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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* – Consultation Paper

Origin Energy Limited (Origin) appreciates the opportunity to provide comments on the Department of Climate Change, Energy, the Environment and Water's (DCCEW) Strengthening the Prohibiting Energy Market Misconduct (PEMM) Provisions in the Competition and Consumer Act 2010 (CCA) Consultation Paper.

Origin recognises the importance of ensuring regulatory frameworks support the long-term interest of consumers and adequately protect against market conduct that could undermine this objective. However, any decision to introduce further regulation should be supported by demonstrated net benefits. This requires evidence that such intervention promotes the efficient operation of the market, appropriately addresses any gaps in the existing framework, and represents a proportionate response to any issues identified. On this basis, Origin does not consider there is a material justification for expanding the retail and wholesale market provisions under the PEMM framework as proposed.

1. Retail provision

The concept of a symmetrical retail provision is predicated on the theory that the existing framework may not adequately protect customers from exposure to unreasonably high prices in an environment of rising costs. However, retail electricity price changes are principally being driven by movements in underlying cost components. This is consistent with the Australian Competition and Consumer Commission's (ACCC) finding that there was a direct correlation between movements in underlying costs and retail prices in 2025-26.¹ At the same time, retailer margins have remained low, further reinforcing that higher prices are not due to excessive returns.²

There are also several new and incoming reforms that are intended to enhance consumer protections. This includes new measures that would restrict the charging of customers above standing offer prices at the end of benefit period. Importantly also, retailers will need to ensure hardship customers pay no more than their best offer, ensuring an even greater level of protection for those that require it most. These reforms are set to commence this year and should be given a chance to work before contemplating more interventions.

Further, the Australian Energy Market Commission (AEMC) is undertaking a broad-based review focused on addressing similar issues, including any potential gaps in the customer protection framework. This process too, should be allowed to run its course before more intervention is contemplated.

¹ ACCC, 'Inquiry into the National Electricity Market: December 2025 Report', 18 December 2025, p. 3.

² ACCC, 'Inquiry into the National Electricity Market: December 2025 Report', 18 December 2024, p. 77.

The above issues alone present a compelling case for not pursuing the proposed changes to the retail provision. However, this is further reinforced by the largely unworkable nature of the provision, which we consider to be misaligned with the efficient and practical operation of the electricity market.

This is given a symmetrical retail provision would inherently rely on subjective judgement from the regulator as to what is and is not a 'reasonable' price change. Whether through assessing the reasonableness of price changes, evaluating prices against a broad reasonableness standard, or approving prices in advance, these approaches would substitute regulatory judgement at a point in time for commercial decision making that invariably considers a broader set of variables over an extended period. This represents a departure from the conduct-based intent of existing frameworks and blurs the line between addressing harmful conduct and supervising competitive pricing. It also represents a very ambiguous approach to establishing further retail price controls, and we consider it would be poor legal / regulatory practice to place the burden of proof on retailers to try and support the workability of the framework.

An outworking of the above is that retailers would likely adopt overly conservative pricing strategies. Over time, this could weaken competitive tension, reduce consumer choice and undermine long-term consumer outcomes, including through fewer or smaller discounts, reduced product diversity and higher average prices.

2. Cross market manipulation provision

Origin does not consider the potential concerns articulated in the Consultation Paper are supported by evidence of a systemic or material problem, or that they provide a sound basis for pursuing additional regulation of the wholesale market under the PEMM.

Given the nature of the energy only National Electricity Market (NEM) framework, any deliberate attempt to distort / manipulate outcomes in related contract or ancillary services markets would seemingly require non-genuine conduct in the spot market. Such behaviour is already prohibited under the false or misleading bidding prohibition in the National Electricity Rules (NER) and the PEMM spot market provision. Part IV of the CCA also provides a broad economy-wide framework for addressing misuse of market power and anti-competitive conduct irrespective of whether such behaviour occurs within a single market or across multiple interconnected markets.

