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Electricity Markets Competition Policy Team
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Dear Electricity Markets Competition Policy Team

Submission to consultation on Strengthening the Prohibiting Energy Market Misconduct (PEMM) provisions in the *Competition and Consumer Act 2010 (CCA)*

AGL Energy (AGL) welcomes the opportunity to engage in the consultation regarding ‘Strengthening the Prohibiting Energy Market Misconduct provisions in the *Competition and Consumer Act 2010 (Cth)*’. AGL appreciates the detailed consultation paper published in December 2025 (**Consultation Paper**) and the collaborative approach of the team.

Retail market provision

We set out a summary of our submission below with additional detail included in the attached Annexure.

Potential impacts of change

We consider no change to the existing PEMM provision is required. Further, the costs and risks of adverse unintended consequences to the retail market and its customers from the options outlined in the Consultation Paper could significantly exceed any benefit yielding a detrimental impact for the industry as a whole, including customers, if implemented.

In particular, the need for change to the existing PEMM provision is not clear:

- the Consultation Paper summarises the significant number of consumer protection laws already enacted - many recently - with some yet to take effect. The existing laws provide a wide range of consumer protections targeted to address the needs of particular customer groups, including hardship customers. It is important, given the volume of regulatory reform on foot, that this proposal is considered as part of, and coordinated with, the existing framework and that existing and upcoming reform. We strongly support the consultation carefully considering whether the current laws, including upcoming changes, are already sufficient to achieve relevant objectives;
- there is significant competition in the market with over 50 retailers competing for customers. Competition is working, and driving improvement in consumer outcomes.¹ The ACCC has noted that “*observed price increases are broadly consistent with forecast changes in underlying costs of supplying retail electricity across most regions in 2025–26*”².

¹ ACCC [media release](#) dated 22 December 2025 announcing publication of December 2025 Report.

² ACCC, Inquiry into the National Electricity Market - December 2025 Report, page 3.

Unnecessary regulation increases costs and can stifle the innovation that would otherwise drive positive outcomes for the wide range of consumers served by the industry. That is particularly the case where such regulation results in uncertainty, which is often the case if the regulation lacks clarity. In the present context, we consider that:

- Option 2 in the Consultation Paper ('symmetrical' retail prohibition) would detrimentally impact the industry as a whole;
 - Contrary to good regulatory practice, the existing retail provision presently creates ambiguity and uncertainty (see below). Implementation of 'Option 2' would significantly expand the uncertainty, further increasing costs and potentially diluting consumer benefit that could otherwise flow for some consumers from clear regulation (for example, due to different interpretations being adopted across industry). Reasons for this include the wider application of 'Option 2' and the likely lack of symmetry, which could result in the legislation operating differently when costs move in different directions;
 - Robust processes to ensure compliance are more costly for legislation that is ambiguous;
 - The likely lack of symmetry may force retailers, who already have very low margins³, to reduce margins further and consistently downwards (depending on the application of the legislation to different circumstances), potentially jeopardising retailers' viability;
 - The additional cost and risk would act as a disincentive to innovation. We consider innovation is important to driving improvements in customer choice and value over time;
 - Accordingly, it is not clear that any benefits from the introduction of this provision would outweigh the detriments (including potential unintended consequences);
- Option 3 in the Consultation Paper ('reasonableness' requirement) as currently set out, could introduce significant uncertainty, which, for the reasons set out above and in the Annexure, would detrimentally impact the industry as a whole, including consumers. For example, if there was ambiguity in the ultimate obligation, such as regarding the required level of prices, applicable products, applicable customers, or other relevant factors, this would likely result in increased uncertainty and costs, reduced innovation and a lack of benefit and equity for consumers.

Ways forward

We are cognisant of the issues identified in the Consultation Paper including the ACCC's reference to '*loyalty penalties for customers that do not regularly switch*'. We strongly support the achievement of an effective regulatory structure that will promote fair and equitable outcomes for all, including having regard to the wide range of consumer preferences and needs, how these change over time, the innovation needed to ensure customers continue to be well served through the transition, and reasonable margins for retailers to support the ongoing provision of these services to customers. We are open to further policy changes of that kind.

