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Electricity Markets Competition Policy Team
Department of Climate Change, Energy, the Environment and Water (DCCEEW)
Canberra ACT 2600

Lodged electronically

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

Nexa Advisory welcomes the opportunity to contribute to DCCEEW's Phase 2 of the Prohibiting Energy Market Misconduct (PEMM) Act Review.

Nexa is an advisory firm with an unwavering focus to accelerate the clean energy transition in a way that provides secure, reliable, and affordable power for consumers of all types. Nexa Advisory is a team of experienced specialists in the energy market, policy and regulation design, stakeholder engagement, and advocacy. We work with public and private clients including renewable energy developers, investors and climate impact philanthropists to help them get Australia's clean energy transition done.

DCCEEW has highlighted the broad range of retail and consumer protections already in place – including the National Energy Customer Framework (NECF), the Electricity Retail Code, Default Market Offer (DMO) (and Victorian Default Offer), Better Bills and recent NERR reforms – which continue to expand. As such, any Phase 2 change to the retail provision should therefore be tightly targeted to genuine misconduct gaps and designed to avoid duplicative regulatory burden and an inadvertent chilling effect on innovative retail products and services.

We support the intention to improve protections for consumers, addressing emerging cross-market misconduct risks as the NEM evolves, and reducing duplication and regulatory burden through clearer governance arrangements. Namely, these reforms should:

- **Focus on protecting against cross-market manipulation**, through a suite of measures that strengthen market integrity, including through transparent reporting to improve visibility of cross-market contracting behaviour by market participants;
- **Avoid duplicative retail regulation**, minimising regulatory burden which can impact innovation in retail product and service offerings by energy service providers - particularly as the retail market evolves to support electrification, CER uptake, and tariff reform; and
- **Avoid governance changes which undermine clear separation of functions between the AER and ACCC**, by streamlining existing arrangements (i.e., ACCC's NEM Inquiry) so duplication is reduced without defaulting to shifting functions to the AER.

Cross-market manipulation

We agree with the issue identified in Phase 1 of the PEMM Review that the current PEMM wholesale provisions are largely market-specific and that there is an elevated risk of 'cross-market' misconduct as the transition progresses.

As such, Nexa supports the intention to mitigate this cross-market manipulation risk. However, the design needs to be calibrated to avoid chilling legitimate bidding, risk management and new contracting structures being deployed through innovative energy service providers – especially new entrant retailers, which already face challenges in the existing retail environment.

Interaction with NEM Review contracting transparency

Nexa supports improved contract market transparency and competition measures being progressed through the NEM Wholesale Market Settings Review, noting our consistent view that improved transparency and information flow in electricity derivatives markets is critical to price efficiency, market access and investment signals. This direction has the potential to address structural contracting challenges, including thin liquidity and concentrated counterparties.

However, Nexa notes that NEM Review reforms will take time to implement and should not be treated as a near-term substitute for protections that could be advanced through PEMM reforms. As such, we support targeted PEMM measures that improve visibility and deter misconduct. This would protect price formation and reduce the risk that market power or cross-market strategies distort contract market outcomes before a more enduring solution is delivered.

Case study: relevance for new entrant technologies - including large-scale storage

Nexa has previously discussed the financeability challenges of large-scale storage developments, including difficulties in securing offtake contracts such as Power Purchase Agreements (PPAs) and counterparty concentration. Notably, PPAs can be dominated by incumbents, and lenders prefer high-credit off-takers - which can limit access to bankable offtake.¹

Evidence from the ACCC and AER shows the 'big three' retailers (AGL, Origin and EnergyAustralia) held 62 per cent of NEM market share as at June 2024.^{2,3} The internal 'natural' hedging of these vertically integrated large participants presents a significant challenge for the transition and for smaller market participants. This dynamic explains today's thin, concentrated offtake market and the difficulty financing projects on bankable terms.

Although this is not the primary intention of PEMM reforms, addressing cross-market manipulation and the use of market power by large 'gen-tailers' has the potential to address this challenge by improving liquidity and price formation in the contract market.

Nexa therefore encourages DCCEE to pursue reforms that improve transparency and mitigate genuine misconduct, while ensuring PEMM does not deter legitimate risk management or the emergence of new contract structures.