Consistent with the retail provision discussed above, there is a material risk a cross-market manipulation provision would undermine market efficiency to the extent it introduces additional ambiguity around what is and is not acceptable behaviour. Market participants would likely adopt more conservative operating strategies, which could reduce their ability to respond to market signals as conditions change in what is a highly dynamic environment (e.g. to make more capacity available, adjust contract positions and optimise portfolios). This would in turn impede the ability of retailers to minimise their cost to serve, the financial impact of which would ultimately flow through to consumers.

This risk would be amplified under an effects test approach that shifts the focus to the actual impact of the conduct in the market, irrespective of its purpose, and materially lowers the burden of proof for the regulator. This is acknowledged in the Consultation Paper, which notes a cross-market provision that includes an effects test would constitute a fundamental shift in the framework governing electricity markets, and could unduly constrain trading behaviour, potentially to the detriment of consumers.³

³ DCCEE, 'Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010 – Consultation Paper', December 2025, p. 51.

As it currently stands, we do not see a credible pathway to adopting this provision that could overcome these risks.

We have provided further comment on these provisions in Appendix 1. If you wish to discuss any aspect of this submission further,

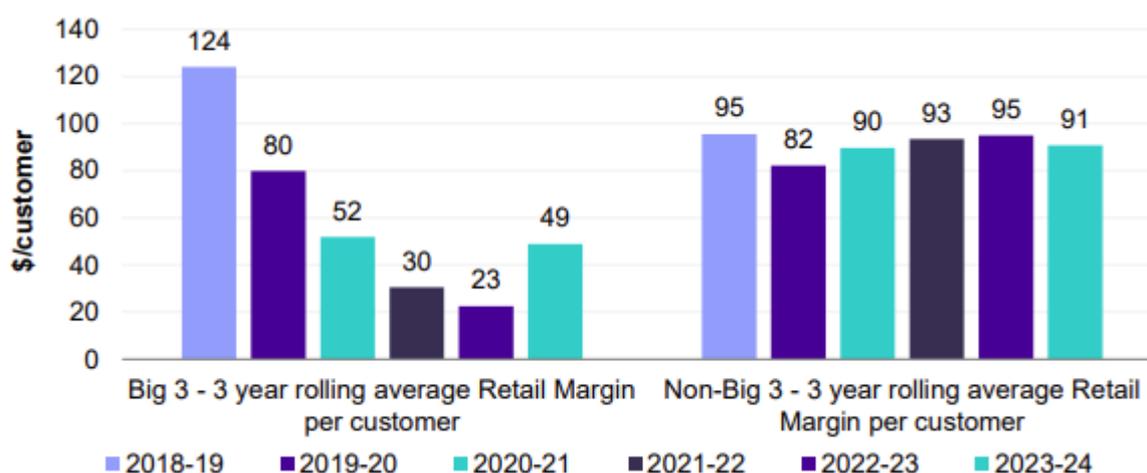
PEMM Retail Provision

7. Are concerns about small customers either facing prices that are unreasonably high, or changes in prices that do not reasonably reflect the changes in underlying costs to supply, valid?

Retail price changes are principally being driven by movements in underlying cost components, particularly wholesale and network costs, that typically make up around 33-48 per cent and 31-45 per cent of the retail cost stack respectively.⁴ This is consistent with the ACCC's latest finding that '*... 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.*'⁵ It is also in contrast to the statement within the Consultation Paper that indicates retailers may have a potential bias toward increasing prices by proportionately greater amounts (compared to underlying costs) in an environment of rising costs.⁶

At the same time, EBITDA margins have consistently trended downward, particularly for Tier 1 retailers (see Chart 1 below). This indicates retailers are not making excessive returns, and that regulated pricing and competition has served to constrain profitability, and limit the risk of small customers facing prices that are unreasonably high.

Chart 1: Three year rolling average retail margins per residential customer across the NEM, by retailer tier, (2018-19 to 2023-24, real terms, ex. GST)⁷



Noting the above, it is possible the underlying concern driving consideration of the expanded retail provision is not whether retailers are charging cost-reflective prices overall, but rather whether retailers' allocation of costs across individual plans and the resultant level of price dispersion experienced by customers is appropriate. This is given discounting practices can expose customers to prices above the default offers, or just generally higher (relative) prices if they are not actively engaged in the market.