If there is a desire to make further adjustments to the PEMM provisions, we welcome further engagement with you on how the identified objectives are best achieved without detrimentally impacting innovation or increasing compliance costs. For example, there could be value in working together to explore the 'reasonableness' requirement contemplated in the Consultation Paper, particularly on the detail of options to provide the clarity as to the practical meaning of such an obligation that would be necessary.

We consider any regulatory change should be carefully calibrated, taking into account an assessment of the retail industry as a whole, including the existing regulatory landscape, other changes on foot and the factors set out in this submission.

³ ACCC, Inquiry into the National Electricity Market - December 2024 Report, page 59. We note that these margins have been low over those years despite a range of different wholesale electricity market scenarios, including periods in which wholesale costs were increasing.

Cross-market manipulation provision

We consider no change to the existing PEMM provision is required. The introduction of a new cross-market manipulation provision would detrimentally impact the industry as a whole, including consumers, as it would significantly increase compliance costs and risks for retailers without any countervailing benefit. In particular:

- There are clearly, and by design, important interlinkages between the wholesale spot market, electricity financial contract markets and electricity ancillary services markets. It is frequently the case that changes in one of those markets will have the effect of impacting others.
- It has not been established that a new 'cross-market manipulation' prohibition is necessary. For example, the Consultation Paper identifies that "*substantial positions held in the contract market can, under certain circumstances, impact outcomes in the wholesale market*". It is unclear why this observation would form the basis for a new prohibition. For example, generators that have sold contracts in financial markets are incentivised to bid in wholesale markets to ensure that they can defend those financial contracts. This accords with the design of the market. As the Nelson Review observed:

*"A core feature of the NEM's design is the link between the spot market, ... and the derivatives market, which is intended to support risk management and long-term investment via price discovery. ... Retailers play a critical role in this framework, acting as financial intermediaries and managing wholesale price volatility on behalf of consumers."*⁴

- The introduction of new, untested legislation, without precedent in other jurisdictions, would create significant uncertainty, inhibit the efficient functioning of these markets and detrimentally impact the industry, including consumers. In particular:
 - it is not clear what would constitute an impermissible cross-market impact, including the basis on which such impact might be viewed as 'artificial' or a profit or advantage might be viewed as 'unfair';
 - it is contemplated that the mere 'effect' of conduct in one market on a separate market could result in a contravention. These are complex markets. Participants are frequently unable to predict the effect of their actions in the instant market, let alone the effect in other markets, some of which relate to prices years in advance of the conduct;
 - any contravention based on purpose must provide clarity as to what is prohibited to ensure that market participants can engage in efficient transactions without fear of unforeseeable regulatory action. The Consultation Paper does not identify any specific 'problem', and does not provide clarity as to what such a provision would be intended to prohibit.
- There are a number of existing provisions which already regulate the conduct of participants in those markets, including in the CCA, *Corporations Act 2001* (Cth) and National Electricity Rules. Those provisions are tried and tested and supported by a significant body of jurisprudence. No problem has been identified with the operation, or outcomes, arising from this existing set of laws.
- Electricity is not unique in participants interacting in multiple related markets that are interlinked in some way. However, despite the commonplace nature of cross-market interactions, examples have not been provided of equivalent legislation elsewhere. The lack of precedent for such prohibitions indicates that policymakers should exercise caution. That is particularly the case where no clear benefit from the contemplated new legislation has been identified.

⁴ Nelson Review, Final Report, page 28.



Financial contracting provision

We are not aware of any problem that has arisen under the existing provision which establishes a basis for change. By contrast, there could well be significant detrimental effects from changing a tried and tested position.

The introduction of a new and untested provision could detrimentally impact the industry as a whole, including consumers. Establishing laws with appropriate thresholds is critical. Achieving this requires very careful consideration, including as to the specific conduct intended to be prohibited. There is significant risk that any attempt to change the existing prohibition would detrimentally impact the efficient operation of markets.

The existing provision has been in operation for over 5 years. Changing this prohibition would likely increase compliance costs and risks for participants, including due to uncertainty associated with the operation of the new provision. This includes the potential application of a different legal test. As the ACCC has noted, *“the SLC test is a well-established standard that has been subject to judicial consideration for decades”*⁵.

⁵ ACCC Submission to PEMS Review, 31 January 2025, page 12.

Annexure

Retail Market Provision

No consumer benefit from symmetrical retail prohibition

There is no need for a symmetrical retail prohibition.

