

6 February 2025



The Australian Government
PEMM Review Taskforce, Electricity Division
Department of Climate Change, Energy, the Environment and Water

By email: PEMMreview@dcceew.gov.au

Marjorie Black House
47 King William Road
Unley SA 5061

P. 08 8305 4222
F. 08 8272 9500
E. sacoss@sacoss.org.au
www.sacoss.org.au

ABN 93 197 662 296

RE: Review of the effectiveness of the Prohibiting Energy Market Misconduct (PEMM) Act 2019 (Cth): Consultation Paper

The South Australian Council of Social Service (SACOSS) is the peak body for non-government health and community services in South Australia with a mission to advocate for the interests of people on low incomes or experiencing disadvantaged across the state. We thank the Department of Climate Change, Energy, the Environment and Water (DCCEEW) for the opportunity to comment on its *Review of the effectiveness of the Prohibiting Energy Market Misconduct (PEMM) Act 2019 (Cth): Consultation Paper*, dated November 2024 (the Consultation Paper).

Please find attached SACOSS's brief submission on select questions from the submissions template document. If you have any questions in relation to this submission, please contact Georgina Morris at georgina@sacoss.org.au or 8305 4214.

Yours sincerely,

Dr Rebecca Tooher
Director of Policy and Advocacy
South Australian Council of Social Service

Legislative review of the effectiveness of the Prohibited Energy Market Misconduct Act: Submission from the South Australian Council of Social Service, 6 February 2025

Assessment Framework and General Questions	
1.	Do you agree with the framework for assessing the effectiveness of the PEMM Act?
2.	<p>How can the review assess the impact of the PEMM Act against the market performance criteria, including:</p> <ul style="list-style-type: none"> • market efficiency; • equity; • reliability; • affordability; • emissions reduction; and • investment outcomes.
	<p>South Australia has the most expensive electricity in the Nation (see ACCC's December 2024 Report Appendix C - where average effective prices were 44.1 c/kWh in SA – 8.9c/kWh above the NEM average). SACOSS is most concerned with DCCEE's assessment of the impact of the PEMM on equity and energy affordability for SA households. Energy costs are regressive, disproportionately impacting low-income households - income levels should therefore be an input into DCCEE's affordability / equity impact analysis.</p> <p>Specifically, we are seeking the Review examine the inequitable impact of high energy wholesale prices (not reflective of costs) on low-income households, renters and high usage households that cannot access energy from behind the meter (non-solar). Having different grid usage amounts as an input into affordability / equity analysis is important - there cannot be said to be an 'average usage' amount in South Australia due to the impact of the high penetration of rooftop solar in this state. SA has the lowest 'average usage' amount of any State in the Nation (see AER's Annual Retail Market Report 2023/24, p. 48), used by the AER to set the DMO and by the networks to forecast price / bill impacts for SA households. This is not reflective of the reality for many South Australian</p>

	<p>households who may face barriers to accessing CER, or who live in (rent) inefficient poor-quality housing. The median usage of a hardship customer was 66% higher than the median usage of a South Australian residential customer in 2022-23, leading to much higher bills (see: ACCC, Inquiry into the National Electricity Market Report, June 2024, Appendix E). Different consumer usage profiles should provide an input into the Review's affordability analysis.</p> <p>SACOSS is calling on DCCEEW to have particular regard to the operation of the wholesale market in South Australia specifically. SA leads the Nation in rooftop solar penetration. SACOSS has repeatedly raised our concerns around the impact of market volatility (due to solar PV) and low liquidity on wholesale prices faced by consumers in this State. As noted by the AER, <i>South Australia has the highest percentage of installed rooftop solar capacity, 40% of its total installed capacity, and the highest percentage of renewable capacity, 74% of its total installed capacity</i>. However, SA households continue to pay increasingly high wholesale costs – in Q4 2024, the quarterly volume weighted average prices in SA were up \$58 per MWh, or 52% from Q4 2023, and had increased by 28% to \$132 per MWh in 2024 from 2023 levels (AER Q4 2024 Wholesale Markets Quarterly Report, p. 4-5).</p> <p>In setting the DMO for 2025/26, the 'underlying cost of electricity' is relevant input to the wholesale methodology and SACOSS has called on the AER to use its information gathering powers to uncover potentially prohibited conduct under the PEMM that impacts market performance, and to refer those findings to the ACCC for compliance action. Where the AER determines that the wholesale market is not functioning effectively, then SACOSS strongly submits those costs should not be reflected in the DMO (on the basis that they are unreasonable) and a more prudent estimation of wholesale costs should be established. Consumers should be protected from the costs of unlawful trading practices in this State.</p>
3.	Are there any other criteria in addition to those above the review should consider? If so, what are they, and how can they be assessed?
4.	Have regulatory changes in the market since the introduction of the PEMM Act influenced its effectiveness?
5.	Are there particular data sources or other forms of evidence the review should consider in making its assessment? If so, what are these and why should the review consider them in making its assessment?