⁴ AER, '2025-26 Default market offer prices – Final Determination', 26 May 2025, pp. 2-3.

⁵ ACCC, 'Inquiry into the National Electricity Market: December 2025 Report', 18 December 2025., p. 3.

⁶ DCCEEW, 'Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010 – Consultation Paper', December 2025, p. 25.

⁷ ACCC, 'Inquiry into the National Electricity Market: December 2024 Report', 18 December 2024, p. 77.

However, the ACCC's latest analysis shows retail market performance continues to improve in this respect. In particular:

- the proportion of customers paying prices above the default offers is declining, down from 27 per cent in 2023 to 17.6 per cent in 2025;⁸
- more customers are on newer plans (42 per cent, up from 29 per cent in 2024);⁹ and
- the price gap between older and newer plans has reduced to 0.9-4.7 per cent in 2025, compared with 4.3-11.8 per cent in 2024 (depending on the plan).¹⁰

As noted by the ACCC (and discussed further in response to Questions 8 and 9), there are also pending reforms that are intended to further protect customers from the risk of '*paying unreasonably high prices*'.¹¹

8. Does the combination of amendments to the DMO and the recent AEMC rule changes that increase consumer protections provide sufficient protections for all small customers on market offers?

The suite of upcoming reforms will directly address regulatory concerns around discounting practices and the associated pricing disparity between new / older plans by targeting the structural and behavioural factors that allow these outcomes to persist, rather than constraining competitive pricing itself. These measures are designed to improve transparency, strengthen customer engagement and ensure that price changes are predictable and fair, particularly at the end of benefit periods.

The new AEMC reforms will limit how and when retailers can increase market offer prices, by restricting price increases to once every 12 months. Additionally, retailers will be prevented from charging customers on fixed-term contracts more than the standing offer price at the end of the benefit period. This will further limit the number of customers paying above the default offers, which has continued to decline.¹² The ACCC has noted this should ultimately reduce the level of price dispersion and number of customers on higher prices.¹³ Crucially also, retailers as part of the incoming AEMC reforms will need to ensure hardship customers pay no more than their best offer, ensuring an even greater level of protection for those that require it most.

Complementing these changes are strengthened better-offer obligations and enhanced billing transparency reforms administered by the AER.¹⁴ Retailers must proactively inform customers when they are not on their best offer, while clearer bills and improved price comparability make it easier for customers to understand the real, ongoing cost of their plan. Together, these measures will reduce information asymmetry, ensuring customers are better placed to respond when discounts expire and to avoid remaining on poor-value legacy offers.

⁸ ACCC, 'Inquiry into the National Electricity Market: December 2025 Report', Appendix C - Supplementary Excel spreadsheet with retail pricing data and charts, Supplementary table C2.5, 18 December 2025.

⁹ Ibid., p. 3.

¹⁰ Ibid.

¹¹ ACCC, 'Inquiry into the National Electricity Market: December 2025 Report' 18 December 2025, p. 45

¹² Recent ACCC analysis indicates that approximately 63.5 per cent of customers are on prices below the default offers (DMO / VDO), while 19 per cent are on prices in line with the default offers which is deemed to be an efficient price. See ACCC, 'Inquiry into the National Electricity Market: December 2025 Report', Appendix C - Supplementary Excel spreadsheet with retail pricing data and charts, Supplementary table C2.5, 18 December 2025.

¹³ Ibid.

¹⁴ AER, Better Bills Guideline V2, 30 January 2023.

Revisions to the DMO are also intended to further reinforce consumer protections by providing a clearer and more robust benchmark for assessing value.¹⁵ By resetting the DMO to reflect efficient costs and tightening standing offer caps, the gap between default and market offers and extent to which disengaged customers can be exposed to higher (relative) prices is expected to reduce.

9. If not, is there a gap in consumer protections that an amended retail provision could fill? Which consumers are impacted and how material is the gap?

