the National Electricity Market that have, to date, taken out cyber insurance.

We are presently in the process of working with our insurance brokers in order to procure cyber insurance that will take into account, and is tailored to, the specific risks and exposures that affect the SA Power Networks' business and operations, and provides a level of insurance that an efficient and prudent network service provider would obtain in the circumstances. This will require a considered analysis of potential and likely cyber events, the likely consequences of those events, and the losses and damage that are likely to flow from, or be associated with, such events.

The premiums for, and other costs associated with negotiating and obtaining, the cyber insurance will not, of course, be included within our base year for the 2020-25 RCP. SA Power Networks will absorb those costs within our current operating expenditure forecasts.

However, we note that, as we intend to obtain cyber insurance which provides a level of insurance that an efficient and prudent network service provider would obtain, we would have access to the 'insurance cap' pass through event if we were to make a claim under the cyber insurance and incur costs that materially exceed the policy limits.

SA Power Networks will engage with the AER to keep them up to date on our progress in obtaining cyber insurance.

13.6.4 Corporate income tax event

In Attachment 13 of our Original Proposal, we noted that we may need to propose an additional pass through event for inclusion in our 2020-25 distribution determination depending upon the outcome from the implementation of the recommendations set out in the AER's final report concerning the review of the regulatory tax approach issued on 17 December 2018 (**Final Tax Report**).

The AER noted this in its Draft Decision. However, at the time of publication of that Draft Decision we had not yet finalised our intended additional pass through event.

Since the publication of its Final Tax Report, the AER has made consequential amendments to the distribution post-tax revenue model (**PTRM**) which affect the calculation of depreciation for tax purposes in that model.

Specifically, the AER has amended the PTRM to:

²⁸ AER, Attachment 14, page 14.

- allow for the recognition of immediate expensing of certain capex for tax purposes; and
- apply the diminishing value method for depreciation to all new depreciable assets (subject to certain exclusions).²⁹

The AER's amendments to the PTRM mean that the regulatory treatment of income tax in the PTRM (ie the forecast of SA Power Networks' income tax allowance) is now consistent with the treatment of income tax by SA Power Networks for actual income tax purposes. In particular, the treatment of income tax in the PTRM is now consistent with TD 2002/5 and TR 2017/D1.³⁰

The AER will make subsequent amendments to the roll-forward model at a later stage.³¹

Although the PTRM has been modified to result in a closer alignment between the regulatory, and actual, treatment of income tax, we are concerned that there could be a change in the method of determining, or the quantum of, actual corporate income tax, such that the treatment of tax in the PTRM would become inconsistent with the actual treatment of corporate income tax. For example, this could arise:

- if there was a change in practices permitted by the Australian Tax Office, eg to no longer permit a NSP to immediately expense certain capex; or
- if the corporate income tax rate was increased from 30% to (say) 32% or decreased to (say) 28% (ie a change such that the expected corporate income tax rate in the PTRM no longer reflected the actual corporate income tax rate).

Without an applicable pass through event to address this type of issue (which is clearly beyond our control), SA Power Networks faces the risk of materially increased (or potentially decreased) costs in providing direct control services.

For clarity, we note that, although clause 6.6.1(a1) of the NER specifies that a '*tax change event*' is a pass through event for a distribution determination, changes in respect of corporate income tax are entirely excluded from the ambit of that pass through event.

We therefore propose a pass through event for a 'corporate income tax change event'. Our proposed definition has been modelled on the wording of the *tax change event* and is as follows:

'A corporate income tax change event occurs if:

- *any of the following occur during the course of a regulatory control period for SA Power Networks:*
 - (i) *a change in corporate income tax, the application or official interpretation of corporate income tax, the rate of corporate income tax, or the way corporate income tax is calculated;*
 - (ii) *the removal of corporate income tax; and*
- *in consequence, the costs to the service provider of providing direct control services are materially increased or decreased.'*

We note the following in relation to the *nominated pass through event considerations*:

- a corporate income tax change event is not already covered by any of the categories of pass through events specified in clause 6.6.1(a1) (1) to (4) of the NER or any of our other proposed additional pass through events. (As noted above, although clause 6.6.1(a1) of the NER specifies

²⁹ AER, Final Decision on Amendments to the PTRMs, April 2019, page 8.

³⁰ Ibid, page 60.

³¹ Ibid.

that a tax change event is a pass through event for a distribution determination, changes in respect of corporate income tax are entirely excluded from the ambit of that pass through event);

- the nature or type of event can be clearly identified, as evidenced by the inclusion of the analogous prescribed tax change event in the NER against which we have modelled our proposed corporate income tax change event;
- a prudent service provider could not reasonably prevent an event of this nature or type from occurring or substantially mitigate the cost impact of such an event because the event is clearly beyond the reasonable control of service providers, and is instead an event within the control of Commonwealth authorities, and this is supported by the inclusion of the analogous prescribed tax change event in the NER; and
- SA Power Networks is unable to insure against the event, whether via insurance on reasonable commercial terms or self-insurance - it is not possible to obtain insurance for this type of regulatory change.

Shortened Forms

2019-20 insurance year	<i>the 12 month period ending on 30 September 2020</i>
ACT	<i>Australian Capital Territory</i>
AEMC	<i>Australian Energy Market Commission</i>
AER	<i>Australian Energy Regulator</i>
capex	<i>capital expenditure</i>
Draft Decision	<i>AER, Draft Decision for SA Power Networks Distribution Determination 2020 to 2025</i>
Emergency Management Act	<i>Emergency Management Act 2004 (SA)</i>
Final Tax Report	<i>AER's final report on regulatory tax approach, 17 December 2018</i>
NER	<i>National Electricity Rules</i>
NSP	<i>Network Service Provider</i>
NSW	<i>New South Wales</i>
Original Proposal	<i>SA Power Networks Regulatory Proposal for the 2020-25 RCP</i>
PTRM	<i>Post Tax Revenue Model</i>
RCP	<i>Regulatory Control Period</i>
Revised Proposal	<i>SA Power Networks 2020-25 Revised Regulatory Proposal</i>
RFM	<i>Roll Forward Model</i>
Vegetation Clearance Regulations	<i>Electricity (Principles of Vegetation Clearance) Regulations 2010 (SA)</i>