We observe:

1. Given the strong existing levels of competition, and targeted consumer protection laws already introduced, additional regulation is not required:
 - a. Existing laws, many of which have been introduced recently, already provide a wide range of consumer protections targeted to address the needs of particular customer groups, including hardship customers, and pricing.⁶ The ACCC has observed:

“From 1 July 2026, several rule changes will likely reduce price dispersion and constrain the size of the loyalty penalty:

 - *Retailers in Victoria must ensure most Victorian customers pay no more than the Victorian Default Offer if they have been on the same contract for 4 or more years.*
 - *Retailers in Victoria will have to automatically place customers experiencing payment difficulty on their best offer.*
 - *Retailers in the NEM outside Victoria will be prevented from charging customers that were on fixed-term contracts ⁷ more than the standing offer price after their energy plan’s benefits change or expire.*
 - *Retailers in the NEM outside Victoria will be required to remove the conditionality of discounts on plans that existed prior to 1 July 2020, and apply the discount in full.”⁸*
 - b. Different customers have different needs, preferences and electricity usage profiles. They acquire electricity in different ways. The AEMC has noted the benefits of competition in facilitating innovation that meets the varied and evolving preferences of consumers:
 - i. *“We rely on competition, with supporting regulations such as information provision and dispute resolution, to deliver good consumer outcomes in most jurisdictions in the NEM. ... Competition stimulates innovation and ensures better quality, lower cost products and services for consumers.”⁹*
 - ii. *“This snapshot of insights ... by the ACCC further support the continuous, iterative process of retail competition, ... the journey is not always smooth and outcomes vary for customers over time, but the process of discovery and experimentation allows businesses to adapt in order to meet the varying needs of consumers”.¹⁰*
 - c. The ACCC has observed that competition is working and continues to improve. Specifically:
 - i. *“there is a wide array of different offers out there and the prices vary significantly, which indicates that competition is working”¹¹*
 - ii. *“There are ... many different retailers to choose from”¹²*

⁶ AGL addressed the extensive regulatory reform agenda in its submission to the DCCEEW regarding the Solar Sharer Offer dated 28 November 2025.

⁷ Note that this requirement also applies to fixed benefit period contracts.

⁸ ACCC, Inquiry into the National Electricity Market - December 2025 Report, page 45 - 46.

⁹ AEMC, Pricing Review – Draft report, 11 December 2025, pages 73 – 74.

¹⁰ AEMC, Pricing Review – Draft report, 11 December 2025, pages 73 – 74.

¹¹ ACCC [media release](#) dated 22 December 2025 announcing publication of December 2025 Report.

¹² ACCC, Inquiry into the National Electricity Market - December 2024 Report, page 45.

- iii. *“We have observed continual, but gradual improvement in the state of competition in the retail electricity market over time”¹³*
- iv. *“margins have been relatively low in recent years”¹⁴*
- v. *“Policy makers have been active in developing reforms to address the barriers to customer switching outlined above, and forthcoming changes may help expedite future improvements in competition”¹⁵*

d. The AEMC noted the improvement in consumer outcomes flowing from competition:

“the ACCC has observed progressive improvements over the past several years. This progress relates to both competition, and also corresponding consumer outcomes such as prices”¹⁶

e. The largest components of customer bills are typically network and wholesale costs. ACCC analysis shows that cost components for the average residential electricity customer in the NEM in 2023-24 were network costs: 39%; wholesale electricity costs: 38%; retail EBITDA 6%.¹⁷

2. A symmetrical retail prohibition would not resolve the potential concerns identified in the Consultation Paper. For example:

a. Retail prices are already moving in line with costs¹⁸, including where those costs are increasing. The ACCC noted in its December 2025 report (based on analysis of a large volume of pricing data)¹⁹:

- i. *“observed price increases are broadly consistent with forecast changes in underlying costs of supplying retail electricity across most regions in 2025–26, as reflected in increases in default offers”²⁰*
- ii. *“price increases were generally consistent with those under the default offers”²¹*

b. The Consultation Paper identifies a small number of examples in which it contends that a customer may not be protected by other consumer protections. The nub of a number of these examples is customers already on a relatively high-priced plan.²² However, as the Consultation Paper notes, a symmetrical retail prohibition would not necessarily improve the outcome for these customers. That is because the constraint proposed in a symmetrical retail provision relates to changes in prices rather than price levels.²³

¹³ ACCC, Inquiry into the National Electricity Market - December 2025 Report, page 43.