Origin does not consider there is a gap in consumer protections that warrants the introduction of the amended retail provision. Recent and pending reforms that aim to enhance protections should be given sufficient time to take effect. As discussed in response to Questions 8, these measures are likely to address some of the concerns raised in the Consultation Paper, including to further reduce the number of customers paying above the DMO / VDO. Introducing additional pricing provisions in parallel would add complexity, increase uncertainty for market participants and is unlikely to support proportionate, evidence-based policy.

The observed performance of the retail market, coupled with the absence of any evidence of retailer profiteering (as discussed in response to Question 7), also does not support expansion of the provision. This is consistent with the statement in the Consultation Paper that in such an environment, regulatory intervention to mandate the passing on of cost savings or to restrict how cost increases are reflected in prices is generally unnecessary.¹⁶

We also do consider expanding the retail provision to be a workable solution. This is given the inherent level of ambiguity associated with the provision (discussed further in response to Questions 10 and 11), which would make it challenging to apply and interpret, and could materially undermine the efficiency of the retail market. Any residual concerns relating to low engagement among certain customer cohorts and price dispersion would also be best considered through broader retail market review processes, such as the AEMC's Pricing Review, which is examining retail pricing and consumer outcomes in a holistic way.¹⁷

10. If an amended retail provision is implemented, should it be confined to the reasonableness of the changes in prices (considering underlying costs) or the reasonableness of prices more generally? How should reasonableness be defined?

As noted above, there is an inherent degree of ambiguity associated with applying a 'reasonableness' standard to retail pricing, noting there is no settled statutory definition of the term within the PEMM provisions of the *Competition and Consumer Act 2010* (CCA). Rather, the concept is intrinsically subjective and lacks a stable legal or economic meaning. It has been recognised by regulators and the legal community as highly contextual and fact-dependent, with judgement based on circumstances, offering limited ex ante certainty to regulated entities.¹⁸

This uncertainty is evident in the ACCC's existing PEMM Guidelines,¹⁹ which rely heavily on illustrative examples to explain what may, or may not, constitute a reasonable price adjustment under the existing provision. While such guidance is helpful, the examples are not exhaustive. It also underscores the

¹⁵ DCCEEW, 'Review Outcomes: 2025 reforms to the Default Market Offer', 4 November 2025.

¹⁶ DCCEEW, 'Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010 – Consultation Paper, December 2025, p. 25.

¹⁷ AEMC, The pricing review – Electricity pricing for a consumer driven future, Draft report, 11 December 2025.

¹⁸ See: Law Council of Australia, 'Submission to DCCEEW's Review into the effectiveness of the Prohibited Energy Market Misconduct Act 2019, January 2025: ACCC, 'Submission to DCCEEW's Review into the effectiveness of the Prohibited Energy Market Misconduct Act 2019', January 2025.

¹⁹ ACCC, Guidelines on Part XICA – Prohibited conduct in the energy market, 2020.

difficulty of articulating reasonableness in a clear or objective manner that retailers can confidently apply at the time pricing decisions are made.

A key challenge in this context is the nature of retail price setting, which is forward-looking and reflects expectations about future wholesale costs, customer behaviour, churn, credit risk, and exposure to extreme events. For example, it may be entirely reasonable for a retailer to offer substantial discounts or below-benchmark pricing to acquire customers, even where underlying costs are rising, as part of a broader portfolio or growth strategy. Conversely, prices may be increased by more than contemporaneous cost movements to manage risk or recover losses incurred during earlier periods of volatility. Assessing the reasonableness of such decisions necessarily involves subjective judgements about commercial strategy and risk tolerance, rather than clear distinctions between acceptable and unacceptable conduct.

Given the issues discussed above, linking the provision to the reasonableness of underlying cost movements or prices more broadly are both flawed and problematic. While the former approach would be marginally less so, the concept would be difficult to apply consistently across retailers with different business models, given reasonableness would need to be assessed in light of a retailer's individual circumstances (e.g. risk management strategies, underlying cost structure).