This Review should focus on implementing fit for purpose misconduct controls that are targeted to protect innovation, rather than introducing duplicative retail protections

Nexa supports the policy intent of addressing retail misconduct and ensuring that customers share in sustained cost reductions where competition is not delivering effective discipline. At the same time, reforms to retail provisions should be calibrated to avoid duplicating existing

¹ Nexa Advisory, [Energy Storage Financeability in Australia](#), March 2024

² ACCC, [Inquiry into the National Electricity Market](#), December 2024

³ AER, [Wholesale Electricity Market Performance Report](#), December 2024

retail protections and to avoid unintended impacts on competition and retail product innovation.

Nexa has made similar observations in previous work: consumer protection settings must be fit for purpose but should not impede competition, noting the existing consumer protection framework (the National Energy Customer Framework) has become a regulatory burden for new entrants and innovation.⁴

We note that retail costs are smaller than network and wholesale components of the consumer bill stack. As highlighted by DCCEEW, recent ACCC reporting indicated retail and other costs + retail margin totalled ~\$298, compared to \$691 for wholesale electricity and \$712 for network costs – and there is a suite of existing retail protections and price regulation already in place.⁵

As such, Nexa supports the strengthening of the PEMM provisions being focused on misuse of market power and wholesale contracting, rather than introducing duplicative retail pricing provisions regulation.

Interaction with the AEMC Pricing Review and network economic regulation under the National Electricity Rules (NER)

While PEMM reforms are directed to retail misconduct under the *Competition and Consumer Act* (CCA), the key cost driver shaping consumer outcomes is increasingly the network cost stack and tariff design settings under the NER.

We have previously discussed that network tariffs comprise around 40 per cent of bills yet remain weakly cost-reflective. Network charges already drive the majority of electricity bill costs, averaging about 38 per cent of the Default Market Offer on average across distribution businesses, and climbing as high as 46 per cent in some regions⁶.

Additionally, Nexa's recent submission to the AEMC's Pricing Review Draft Report highlights that the Draft's most consequential proposals relate to network pricing.⁷

We have also highlighted that tariff restructuring (including a shift towards fixed charges as proposed by the AEMC) risks being a second-order response to deeper issues in network economic regulation and incentives (including capex bias). Without reform to underlying economic regulation, network tariff reform becomes an exercise of redistribution, rather than unlocking real consumer value.

Although this falls outside of the remit of the current PEMM Review and CCA, we encourage DCCEEW to consider interactions with these reforms as unresolved issues in network pricing and economic regulation will continue to dominate affordability and consumer trust outcomes - even as PEMM addresses market misconduct.

Governance: streamline reporting and enforcement without expanding the AER beyond core functions

Nexa considers the NEM Inquiry's transparency function to be a valuable feature of the current market reporting environment. The Inquiry has provided regular public reporting across retail prices and outcomes, wholesale market conditions, and contracting dynamics, as was

⁴ Nexa Advisory, [Submission to AEMC Pricing Review - Discussion Paper](#), July 2025

⁵ DCCEEW, [Review into the effectiveness of the PEMM Act – Final Report](#), June 2025

⁶ AER, [2025-26 Default Market Offer Final Determination](#), May 2025

⁷ Nexa Advisory, [Submission to AEMC Pricing Review – Draft Report](#), February 2026

highlighted by DCCEEW in Phase 1 – which concluded that information of this nature remains important and should continue to be published at least annually.⁸ This transparency has supported better-informed market scrutiny and policy development. In Nexa’s view, the ACCC has delivered this function with high credibility and a clear competition and consumer outcomes lens.

As such, we recommend against broad transfer of NEM Inquiry role from the ACCC to the AER as a default approach.

Nexa acknowledges the rationale outlined in the PEMM Review for transitioning the NEM Inquiry function to the AER: to reduce duplication and embed ongoing monitoring into an enduring market monitoring role. However, the key governance problem identified is duplication and friction in reporting and information access – which we consider can be addressed through better information collection and sharing processes without blurring institutional roles between the ACCC and AER.

DCCEEW should consider alternative approaches, namely how the Inquiry process can be streamlined to eliminate duplicative reporting or engagement with market participants throughout ACCC and AER monitoring.

⁸ DCCEEW, [Review into the effectiveness of the PEMM Act 2019 - Final report](#), p.9