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Electricity Markets Competition Policy Team

Department of Climate Change, Energy, the Environment and Water

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## Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010

The Energy and Water Ombudsman (Victoria) (**EWOV**) welcomes the Department of Climate Change, Energy, the Environment and Water's (**DCCEEW**) consultation relating to Strengthening the Prohibiting Energy Market Misconduct (**PEMM**) provisions.

EWOV provides free, independent dispute resolution for Victorian energy and water consumers. Receiving complaints directly from consumers gives us unique insights into the experiences of Victorians across energy and water markets. This enables us to identify emerging issues early and contribute to improvements in policy, regulation and industry practice through our systemic insights and engagement with businesses, government, regulators and the wider community.<sup>1</sup>

High bills are a primary driver of complaints to EWOV. In many of these cases, retailers fail to consider changes to the underlying contract price as a factor contributing to a higher-than-expected bill. In this context, EWOV welcomes DCCEEW highlighting consumer harms arising from unreasonable price increases and how best to revise key PEMM provisions to address this problem, considering recent changes to the *Energy Retail Code of Practice 2022* (Vic). The comments set out in this response provide DCCEEW with matters to consider in designing reforms that support equitable outcomes for consumers across jurisdictions and harmonisation across regulatory frameworks to reduce regulatory overlap for industry, relating to:

- monitoring and governance
- efficient regulation, and
- alignment with Victorian reforms.

### Monitoring and governance

EWOV supports strengthening the PEMM provisions but emphasises the need to avoid creating regulatory gaps or duplicative oversight mechanisms.

The key governance challenge is ensuring that the obligations sit within a framework that avoids duplicated responsibilities or gaps in consumer protections across different jurisdictions.

### Ensuring consistency across jurisdictions and monitoring co-ordination

Relocating the PEMM provisions to an instrument that does not apply to Victoria could create a gap in protections, if the current provisions are not mirrored in an instrument that applies to Victoria.

Victorian consumers should retain equivalent protections to consumers in other jurisdictions, particularly in relation to retail pricing provisions.

Any changes to the governance of the PEMM provisions should also seek to avoid duplication of compliance obligations. Regulators in different jurisdictions need to retain a holistic view of market performance and consumer outcomes through their monitoring and reporting functions. Transferring

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<sup>1</sup> See Clause 5.1 of EWOV's [Charter](#).

monitoring and compliance from the Australian Competition and Consumer Commission (**ACCC**) to the Australian Energy Regulator (**AER**) may create a risk of fragmented responsibilities, between the AER and Victoria's Essential Services Commission (**ESC**) unless roles, enforcement powers and information sharing protocols are clearly defined.

### Establish clear roles for strengthened provisions

The consultation paper considers a proposal (Option 3) for similar protections for legacy customers due to come into effect in Victoria in 2026 through the Energy Retail Code of Practice (**ERCoP**) reforms (see further detail below). If DCCEEW introduced amendments to the PEMM provisions that were substantially similar to these Victorian protections, this could create issues with compliance efforts between the ESC and AER relating to consumers with legacy contracts (see case studies below).

DCCEEW might consider how relevant agencies could develop information sharing arrangements to reduce regulatory burden for industry and minimise any overlap of efforts. There may be value in clearly mapping out the different functions and responsibilities of both the AER and ESC, and to co-ordinate how regulators monitor and publish information around market conditions. Additionally, clearly defined roles and responsibilities will enable effective compliance with obligations and consumer outcomes in Victoria.

Formal mechanisms for data sharing, joint monitoring frameworks, coordinated compliance and enforcement action and aligned public reporting will be critical.

### Options for strengthening PEMM provisions

The Essential Services Commission (**ESC**) has recently introduced reforms intended to lower costs for consumers on legacy contracts.<sup>2</sup> Ensuring alignment across jurisdictions and developing obligations that minimise unnecessary regulatory burden for industry, will help support more consistent and effective protections for consumers.

EWOV observes cases where the consumer contacts their retailer noting circumstances that indicate payment difficulty, but the retailer fails to consider price as a factor that may cause affordability issues (see this issue identified relating to a gas bill in Case Study 1). We also observe examples of consumers on older contracts paying an effective rate above the Victorian Default Offer (**VDO**) benchmark for their electricity, even if they meet the requirements of pay-on-time-discounts (see Case Study 2). These types of cases highlight the need for strengthened provisions to require retailers to lower prices for consumers on legacy contracts.

In our submission to the ESC's [Energy Consumer Reform](#), EWOV outlined our support for the proposal to ensure consumers on older contracts are paying reasonable prices.<sup>3</sup> The DCCEEW consultation paper suggests amendments to the PEMM provisions (Option 3) offering similar protections to these recent Victorian reforms.

From July 2026, electricity retailers operating in Victoria are required to review consumer contracts older than 4 years and consider whether they are paying a reasonable price, taking into account a range of factors.<sup>4</sup> Retailers may take a flexible approach when determining whether a consumer is paying a "reasonable price". Retailers must then switch or lower the consumer's tariff if they are determined to be paying higher than a "reasonable price".

EWOV is supportive of the ESC's reforms as they will ensure the underlying price is considered when retailers engage with consumers about high bills or payment difficulty. Retailers will also be

<sup>2</sup> Essential Services Commission, [Energy Consumer Reforms](#), September 2025

<sup>3</sup> Energy and Water Ombudsman Victoria, [Submission to the ESC's Energy Consumer Reforms RIS](#)

<sup>4</sup> See Essential Services Commission, [Energy Consumer Reforms](#), September 2025, pg 33; factors include: the lowest cost generally available plan available to the retailer's new customers; the median price paid by customers of the retailer; the price of the retailer's standing offers; the value of any additional benefits to the customer; any other matter specified in a guideline issued by the Commission.

required to report to the ESC, who will monitor retailer performance and compliance with this obligation.