Revising the provision such that it tests the reasonableness of prices more generally would likely exacerbate these challenges to the extent it broadens the scope of the provision. It would effectively represent an opaque approach, potentially more onerous than traditional price regulation, with the regulator required to form views on acceptable price levels or margins for market offers and substitute regulatory judgement for commercial decision-making. This would blur the distinction between conduct regulation and price supervision, and represent a fundamental departure from the conduct-based framework of Part XICA of the CCA. It would also heighten the risk of hindsight-based enforcement, which could deter legitimate pricing strategies (such as those described above), with adverse consequences for competition and innovation, as we discuss further in Question 11 below.

11. What are the risks and benefits of the design options outlined, including to:

- **consumers;**
- **retailers; and**
- **the effective operation of the retail market?**

The Options outlined in the Consultation Paper introduce material risks to the effective operation of the retail electricity market, retailers, and by extension consumers who they are ultimately intended to benefit. Taken as a whole, the options would expand regulatory intervention in circumstances where recent and pending reforms are already addressing the identified concerns.

Overall, the issues identified as motivating these options are already being addressed through recent reforms and considered more broadly as part of the AEMC's ongoing pricing review. Expanding the retail pricing provision at this time would be premature, poorly targeted and likely to undermine the effective operation of the retail electricity market.

While Options 2, 3 and 4 differ in form and degree of intervention, consistent with our response to Question 10, they share a number of fundamental risks. These risks vary in severity across the options but stem from the same underlying challenge: applying regulatory controls to retail prices that are forward-looking, risk-based and shaped by competition rather than monopoly power.

Each option would require regulators, to varying degrees, to make judgements about the appropriateness of retail prices or price movements. Whether through assessing the reasonableness of price changes, evaluating prices against a broad reasonableness standard, or approving prices in

advance, these approaches risk substituting regulatory judgement for market outcomes. This represents a departure from the conduct-based intent of existing frameworks and blurs the line between addressing harmful conduct and supervising competitive pricing. It also represents a very indirect and opaque approach to establishing further retail price controls.

All options also risk dampening competition and innovation. Increased scrutiny of pricing decisions, particularly where standards are subjective or approvals are required, creates strong incentives for retailers to adopt more conservative and standardised pricing strategies. Pricing experimentation, discounting and the development of innovative tariffs or bundled offerings are likely to be curtailed to reduce regulatory exposure. Over time, this would weaken competitive tension, reduce consumer choice and undermine long-term consumer outcomes, including through fewer or smaller discounts, reduced product diversity and higher average prices.

A further common risk is heightened regulatory uncertainty and compliance burden. Each option introduces obligations that are difficult for retailers to assess ex ante, increasing legal risk and compliance costs. These impacts would be disproportionately borne by smaller retailers and new entrants that rely on pricing flexibility to manage risk and differentiate their offerings. This would raise barriers to entry and reduce diversity of offerings in the retail market at a time when the roll out of smart meters alongside incentives and policy changes to support the uptake of consumer energy resources (CER) is intended to drive further competition and innovation.

In addition, all options risk overlap and inconsistency with existing and pending reforms. Recent changes to the DMO, retail pricing rules, billing transparency and hardship protections are already addressing the core concerns motivating these proposals. Introducing additional pricing interventions risks duplication, regulatory complexity and unintended interactions, while making it more difficult to assess the effectiveness of reforms that are yet to fully commence.

We have provided further comments on aspects of the individual options proposed in Table 1 below.

Table 1: Indicative options assessment

Options	Comments
Option 1 (no change)	<ul style="list-style-type: none"> ▪ We consider Option 1 to be the most appropriate approach given the market dynamics discussed under Question 7, and the expectation that pending reforms will further reduce the risk of customers on market offers paying prices above the DMO. This approach would also recognise that given the shortcomings discussed above, expanding the retail provision is unlikely to provide an effective or efficient means of enhancing consumer protections. .
Option 2 ('symmetrical provision')	<ul style="list-style-type: none"> ▪ Option 2 would extend the existing retail provision to capture both price increases and decreases. While framed as a neutral and proportionate extension, in practice this option would significantly expand regulatory involvement in routine pricing decisions and further blur the boundary between conduct regulation and price supervision. ▪ A particular risk under Option 2 is hindsight-based enforcement. Prices set on the basis of reasonable forecasts and risk assessments could later be judged against realised outcomes that were not foreseeable at the time. It is also unclear how price differentiation (e.g. between pricing for new / existing customers) would be treated under this obligation. This uncertainty could discourage timely and efficient pricing responses and disproportionately affect smaller retailers and new entrants that have less diversified portfolios and rely more heavily on pricing flexibility to manage risk
Option 3 (new general requirement for 'reasonable' pricing)	<ul style="list-style-type: none"> ▪ Option 3 proposes a new, broad obligation requiring retail prices to be 'reasonable'. This option presents significantly greater risks than Option 2 due to the absence of objective boundaries around the standard.

