



PEMM Review Taskforce
Department of Climate Change, Energy the Environment and Water
GPO Box 3090
Canberra ACT 2601

30 January 2026

To PEMM Review Taskforce

Strengthening the Prohibiting Energy Market Misconduct provisions in the *Competition and Consumer Act 2010* – Consultation paper

ENGIE Australia & New Zealand (ENGIE) appreciates the opportunity to respond to Department of Climate Change, Energy, the Environment and Water's (DCCEEW) consultation paper on Strengthening the Prohibiting Energy Market Misconduct (PEMM) provisions in the *Competition and Consumer Act 2010*.

The ENGIE Group is a global energy operator in the businesses of electricity, natural gas and energy services. In Australia, ENGIE operates an asset fleet which includes renewables, gas-powered generation, and battery energy storage systems. ENGIE also provides electricity and gas to retail customers across Victoria, South Australia, New South Wales, Queensland, and Western Australia.

ENGIE is disappointed that the PEMM Act was not allowed to sunset on 1 January 2026 and is concerned that DCCEEW is considering an expansion of its scope. As noted in ENGIE's submission to the review into the effectiveness of the PEMM Act, government and market bodies have implemented a broad suite of obligations and reforms since 2019 that are aimed at strengthening transparency, competition, retail pricing and market monitoring.¹ These reforms have largely delivered the targeted forms of protection the PEMM Act was designed to address, providing duplicative outcomes and diminishing the need for further intervention.

While ENGIE acknowledges DCCEEW's intent to provide greater protection for consumers and to prohibit potential forms of market manipulation through proposed expansions to the PEMM Act, any policy to this effect should be clearly evidence-based, targeted and support the outcome of a competitive and efficient market. Indeed, as outlined in the consultation paper, the PEMM Act is required to assess its effectiveness against two primary objectives:

¹ ENGIE 2025, Submission to 'Review of the effectiveness of the Prohibiting Energy Market Misconduct Act 2019 – Consultation paper', 31 January, pp. 1 – 3. Page 1

- To ensure electricity retail, contract and wholesale markets are operating competitively, efficiently and to the benefit of consumers; and
- To ensure that consumers realise the benefits of reduced supply chain costs, resulting from more effective competition, policy reform, and other factors.

ENGIE considers that the two additional provisions outlined in the consultation paper would prevent the PEMM Act from meeting these objectives. In addition to imposing additional compliance costs and creating an inordinate regulatory burden on market participants, these provisions are antithetical to a competitive and efficient market that works for the benefit of consumers. While ENGIE is supportive of targeted reforms that improve retailers' ability to provide meaningful support to their customers, the PEMM Act is not the appropriate mechanism for addressing the complex issues raised. Ultimately, ENGIE considers that the broad nature of these additional provisions is likely to lead to worse market outcomes for consumers.

Accordingly, ENGIE sets out its detailed feedback on the specific consultation sections below.

PEMM Act retail pricing provision

Option 1

ENGIE strongly supports the option to retain the current retail pricing provision but make no further changes. While ENGIE recognises DCCEEW's intent to address concerns around 'sticky' customer cohorts who have not changed retailers or energy plans for a long time, the broad regulatory mechanisms proposed are unlikely to deliver efficient outcomes.

DCCEEW should exercise caution when contemplating broad-based interventions of this nature, as the issue of differential pricing and customer engagement is highly complex and has far-reaching implications for market dynamics, competition, and long-term consumer outcomes.

There is a body of literature that suggests that regulation intended to ban the 'loyalty penalty' reduces competition and affects the ability of firms to provide lower prices or innovate for efficiency. Indeed, while this regulation is designed to protect customers, the 'overall effect could paradoxically make all customers worse off by leading to higher average prices across the board.'² Additional literature suggests that such measures can entrench incumbent advantage, which could have an impact on new entrants and smaller less established retailers.³ While there are several variables to consider, such as the 2022 energy crisis, the state of the UK energy market is instructive in this regard. Ofgem's Ban on Acquisition Tariffs (BAT) and related price caps has been a contributing factor to reduced switching activity and retailer exits while also limiting the competitive price discovery process.⁴ Consistent with this, a recent report by the UKs

² Zhukov 2025, 'Essays on the loyalty Penalty: Impacts on consumers and policy responses', May, p.140.