In our view, there would be merit in adopting amendments to the PEMM provisions to ensure consumers on legacy tariffs are put on reasonably priced tariffs. However as outlined, consideration must be given as to how the ESC's new provisions and any reforms to the PEMM provisions will interact and be governed. Establishing these provisions on a national basis and enabling the AER as the regulator could improve market-specific effectiveness, but it will need to ensure that roles, reporting and data-sharing between the AER and ESC are clear.

### Case study 1: Retailer fails to consider price in a high bill complaint

Cal\* contacted EWOV in 2024 about high gas bills and an imminent disconnection notice. Cal had contacted his retailer to query the high bill, who advised him to engage a plumber to check for gas leaks. Cal confirmed he had engaged a plumber who verified there were no leaks. Cal contacted his retailer again to advise of this, who agreed to place the account on hold while it investigated the bill with the distributor. Cal advised us that shortly after this, he began to receive overdue reminder notices. Following our referral, the retailer also advised Cal to discuss concessions with Centrelink, which Cal advised was not relevant as he did not have a valid concession. Cal was seeking for the retailer to cancel any disconnection orders, place the gas account on hold and investigate the reasons for the high bills.

EWOV reviewed the account and confirmed that the consumer was disputing two bi-monthly bills totalling \$2,700. Following a detailed review, EWOV assessed that the data reflected typical seasonal usage.

EWOV considered other reasons for the high bill. We found Cal had set up his account with the retailer in 2017, which included a high pay-on-time discount, and had been on this same offer since then. Until the billing dispute, Cal had paid his bills on time and there was no indication of the need for payment difficulty assistance. The potential savings highlighted in the best offer notice increased multiple times, with the most recent notice indicating potential savings of more than \$2,000 per year. The retailer acknowledged that it had issued price increase notices, that included information about the best offer, however as the consumer was on an older offer, prices had increased in line with the older offer, and this may have led to the bill shock Cal experienced.

EWOV considered whether the retailer should have advised Cal about the benefits of switching to the best offer when he had contacted the retailer to discuss the high bill. The retailer advised us that it considered it had complied with its obligations under the Code as Cal had contacted it to query the high bill, not the plan, which is its standard approach to high bill queries. EWOV considered addressing the root cause of the complaint by undertaking a best offer check in the first instance would have been a more appropriate approach.

EWOV found that the collections notices had been sent in error as the account was not placed on hold while the high bill was investigated, and the retailer acknowledged this error.

Based on this, EWOV found that while the retailer had complied with its obligations to issue price increase notices and standard best offer messaging under the Code, it did not consider the retailer's conduct to be fair and reasonable in the circumstances. In light of this, to resolve the complaint, the retailer offered to:

- Waive the meter investigation fee;
- Apply all missed pay-on-time discounts from the disputed period through to the investigation; and
- Apply an additional credit recognising the poor customer experience and the missed opportunity to discuss the best offer when Cal contacted it about the high bill, amounting to a total credit of \$2,200.

The consumer accepted this offer and the complaint was closed.

*\*Name changed for privacy purposes.*

**Case study 2: Consumer paying high rates on a legacy tariff**

Dylan\* called EWOV on behalf of Lily\* in 2025 with a complaint about a high tariff. While Dylan had recently switched Lily to a cheaper offer with the same retailer, he questioned why the retailer had not proactively moved Lily to a cheaper plan given she was a long-term customer.

In his complaint to the retailer, Dylan noted that Lily's latest quarterly bill was approximately \$700, which reflected high rates well above the Victorian Default Offer benchmark. In response, the retailer advised Dylan that Lily had not been overcharged and offered a \$100 credit as a service gesture.

After EWOV's referral, the retailer explained that the bill was higher due to a missed pay-on-time discount. Had the bill been paid on time it would be approximately \$400. The retailer acknowledged that Lily had been on the same plan since 2019, which had high undiscounted rates (Peak: \$1.04 p/kWh, Off-peak: 57c p/kWh), even though it included a large 46% discount feature. Dylan asked the retailer to conduct a bill investigation, to consider backdating the newly selected plan to 2023, and to consider a refund if the investigation uncovered overcharging.

The retailer's investigation found that Lily's pensioner concession eligibility checks failed validation, which meant no concession was applied during the relevant period. However, the retailer's review concluded Lily was on a retail market offer that otherwise complied with regulatory requirements. The retailer acknowledged the effective rate for the period was higher than the VDO benchmark (even after applying the pay-on-time discount) but considered this was permissible because market offers can exceed the VDO.

The retailer reported that it performs regular "health checks" on customer accounts which included best offer information on bills in line with regulatory requirements. The most recent best offer notifications indicated that Lily could be approximately \$1400 better off per year if she had switched to the best available offer. The retailer highlighted that it was unable to change a customer's plan without their Explicit Informed Consent, limiting proactive plan changes without customer initiation. The retailer concluded there was no overcharge.

To achieve a conciliated outcome, the retailer offered an apology for the inconvenience caused and a goodwill credit of \$500. Dylan agreed and the complaint was closed.

*\*Names changed for privacy purposes.*