	<ul style="list-style-type: none"> ▪ A general reasonableness requirement would operate as ongoing price supervision, requiring regulators to form views on acceptable prices or margins across a wide range of market offers. This would necessitate detailed assessments of retailer-specific factors such as hedging strategies, risk premiums, customer churn and exposure to extreme events, areas where regulatory judgement is ill-suited to replace market discipline. The result would be persistent uncertainty and enforcement risk. ▪ Even if confined through design features such as high thresholds, limited scope or selective enforcement (discussed below), a general reasonable price obligation would remain inherently subjective and difficult to apply consistently.
<p>Option 4 (pre-approval of market offer prices)</p>	<ul style="list-style-type: none"> ▪ Option 4 is incompatible with a competitive retail market and would likely impose substantial costs while delivering poorer long-term outcomes relative to existing and pending reforms. We agree with DCCEEW that the approach does not warrant any further consideration.²⁰ ▪ Option 4, which would require regulatory pre-approval of market offer price increases above a specified threshold, represents a fundamental departure from a conduct-based framework and would introduce explicit, but ambiguous ex-ante price control into an otherwise competitive retail market. ▪ This option would require regulators to assess proposed price changes before they take effect, which would involve detailed scrutiny of retailers' cost forecasts, hedging positions, risk management strategies and commercial assumptions. This would substitute regulatory judgement for commercial decision-making and materially constrain retailers' ability to respond to changing market conditions given the time that would likely be required to prepare for, and undertake the approvals process. In a dynamic market like the NEM, approval delays or uncertainty could expose retailers to unmanaged risk, with potential implications for financial resilience and market stability. ▪ The compliance and administrative burden would be substantial for both retailers and regulators. Over time, this would raise barriers to entry and weaken competitive tension, ultimately reducing consumer choice.

12. Are there other issues we should consider in relation to these design options?

There are strong legal, economic and practical arguments against shifting the burden of proof to retailers to justify their pricing or pricing decisions as proposed by the ACCC and foreshadowed as part of Options 2 and 3.

From a legal and regulatory design perspective, shifting the burden of proof departs from established principles of competition and consumer law. In these frameworks, the onus rests with the regulator to demonstrate misconduct, harm or anti-competitive effect. Reversing that onus effectively presumes that pricing behaviour is suspect unless proven otherwise, which undermines legal certainty and procedural fairness and risks normalising intervention in competitive market behaviour.

There appears to be no relevant domestic or international regulatory precedent in the energy sector that would support this approach. In this context, Origin does not consider the recent reforms to the Energy Retail Code of Practice introduced by the Essential Services Commission in Victoria – where the burden of proof on retailers regarding pricing conduct has been reversed – to be relevant.²¹ This aspect of the Victorian reforms arises from a jurisdiction-specific regulatory context and applies only to a very narrow segment of the state's retail electricity market: small customers on contracts of four years or longer. By contrast, the ACCC's proposal would extend this practice across the NEM to all customers.

²⁰ DCCEEW, 'Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010 – Consultation Paper, December 2025', p. 39.

²¹ ESC, 'Energy Consumer Reforms – Final Decision', 20 September 2025, p. 34.

From a commercial and evidentiary perspective, retail pricing decisions are inherently forward-looking and based on complex, uncertain forecasts. Retailers must assess expected wholesale prices, hedging strategies, demand volatility, credit risk, prudential requirements and the risk of extreme events. Demonstrating ex post that a price change was 'reasonable' against realised outcomes is not possible in any objective sense and exposes retailers to hindsight bias, even where decisions were prudent and well-founded at the time.