¹⁴ ACCC, Inquiry into the National Electricity Market - December 2024 Report, page 59. We note that these margins have been low over those years despite a range of different wholesale electricity market scenarios, including periods in which wholesale costs were increasing.

¹⁵ ACCC, Inquiry into the National Electricity Market - December 2025 Report, page 43.

¹⁶ AEMC, Pricing Review – Draft report, 11 December 2025, pages 73 – 74.

¹⁷ ACCC Inquiry into the National Electricity Market - December 2024 Report, page 66.

¹⁸ Consultation Paper, page 26.

¹⁹ The ACCC December 2025 Report was based on a dataset covering 6.8 million residential customers, with data as at 1 August 2023, 2024 and 2025 (see page 9 of that Report).

²⁰ ACCC, Inquiry into the National Electricity Market - December 2025 Report, page 3.

²¹ ACCC, Inquiry into the National Electricity Market - December 2025 Report, page 22.

²² Consultation Paper, page 30, dot points 2 and 4.

²³ The Consultation Paper notes at page 36 *“customers could choose a market offer that is above the reasonable cost to supply. In addition, customers that are already on a market contract that is above the reasonable cost would continue to pay more than necessary (if not captured under the new rules), since under Option 2 it is the change in price that is subject to constraint”*.

A 'symmetrical' retail prohibition would have significant costs

An expanded retail prohibition would have significant detrimental impacts on the industry, including because of the additional uncertainty and associated costs²⁴ such as:

- reduced innovation as a result of uncertainty regarding the practical application of legislation to new products;
- the cost of business resources associated with developing and implementing compliance processes, and
- increased compliance risk, which would act as a disincentive to retailers entering the market and/or offering new and appealing products (including through lower pricing).

As to uncertainty, we observe:

- The practical application of the existing retail prohibition is in many instances unclear. This remains the case despite the various guidance that has been issued. For example, if a retailer offered a product with fixed rates for more than 12 months, it is not clear whether the retailer may subsequently be required by PEMM to reduce the rates on that product within that fixed rate period.²⁵ As the ACCC Guidance observed:

“The ACCC does not intend for the application of s. 153E to inhibit competitive or efficient conduct by retailers, including the creation of new and innovative offers or the restructuring of existing offers. However, retailers will need to consider the requirements of s. 153E when creating new offers ..., including prior cost reductions that may need to be taken into account in the new or restructured offers.”

- The introduction of an expanded prohibition would significantly expand the uncertainty associated with the existing retail prohibition and could impact the ability of retailers to remain viable. For example:
 - The proposed new provision would likely not be truly 'symmetrical'. The current provision requires retailers to adjust their prices to reflect specified reductions in costs. In contrast, a new 'symmetrical' provision would likely not require retailers to adjust their prices to reflect increases in costs. Instead, the Consultation Paper contemplates a provision 'constraining price increases where these do not reflect increases in costs'.²⁶
 - The current provision refers to changes in costs that are 'sustained and substantial'. It is not clear whether a 'symmetrical' provision would enable retailers to recover only those types of cost changes, or whether retailers would also be able to increase prices in response to other cost increases (including very substantial one-off (or short term) cost increases).²⁷
 - The current provision does not apply to retail costs.²⁸ It is not clear²⁹ whether a 'symmetrical' provision would permit retailers to recover increases in retail costs, including where such costs were outside the control of the retailer.³⁰ The Consultation Paper notes that it 'may' be appropriate to allow retailers to recover such increases in costs. As noted above, it is not clear whether that would only apply where such cost increase was 'sustained and substantial'.

²⁴ Costs such as these are not easy to quantify. For example, the impact of different risk levels may not crystallise until an unexpected event occurs. However, that does not mean that such costs are not material.

²⁵ The ACCC Guidelines on Part XICA directly address this question, noting, on page 11, that “the longer the period of a fixed rate contract, the less likely it will be that not adjusting prices within the term of the contract following a relevant cost reduction will be reasonable”.

²⁶ Consultation Paper, page 33.