³ Yang et.al 2024, 'Fairness regulation of prices in competitive markets', p.1906.

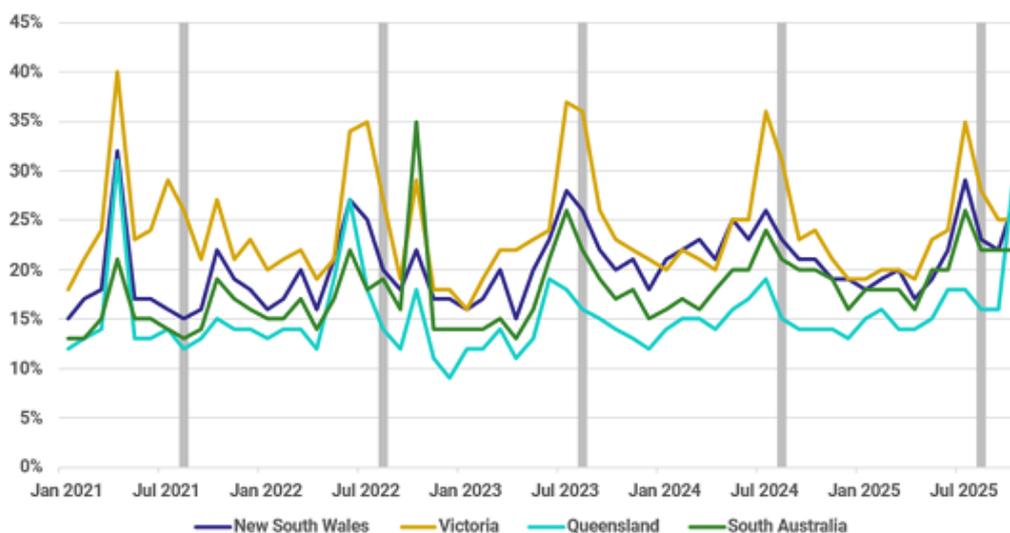
⁴ Littlechild 2024, 'Future of domestic price protection', 10 May, pp.5-7.

Department for Energy Security and Net Zero observed that market concentrations increased across all energy sectors in 2024, including the retail energy market.⁵

In contrast to the UK, recent reforms and competitive outcomes in Australia are increasingly delivering improved market engagement and outcomes for retail customers. The December 2025 ACCC Inquiry into the National Electricity Market Report, for instance, highlights that 41.8 per cent of customers are on newer plans (up from 29 per cent in 2024) and a higher proportion of customers have switched to their retailers best offer (26.7 per cent of residential customers, up from 19.3 per cent in 2024).⁶ These movements reflect a stronger uptake of competitive offers and suggest that a growing number of customers are actively engaging with the retail market to find savings opportunities. An additional contributing factor to this, as noted by the ACCC, was the 'increased maturity of the Better Bills Guideline' and related better offer message.⁷

Additionally, the report highlights that customers are generally responsive to price change events as depicted in the graph below.⁸

Annualised transfer rate, residential and small business customers combined, monthly, January 2020 to September 2025



Source: ACCC analysis of customer switching data from the Australian Energy Market Operator, [Retail Transfer Statistical Data](#), accessed 18 September 2025.

This accords with ENGIE's experience in the market, where increasing levels of customer engagement and switching activity occurs following price change events. Such responsiveness places a clear competitive constraint on the extent to which retailers can increase prices without risking customer attrition. In

⁵ Department for Energy Security & Net Zero 2025, 'Competition in UK electricity markets, 2024', p.4.

⁶ ACCC 2025, 'Inquiry into the National Electricity Market', 18 December, p.2.

⁷ ACCC 2025, 'Inquiry into the National Electricity Market', 18 December, p.6.