The AER can now exercise its relatively new information gathering powers under the [Statutes Amendment \(National Energy Laws\) \(Wholesale Market Monitoring\) Bill 2023](#) to assess competition and the effective functioning of wholesale markets. SACOSS strongly supports the AER in taking full advantage of its new Wholesale Market Monitoring powers, and also supports DCCEEW having access to this data and evidence to inform the Review.

- | | |
|----|---|
| 6. | How have broader market conditions, such as the COVID-19 pandemic and the energy crisis, affected the PEMM Act's operation in the market? |
|----|---|

Retail Market Prohibition Questions

When providing feedback on the questions in this section above you may wish to comment on:

- Broader market conditions which have affected the behaviour and pricing strategies of electricity retailers.
- Whether the requirements of the PEMM Act have created barriers to entry into the electricity retail market.
- How market conduct affects vulnerable and disengaged customers, and customers on legacy contracts.
- Whether the PEMM Act fails to regulate conduct that should otherwise be regulated

- | | |
|----|---|
| 7. | Has the retail prohibition in the PEMM Act affected electricity market performance? If so, how? |
|----|---|

In South Australia, the AER have '*identified individual plants that may have exhibited economic and physical withholding behaviour between 2019 and 2023. Economic and physical withholding are not unlawful under the National Electricity Law or National Electricity Rules per se but can be **both inefficient and harmful for consumers because it leads to higher prices that do not reflect costs.***' Australian Energy Regulator, [Wholesale Electricity Market Performance Report](#), December 2024, p. 148

SACOSS questions why 'economic' and 'physical' withholding are not captured by Section 153G or 153H, and is calling on DCCEEW to examine whether there are amendments that need to be made to PEMM to ensure corporations do not benefit from withholding behaviour at the expense of South Australian energy consumers. If this behaviour is captured by those provisions, SACOSS supports strong compliance and enforcement action, with a 'true-up' to return benefits to consumers.

- | | |
|----|---|
| 8. | Has the retail prohibition resulted in consumer prices better reflecting the underlying costs of procuring electricity? If so, how? |
|----|---|

SACOSS would suggest not in South Australia. Our highly volatile and illiquid market is resulting contracting behaviour that means SA households pay for the retailer's risk (through more expensive hedging contracts), therefore the actual wholesale price consumers pay is well above the underlying cost of procuring electricity in this State. Consumers should not have to pay for risks they are unable to manage or avoid, and the PEMM should operate to protect consumers from costs associated with market failures. The AER's DMO team and wholesale markets monitoring team, together with the ACCC (see the December 2023 Report) have noted and documented this issue in SA. The ACCC's [December 2023 Report](#) recommended that:

- Government should investigate, in consultation with the ASX and market participants, whether there are ways to support new hedging products being listed on the ASX in a timelier manner, and
- Governments can increase liquidity in the contract market during the transition by making more contracts available from **government-supported renewable energy and storage projects**.

Notably, the ACCC's [December 2024 Report](#) shows SA households paid the highest retail margin in the Nation in 2023/24 – at 12% of the price stack, or \$240 per customer - up by 238% on the 2022/23 retail margin of \$71 per customer (See Appendix C). The ACCC suggests: *A possible reason for this is that **most retailers increased retail prices to recover high wholesale costs**. This could have allowed retailers that **avoided high wholesale costs to set consumer prices with high margins***. ACCC, [Inquiry into the National Electricity Market Report](#), December 2024, p. 7.

9.	Has the retail prohibition influenced retailer pricing strategies in the market, observed or otherwise?
10.	Are the remedies that are available in relation to the retail prohibition under the <i>Competition and Consumer Act 2010</i> (CCA) appropriate and effective?
11.	How has retailer behaviour changed as a result of the prohibitions set out in s.153E having regard to the way in which misconduct is defined?

Contract Market Prohibition Questions

When providing feedback on the questions in this section you may wish to comment on:

- Broader market conditions which have affected the behaviour of electricity generators offering financial contracts.
- If the requirements of the contract prohibition have created barriers to entry for new potential suppliers of generation.
- How the requirements of the contract prohibition may have affected the way new and existing generators design their generation infrastructure.
- Whether the PEMM Act fails to regulate conduct that should otherwise be regulated.

