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PEMM Review Team
Department of Climate Change, Energy and Water (DCCEEW)
By email: PEMMReview@dceew.gov.au

ENERGY CONSUMERS AUSTRALIA SUBMISSION ON THE PEMM REVIEW

Dear PEMM Review Team

Energy Consumers Australia (ECA) appreciates the opportunity to comment on the Strengthening the Prohibiting Energy Market Misconduct provisions in the *Competition and Consumer Act 2010* (CCA) consultation.

ECA is the national voice for household and small business energy consumers. We advocate for a fair, affordable, and reliable energy system—one that meets everyone's needs and leaves no one behind on the journey to net zero.

We support the focus of the review on protecting consumers and recommend that:

- the Australian Energy Regulator (AER) is adequately resourced to take on the NEM Inquiry reporting function and any new compliance and enforcement functions
- future governance of the PEMM provisions should be determined having regard to the respective roles and expertise of the Australian Competition and Consumer Commission (ACCC) and the AER as the competition and consumer regulator and energy regulator respectively (with possible areas of joint responsibility)
- the AER takes on compliance and enforcement of the Electricity Retail Code
- retail reform Options 2 and 3 be further developed, but DCCEEW should ensure coordination with other pricing-related reform processes
- cross-market manipulation reforms are progressed. Currently, we support Option 3.

NEM Inquiry functions

The ACCC NEM Inquiry reports have provided valuable data and insights into retail electricity market issues over a number of years. We consider that the ACCC has delivered this function effectively and has developed significant expertise in both reporting and identifying insights that have been a key input into retail market policy and reform. For example, the ACCC's reporting on the 'loyalty tax' and consumer protection issues for consumer energy resources have informed consideration of pricing reforms and the need for an energy consumer duty.

In transferring this reporting function to the AER, we recommend DCCEEW ensure that:

- **The AER is adequately resourced to take on this function.** Specific long-term funding should be provided to ensure the AER has the necessary resourcing and expertise to deliver

this function effectively, rather than being forced to consider funding for and delivery of this function against its other operational budget and priorities.

- **NEM Inquiry reports continue to scrutinise emerging consumer issues and gaps in consumer protections.** Currently, the function being delivered by the ACCC creates a necessary degree of separation between the Inquiries function and the AER's day to day compliance and enforcement priorities. Continuing this separation is more challenging with the function being moved to the AER but could be achieved through clear and robust Terms of Reference and internal functional separation. Inquiry reports provide important data and insights to inform policy that cannot be obtained without the information-gathering powers of the ACCC and AER.

We support the AER having a general inquiry function similar to section 95H of the CCA. We note the Victorian energy regulator also has a similar inquiries function.¹

Governance of the PEMM provisions and related matters

We generally support the AER taking on relevant compliance and enforcement functions as the energy regulator, but have concerns about the AER's capacity to monitor the PEMM provisions (Part XICA of the CCA) as well as the loss of the ACCC's expertise in competition regulation if it were to no longer monitor and enforce these provisions. If the AER takes on these functions, we recommend it is given funding to enable it to develop its capacity to deliver these functions effectively.

More generally, it is important that the transfer of the PEMM functions to the AER does not lead to any actual or perceived diminution of the ACCC's broader ongoing role in regulating energy markets nationally under the CCA including under the Australian Consumer Law (ACL). Effective enforcement of ACL consumer protection obligations remains critically important for energy consumers both within and outside the NEM, particularly where jurisdictional energy-specific regulation does not afford adequate protections.

The ACCC will continue to require adequate powers including to gather information to support these functions. As the consultation paper notes the ACCC may also use information obtained from the NEM Inquiry for other compliance and enforcement-related purposes. We support reforms to ensure the ACCC continues to have appropriate access to such information.²

The issue of PEMM governance reflects a general tension and uncertainty in the consultation paper as to whether the PEMM provisions should be primarily aimed at regulating competition and misuse of market power or addressing specific electricity market conduct irrespective of whether it creates competition concerns. The AER is well placed to regulate the latter but may lack the competition regulation expertise and capacity to regulate the former. Accordingly, the preferred approach to governance may depend on which options government proceeds with on reforms to the PEMM provisions.

We note some of the enforcement mechanisms under Part XICA, such as divestiture orders, are more significant than those generally available to the AER, such as civil penalties and enforceable undertakings. The ACCC in contrast would have more experience with significant market interventions

¹ *Essential Services Commission Act 2001*, Part 5—Inquiries and reports.

² DCCEE, Consultation Paper, 15, 19.

through its general competition regulation functions (as well as its existing PEMM functions, though we understand no public enforcement action has yet been undertaken).

An option is to develop a cooperative joint enforcement framework, supported by a memorandum of understanding outlining PEMM enforcement responsibilities between the ACCC and AER (which could involve AER progressively taking on more responsibility for enforcement of these provisions over time). This would recognise the AER's role as energy regulator while mitigating some of the other concerns. The multiple regulator model for the ACL is an example of how this could work.