⁸ ACCC 2025, 'Inquiry into the National Electricity Market', 18 December, p.41.

competitive environments with rising engagement and visible switching behaviour, the case for additional regulatory intervention is less compelling. As the consultation paper itself outlines, in such environments ‘regulatory intervention ... is generally unnecessary’.⁹

While ENGIE acknowledges that not all customers regularly switch offers, there are a range of legitimate reasons why they might choose to stay on a given plan. This could include preference for particular product features or low-price sensitivity due to greater financial flexibility. ENGIE recognises that there is a distinct cohort of customers who remain disengaged and it is understandable that DCCEEW is seeking to improve outcomes for this cohort. However, recently consulted on reforms set to be implemented this year will largely address many of the issues this cohort faces.

- The AEMC’s Assisting Hardship Customer Rule Change ensures that customers in hardship ‘are not financially worse off if they do not take up their retailer’s deemed better offer.’¹⁰
- The ESC has likewise completed a rule change where customers receiving tailored assistance or have been in arrears for three months with a debt over \$1,000 are required to be switched to a retailers best offer without explicit informed consent (EIC).¹¹
- Both the AEMC and ESC have pursued measures to increase the visibility of the best offer, such as its inclusion on communications relating to the bill, and improve the switching process.¹²
- The ESC has set out a requirement that retailers are to ensure customers on contracts that are four years or older are paying a reasonable price for their energy.¹³

Collectively, these reforms respond directly to the key drivers of consumer detriment identified in the consultation paper, including information gaps, missed better offer messages, and vulnerability arising from financial hardship. To the extent that residual harm can be demonstrated among any remaining customers within this cohort, ENGIE considers that further intervention should be narrowly targeted and evidence based. ENGIE also considers that any incremental and targeted consumer protections would be more appropriately implemented through the National Energy Retail Law and Rules rather than the PEMM Act.

Option 2

ENGIE does not support option 2 and has several issues with the proposal to create a ‘symmetrical’ provision that captures cost increases as well as decreases. In addition to the feedback provided in response

⁹ DCCEEW 2025, ‘Strengthening the Prohibiting Energy Market Misconduct provisions in the *Competition and Consumer Act 2010* - Consultation Paper’, December, p.25.

¹⁰ AEMC 2025, ‘Assisting Hardship Customer – Rule Determination’, 19 June, p.12.

¹¹ ESC 2025, ‘Energy Consumer Reforms – Final Decision’, 30 September, pp.11-17.

¹² AEMC 2025, ‘Improving the ability to switch to a better offer – Final Determination’, 11 September; ESC 2025, ‘Energy Consumer Reforms – Final Decision’, 30 September, pp.47-50.

¹³ ESC 2025, ‘Energy Consumer Reforms – Final Decision’, 30 September, pp.35-39.

to option 1, ENGIE considers that option 2 will impose significant constraints to competition and introduce a high degree of uncertainty into retailer pricing frameworks, running counter to the PEMM Act's primary objectives.

Retailers rely on a range of pricing strategies, including providing acquisition offers initially priced below the cost to serve, to attract customers. This approach is particularly important for new and smaller retailers seeking to establish scale and market presence. Such strategies also support a degree of price dispersion within the market, enabling active and engaged customers to access prices below the market average. Indeed, such price dispersion is key to the effectiveness of the upcoming Energy Consumer Reforms, particularly where hardship customers will be no worse off than their retailer's best offer.

Retailers that supply low-priced acquisition offers in the market would typically establish a price path for the contract such that it can recover its efficient costs over a period of time. As option 2 would limit the annual price increases that are possible under a contract, it appears to be inconsistent with current retailer acquisition pricing strategies. This would likely have the effect of removing the lowest priced offers in the market and limit the ability of new and small retailers to attract customers.

Additionally, ENGIE has strong reservations around the proposal for retailers to provide evidence that changes in their prices are 'reasonable'. This reversed burden of proof is against good legal principle, creates significant regulatory risk, and sets a heavy burden on retailers to maintain information behind pricing decisions.