12.	Has the electricity financial contract liquidity prohibition in the PEMM Act impacted electricity market performance? If so, how?
-----	---

13.	Have retailers, particularly small standalone retailers, observed improved access to financial contracts? If not, why?
-----	--

14.	How important is it for retailers to access Australian Stock Exchange (ASX) traded contracts, or other types of financial contracts for risk management, and how does this impact the underlying costs of procuring electricity?
-----	--

15.	Have the remedies available under the electricity financial contract liquidity prohibition impacted investment decisions by generators? If so, how?
-----	---

16.	Are the remedies available in the <i>Competition and Consumer Act 2010</i> (CCA) – including contracting orders under the PEMM Act – appropriate and effective in addressing electricity financial contract liquidity misconduct?
17.	How has generator behaviour changed as a result of the prohibition set out in s.153F having regard to the way in which misconduct is defined?
<h3>Spot Market Prohibition Questions</h3>	
<p>When providing feedback on the questions in this section you may wish to comment on:</p> <ul style="list-style-type: none"> • Broader market conditions which have affected the behaviour of electricity generators, for example, the global energy crisis, supply chain constraints, and coal plant outages. • If the prohibitions of the PEMM Act have interfered with behaviour which is genuine commercial behaviour as intended by the design of the electricity spot market. <ul style="list-style-type: none"> • This includes strategies undertaken by generators to optimise their operation and economic rationing of capacity. • Whether the PEMM Act fails to regulate conduct that should otherwise be regulated. 	
18.	Have the electricity spot market prohibitions in the PEMM Act impacted electricity market performance? If so, how?
19.	Do electricity spot market bidding provisions in the PEMM Act and bidding and rebidding provisions in s 3.8.22A of the National Electricity Rules (NER) overlap or address different generator behaviours? If so, how?
20.	Has generator bidding behaviour changed as a result of the electricity spot market prohibitions? If so, how?

21.	Have the remedies for the electricity spot market prohibitions affected investment decisions by generators? If so, how?
22.	Are the remedies in the <i>Competition and Consumer Act 2010</i> (CCA) and the PEMM Act appropriate and proportionate to address electricity spot market misconduct?
23.	How has generator behaviour changed as a result of the prohibition set out in ss. 153G and 153H having regard to the way in which misconduct is defined?
ACCC NEM Inquiry Function Questions	
24.	Does the NEM Inquiry support improved outcomes for customers?
<p>Yes, absolutely. SACOSS is extremely reliant on the data and analysis provided by the ACCC through its NEM Inquiry on highlighting inequities and energy price impacts on South Australian households. The ACCC's data and analysis has informed important policy responses around:</p> <ul style="list-style-type: none"> • Retailer's customer contracting behaviour, resulting in significant 'loyalty penalties' being incurred by customers with 'existing contracts', as opposed to previous analysis of much lower acquisition offers. • The number of households paying well in excess of the Default Market Offer in South Australia, and the impact of 'better offer' information (resulting in Rule Changes and informing / shaping the Review of the NECF). • Retailer's wholesale contracting behaviour in this State, resulting in high wholesale costs for consumers, not reflective of underlying wholesale costs – leading to legislative change and greater information-gathering powers for the AER). 	

<ul style="list-style-type: none"> • Different customer usage profiles for hardship / payment plan households, allowing for more meaningful price impact analysis outside of the 'average annual usage' amount – informing advocacy around cost shifts in a transitioning system (particularly the inequitable recovery of network and jurisdictional scheme costs). • Effective energy price and bill stack analysis based on actual billing data – this information is not available anywhere else and provides an evidence base of the actual energy costs facing South Australian households (as compared to other jurisdictions), and the impact of each element of the price stack. This informs SACOSS' policy and advocacy responses to network regulatory determinations, and underpins all our responses to Market Body and State Government consultations. This information is essential in an affordability and equity analysis, and differs from the AER's retail markets reporting. • TOU tariff information is increasingly important in this State (with around 40% of households placed on TOU structures without consent, choice or education), this has informed our advocacy on ensuring SA smart meter households retain a choice of flat rate tariffs. 	
25.	Does the NEM Inquiry provide value beyond supporting monitoring and compliance with the PEMM Act provisions? If so, how?
Yes, see above.	
26.	Is the scope and the types of information gathered through the current NEM Inquiry appropriate? If not, how?
<p>Yes, SACOSS supports the ACCC having a broad scope and discretion to collect information and inquire into matters that impact retail energy prices facing South Australian consumers and highlight market failures. We highly value not only the scope and type of information gathered, but also the ACCC's independent and critical analysis of that information together with recommendations for action. We urge DCCEE to support the ACCC to continue to undertake critical analysis of billing data and market behaviour for the benefit of consumers, independent of government or industry influence.</p> <p>SACOSS considers the scope of the ACCC's powers should extend to the impact of tariff design at a network level on retail tariffs, as well as an analysis of profits being made by electricity networks above regulated profits recovered through network tariffs. We would also like to see a distributional analysis of grid usage, and the inequitable cost shift of network and jurisdictional scheme costs from solar to non-solar households in SA. An analysis of the impact of PPAs, and whether households are subsidising the energy costs of large industrial loads would also be useful.</p>	
Are there any other comments you would like to make?	
In the interests of transparency, accountability, evidence-based policy development and legislative change to support and protect consumers through the energy transition, SACOSS strongly supports the continuation of the ACCC's market monitoring powers beyond 31 August 2025 .	