²⁷ The Consultation Paper contemplates allowing retailers to recover sustained non-substantial cost increases (page 34) but does not contemplate retailers recovering substantial one-off cost increases.

²⁸ See Consultation Paper, footnote 26.

²⁹ Consultation Paper suggests that it 'may' be appropriate for new legislation to permit retailers to recover increased retailer costs (page 34).

³⁰ For example, increased regulations can drive retail costs higher.

It is further unclear whether such a change (i.e. expanding the set of relevant ‘costs’ regulated by the provision), would create additional misalignment between regulation associated with cost decreases and cost increases.

- The lack of symmetry, and regulatory uncertainty, noted above may force retailers, who already have very low margins³¹, to ratchet those margins further and consistently downwards.
- Electricity retailers already face low margins and significant risk. As the ACCC noted in its December 2023 report, “*wholesale electricity spot prices increas[ed] dramatically ... in the second quarter of 2022 ... Some retailers were more exposed to price and volume risk than others, and the market saw a number of retailers exit*”.
- For the reasons set out above, a ‘symmetrical’ provision could jeopardise the viability of retailers.

As to innovation, we observe:

- AGL considers innovation is critical to customer choice and value, and is particularly important at the present time given the ongoing economic shift toward electrification, the major transition underway in generation and storage technologies and the opportunities for retailers to offer innovative products that can assist to reduce overall system costs and improve customer outcomes.

We note:

- The AEMC has pointed to the opportunities for consumer energy resources to reduce overall system costs. In its determination regarding the integration of price responsive resource, it observed:

“[Consumer energy resources] and distributed energy resources (DER) will play a critical role in Australia’s energy transformation, helping to reduce overall system costs, improve reliability and achieve a secure, low-emission energy supply for all.”³²

- The ACCC has observed that innovation can improve value for customers.³³
- The AER has observed that innovation (amongst other things) is an enabler of dynamic efficiency in energy markets.³⁴
- In this exact context, the ACCC expressly identified the need for caution in the event that a ‘symmetrical’ provision was contemplated, stating:

“expanding the prohibition to operate symmetrically would require careful consideration as it is a stronger form of intervention that could resemble aspects of ongoing price regulation ...

the risk of prescriptive regulation is that it may effectively prescribe a business model for retailers and discourage innovation and dynamism”³⁵

- Uncertainty as to the application of legislation, such as that which would flow from an expanded retail prohibition’ can inhibit innovation. In particular:
 - While the retail market prohibition is focussed on price, electricity retailers provide a multi-faceted service to customers, and may seek to innovate in a range of areas, many of which could be impacted by uncertainty arising from an expanded retail prohibition.

³¹ ACCC, Inquiry into the National Electricity Market - December 2024 Report, page 59. We note that these margins have been low over those years despite a range of different wholesale electricity market scenarios, including periods in which wholesale costs were increasing.

³² AEM, Rule Determination - National Electricity Amendment (Integrating price-responsive resources into the NEM) Rule 2024, 19 December 2024, page ii.

³³ ACCC Inquiry into the National Electricity Market - December 2024 Report, page 62.

³⁴ AER, Wholesale Electricity Market Performance Report 2024, page 9.

³⁵ ACCC Submission to PEMM Review, 31 January 2025, page 9.

- There is no guarantee that new products will resonate with customers. Innovation often involves trials and iteration. Not all new products turn out to be sufficiently profitable to continue.
- In circumstances where the commercial viability of a potential new product depends on the application of legislation, that legislation is uncertain, and there are severe consequences for contraventions of that legislation, a retailer may simply decide not to invest in, or offer, a new product. Such an outcome is not in the best interests of the industry as a whole, including consumers.

Alternative approaches such as a new general requirement for reasonable pricing

If there was a desire to strengthen the retail prohibition, we consider an alternative approach is likely to be preferable to a 'symmetrical' provision and would welcome the opportunity to work with a taskforce to develop alternative approaches.

We observe that achieving an appropriate regulatory framework for the retail market is particularly critical given the scale and importance of the transition underway in wholesale markets and opportunities for innovation in retail markets.

Implementation

In the event that changes are made, they should only take effect after a lead time sufficient to allow market participants to plan for the effect of altered laws and to put in place the new processes and procedures that would be necessary for compliance. As noted above, there are already a large number of policy changes enacted which will take effect on designated dates this year.

2 February 2026