We note Part XICA vests certain powers in the Treasurer, as the Minister responsible for the CCA. Should the AER take on these functions we query whether the Minister for Climate Change and Energy should also have powers under this Part.

In considering the transfer of functions to the AER, we also recommend DCCEEW consider establishing a scheme, similar to the designated complaint scheme in Part XIE of the CCA, enabling designated complaints to be made to the AER in relation to significant or systemic issues affecting energy consumers. While Part XIE sits outside the PEMM provisions we think it is a useful adjunct to the ACCC's current powers under the CCA, including the PEMM provisions and its NEM Inquiry function. The AER in taking on these functions should have similar powers and duties as the ACCC currently does, including to respond to designated complaints. We note both of the designated complaints made in the first year of the scheme's operation related to the energy sector.³

Governance of the Electricity Retail Code

We support compliance and enforcement of the Electricity Retail Code being transferred to the AER. Monitoring of regulated electricity prices under the Default Market Offer (DMO) and Solar Sharer Offer (SSO) should be part of the AER's core functions, and it is well-placed to take on this role given its role in determining the tariffs for the DMO and SSO under the Code.

PEMM Retail Provision – general comments

Energy costs are a major concern for household and small business consumers. 79% of consumers are quite concerned or extremely concerned about the cost of electricity, and 36% of consumers report difficulty paying a home electricity bill within the last 6 months.⁴ For small businesses, three quarters say they are concerned about the cost of electricity, and the average energy debt for a small business consumer is almost twice as high as residential consumers.⁵

We expect concerns about energy costs will continue or escalate given the expiry of government rebates and forecasts of up to 24% increases in electricity bills.⁶

We strongly support the need for reforms that help ensure energy costs are fair and affordable for households and small businesses. We do not consider recent reforms to the DMO and rule changes by the Australian Energy Market Commission (AEMC) remove this need. While some of these reforms, like automatic best offer protections for hardship customers, mitigate some of the worst outcomes, many consumers still face poor outcomes. For example, the ACCC's most recent NEM

³ ACCC, [Designated complaints register | ACCC](#).

⁴ ECA, [Consumer Energy Report Card data](#), December 2025.

⁵ AER, Retail energy market performance update for Q3 2024-25, Schedule 3.

⁶ Australian Financial Review, [Australian electricity prices could rise 24 per cent this year after \\$6.8 billion of government subsidies end](#).

Inquiry report highlights that loyalty penalties persist, with customers on older plans paying \$221 more than those on newer plans and a substantial proportion of customers on plans with prices above the default offer.⁷

However, there is a need for better coordination of energy pricing reforms. As well as the PEMM Review, major reforms that would impact energy pricing are being considered as part of:

- the AEMC Pricing Review – in particular Recommendation 1 ('same plan, same price') which aims to address the 'loyalty tax'.
- reforms to the DMO and introduction of the SSO on 1 July 2026.
- DCCEEW's Better Energy Customer Experiences reforms, which include consideration of a consumer duty for energy.⁸ Research commissioned by ECA highlights the potential for a consumer duty to deliver better consumer outcomes including to ensure fair price and value for energy.⁹

While we welcome that a number of different reviews have recognised consumers' concerns about energy costs, we are concerned that these reforms are being considered in a disjointed way. This may lead to reforms being determined more by process and timing rather than a holistic consideration of all relevant options. We recommend DCCEEW ensure better coordination of pricing-related reforms including through its role advising the Minister as Chair of the Energy and Climate Change Ministerial Council.

PEMM Retail Prohibition – comments on reform options

In terms of the options identified in the consultation paper we support further development of Options 2 and 3. We agree Option 1 ('do nothing') is not viable and agree with the rationale in the consultation paper for not progressing Option 4 (pre-approval of market offer price increases). We understand DCCEEW's consideration of these options is at a preliminary stage and welcome further engagement.

On **Option 2** (symmetrical retail prohibition), we agree with the rationale in the consultation paper for making the retail prohibition 'symmetrical' such that it applies in circumstances of wholesale cost increases as well as decreases. The limitations of the existing approach are immediately obvious from wholesale price spikes in 2022.

That said, it is difficult to assess whether the existing retail prohibition has had any meaningful impact on prices, and likewise whether an amended retail prohibition would meaningfully moderate price increases. In part, this may be because the current provision only applies to 'sustained and substantial' reductions in wholesale costs and requires 'reasonable adjustments,' which may be difficult to determine in practice.

ACCC guidance indicates 'sustained' means something that is continuing and expected to continue.¹⁰ This may be difficult to apply to wholesale costs which fluctuate significantly. On 'reasonable adjustments' the ACCC's guidance highlights that 'all relevant circumstances need to be taken into

⁷ ACCC, [Inquiry into the National Electricity Market - December 2025 Report](#), 20, 27.

⁸ Energy and Climate Change Ministerial Council, [Meeting Communique December 2025](#).

⁹ ECA, [Exploring a consumer duty for Australia's energy market | Energy Consumers Australia](#).