Option 3

ENGIE also does not support option 3, which established a new generation requirement for 'reasonable' pricing. ENGIE agrees with DCCEEW that a broad provision would be 'administratively burdensome and inadvertently negatively impact innovation or competition in retail offers.'¹⁴

The consultation paper suggests that DCCEEW is looking at Victoria's upcoming reform on older customer contracts as a potential model to mirror for option 3. However, this raises several additional issues:

- The PEMM Act is applied nationally, resulting in duplication with existing Victorian arrangements;
- The reform undertaken in Victoria allows for customers on older contracts to be switched without EIC to a reasonably priced offer. Without supporting reforms to EIC provisions in the National Energy Retail Law, it is currently uncertain what mechanism this provision would provide to move disengaged customers to a 'reasonable price'; and
- While the Victorian reform allows for consideration of 'additional benefits' that could justify a higher price, no specific types of plans were exempted. This has created a high degree of regulatory

¹⁴ DCCEEW 2025, 'Strengthening the Prohibiting Energy Market Misconduct provisions in the *Competition and Consumer Act 2010* - Consultation Paper', December, p.37. Page 5

uncertainty, as the regulator retains the ability to retrospectively determine whether a plan's price was reasonable.

In our submission to the ESC's consultation on the Victorian Energy Consumer Reforms, ENGIE outlined several reservations on this reform, particularly on its effects on retail pricing strategies.¹⁵

Option 4

ENGIE agrees with the DCCEE's rationale for not further developing a requirement for market price increases to be pre-approved and does not support its consideration.

Cross-market interactions in the NEM

ENGIE considers that the existing regulations are sufficient in this area and does not support any further intervention. In particular, section 46 of the Competition and Consumer Act 2010 prohibits misuse of market power across markets, while section 1041A of the Corporations Act 2001 prohibits market manipulation and false or misleading conduct in financial markets. Additionally, as outlined in the consultation paper, the AER likewise has a range of wholesale and contracts markets monitoring functions which have been recently expanded to allow the regulator to gather and report on information relating to contracts and risk management strategies.

In ENGIE's view, this level of regulatory oversight is already sufficient. The rationale behind introducing additional measures with a lower burden of proof remains unclear, considering how no clear cross-market manipulation issues have needed to be addressed. While the Consultation Paper has speculated on hypothetical issues, such as increased use of AI trading and high NEM concentration, ENGIE does not consider there is sufficient information to suggest these risks are likely to eventuate. Indeed, AI is still a developing technology and the broader risk of market power misuse is likely to decline as the wholesale market continues to diversify while the volume of large dispatchable generation decreases.

Additionally, ENGIE considers that it is desirable that there continues to be strong interaction between physical and financial markets to allow participants to properly manage risks that stem from the volatility of the spot market and other related factors. Consistent with this, ENGIE considers that any expansion of the PEMM Act provisions to capture conduct with an effect, or likely effect, of substantially lessening competition should be narrowed to apply only to conduct undertaken with the intent of substantially lessening competition. Without an intent-based threshold, ordinary and necessary trading and risk-management activity across physical and financial markets may be exposed to regulatory risk through retrospective assessment of outcomes. This would undermine the efficient interaction between these markets and create unnecessary uncertainty for participants engaging in legitimate risk management. Moreover, financial contracts play an important role in underwriting new generation projects. ENGIE

¹⁵ ENGIE 2025, Submission to 'Energy Consumer Reforms— Regulatory Impact Statement', 26 June, pp. 7-10.

considers that if these rules are broadened too far, this uncertainty could extend into these contract markets and make it harder for new projects to secure financing.

Transfer of NEM Inquiry function and other governance matters

ENGIE is supportive of the NEM Inquiry being significantly de-scoped and passed to the AER. While ENGIE supports DCCEE's commitment to reducing duplication, the ACCC should continue to retain responsibility for the Electricity Retail Code and the PEMM Act provisions. The Electricity Retail Code covers how prices and discounts must be advertised, published and offered, which better fits the ACCC's existing remit. Likewise, the provisions in the PEMM Act more comfortably fit under the ACCC's remit. Retaining these existing arrangements will maintain regulatory consistency for market participants. While a familiar regulator to the market, transferring responsibility of these regulations to the AER would risk creating uncertainty as the market undergoes significant changes and would likely take significant time to achieve.

Concluding Remarks

ENGIE remains committed to engaging with DCCEE to ensure that the retail market delivers competitive and efficient outcomes for the long-term benefit of consumers.