¹⁰ ACCC, [Guidelines on Part XICA](#), 2.18.

account' and includes several examples.¹¹ This may also be difficult to apply in practice given the complexity of forward contracting for wholesale costs, timing of retailer price resets and fixed-term contracts.

We note one of the examples of a 'reasonable adjustment' given in the ACCC guidance (Example 9) is a retailer reducing its usage charge for a 'Green Energy' product following a reduction in green energy certificate prices. Recent reporting highlights that GreenPower plan costs do not appear to have reduced significantly despite Large-scale Generation Certificate costs having dropped sharply (the article suggests this may be due to forward contracting when prices were higher).¹²

As suggested in the consultation paper, these thresholds should be further considered if this option is progressed. It is important the provision can be practicably enforced, and we agree the ACCC's suggestions to improve enforcement of this provision should be considered.¹³ We would also recommend the ACCC (or the AER as the case may be) update guidance on the application of these provisions.

On **Option 3** (general requirement for 'reasonable' pricing), while this would be (depending on how 'reasonable' was determined) a much more significant intervention, we agree it is worth developing further given continued concerns about energy costs. While existing reforms have moderated some of the most unreasonable prices, many consumers continue to face high prices including a substantial proportion paying above default offer prices.

We note this option is conceptually similar to a requirement under a consumer duty for retailers to act to deliver fair price and value for consumers, which ECA supports. We again encourage DCCEEW to ensure coordination between different reform processes.

We agree that a critical issue under this option is determining what would constitute a 'reasonable' price. We note the consultation paper references the 'reasonable price' requirements under the Victorian Energy Retail Code of Practice. The Victorian provision is more limited, applying only to contracts over four years old (4% of contracts in Victoria)¹⁴ and may not be directly applicable to Option 3. The requirement is primarily for retailers to determine what is 'reasonable' having regard to the retailer's other offers, including its standing offer. A similar requirement is not likely to be suitable for Option 3 because the reasonable price requirement would (or should) apply to all market offers.

If this option is pursued we would therefore expect more guidance to be provided, either in the legislation itself or by the regulator, on what constitutes a 'reasonable price'. We consider that reasonable price obligation would need to take into account the essential nature of electricity supply. Consumers generally cannot opt out of the market: this contributes to the current prevalence of price discrimination resulting in unreasonably high prices for many 'loyal' customers who do not switch regularly.

A reasonable price obligation would also likely need to include explicit consideration of the retailer's underlying costs in providing electricity, though we appreciate DCCEEW states, '[t]he policy intent of this option is not to introduce a form of price regulation' so we would not anticipate the regulator would be required to determine these costs, like it does for the DMO. Instead, in enforcing the provision the

¹¹ Ibid, 10-14.

¹² Renew Economy, ["A price gouging rip off:" Cost of GreenPower certificates have plunged, but retailers still charge huge premium.](#)

¹³ DCCEEW, Consultation Paper, 32-33.

¹⁴ Essential Services Commission, [Energy Consumer Reforms](#), 5.

regulator might need to consider if the price was reasonable having regard to the essential nature of electricity supply, underlying costs and other matters.

Cross-Market Manipulation

We agree that there are material risks of cross-market manipulation arising from market power in the NEM. We support the analysis presented in the Consultation paper, along with evidence from the AER¹⁵ and the NEM Review Panel.¹⁶

As the paper highlights, the move to five-minute settlement as well as the increased use of AI trading has created a situation where strategic bidding is harder to monitor. It is therefore essential that the AER is fully equipped, resourced, and empowered to undertake a formal, ongoing monitoring and enforcement role.

We also agree with the consultation's assessment of market-power risks associated with batteries and consumer energy resources (CER). As uptake of both large-scale and small-scale storage accelerates, so too does the potential for market concentration and portfolio-level influence. To mitigate this, we recommend continuous monitoring of the market share of battery storage across the NEM to ensure early visibility of emerging concentration risks.

Of the options presented, we believe Options 3 and 4 warrant further development. However, we would like more information before we can form a final view.

We note the consultation paper also asks whether the 'substantially lessen competition' (SLC) test in the contracts provision should be removed and enforcement transferred to the AER. This again highlights the complexity of transferring these enforcement responsibilities to the AER given the ACCC's role as competition regulator. In principle, if enforcement moves to the AER, we support developing an electricity-specific regulation that does not rely on the SLC test but consider that it could be developed to supplement rather than replace the existing provision enforced by the ACCC.

Thank you for considering this submission. If you have any questions about this submission please contact Adam Collins (adam.collins@energyconsumersaustralia.com.au) and Ashley Bradshaw (ashley.bradshaw@energyconsumersaustralia.com.au).

Yours sincerely,



Brendan French
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¹⁵ See AER, Submission to NEM Review Initial Consultation, [here](#).

¹⁶ Nelson, T., Conboy, P., Hancock, A., Hirschhorn, P., 2025, National Electricity Market wholesale market settings review: Final Report, Department of Climate Change, Energy, the Environment and Water, Canberra, December 2025