There are also significant compliance and cost implications. To discharge an ongoing burden of proof, retailers would need to maintain extensive documentation of internal forecasts, portfolio strategies and commercial assumptions for each pricing decision. This information is highly complex and commercially sensitive, and the associated compliance burden would be substantial – particularly for smaller retailers – diverting resources away from customer service, innovation and competition.

Shifting the burden could also have material behavioural effects. Faced with heightened regulatory risk, retailers would be incentivised to adopt conservative, defensive pricing strategies, reduce discounting and simplify products to minimise the need for justification. This would weaken competitive tension, reduce product diversity and ultimately lead to higher long-term prices for consumers.

Finally, a reversed burden of proof would blur the boundary between misconduct and normal competition. Pricing decisions would not be assessed on the basis of competition in the market, but on whether they can be justified to a regulator. This transforms a conduct-based regime into one of ongoing price supervision and is inconsistent with the original intent of the PEMM framework and with a competitive retail market more generally.

Taken together, shifting the burden of proof to retailers would increase uncertainty, raise costs and undermine competition, without clear evidence that it would deliver improved consumer outcomes.

13. Should any alternative approaches be considered?

As discussed in Question 9, pending reforms should be given time to take effect, as this will help inform any need for future reform and is consistent with an evidence-based approach to regulation that will best support the long-term interests of consumers. Alternative approaches would also be best considered through broader review processes, rather than through targeted consultation on the PEMM framework.

14. Are there any other compliance and enforcement issues we need to consider?

Origin has not identified any other compliance / enforcement issues to consider at this point.

15. If the retail provision is expanded to broaden its scope, are there other implementation issues that need to be considered?

If the retail provision were to be expanded, there would need to be extensive consultation to address the raft of implementation issues, including to inform the development of legislation and associated guidance material that would be required to try and clarify how an expanded retail provision would be applied and interpreted. However, as it currently stands, we do not see a credible pathway to adopting this measure that would allow for an efficient and well-functioning market under any of the reform options being considered.

Cross-Market Manipulation

16. Are concerns about potential cross-market manipulation in the Australian energy markets valid?

Origin does not consider the potential concerns articulated in the Consultation Paper are supported by evidence of a systemic or material problem, or that they provide a sound basis for pursuing additional regulation.

Existing legal and regulatory frameworks already provide comprehensive protections against harmful conduct across physical electricity and financial markets. Given the nature of the energy only NEM framework, any deliberate attempt to distort / manipulate outcomes in related contract or ancillary services markets would seemingly require non-genuine conduct in the spot market. Conduct which gives rise to false or misleading bidding in the spot market is already prohibited under the NER. Participants bids / rebids must:

- reflect genuine physical and operational conditions;
- be technically feasible within plant capability;
- not be false, misleading or inconsistent with system conditions; and
- include a valid and contemporaneous reason for any rebid.

Similarly, trading of financial products in contract markets is subject to a broad range of regulation administered by ASIC. Any deliberate conduct to distort or manipulate the contract market would be dealt with under the market misconduct and other prohibited conduct provisions and insider trading prohibition in the Corporations Act.

As such, market misconduct by participants in either of these markets will be addressed under the existing regulatory framework which is necessarily tailored to the complexities and operational requirements of each individual market. As outlined in this paper, applying an additional layer of cross-market regulation across two historically separately regulated markets, one physical and the other financial, risks impacting the effectiveness of the comprehensive protections which already exist in each of these markets, and which could lead to much larger implications for market efficiency as a whole.

Part IV of the CCA also provides a broad economy-wide framework for addressing misuse of market power and anti-competitive conduct irrespective of whether such behaviour occurs within a single market or across multiple interconnected markets.

This enables the ACCC to intervene where conduct in one market is strategically used to distort competitive outcomes in another, for example where a firm leverages market power in physical markets in related financial or downstream markets in which they participate.

Further, the existing PEMM provisions in Part XICA of the CCA provide an additional layer of protections. The wholesale market provisions prohibit bidding behaviour intended to distort or manipulate spot market outcomes, including conduct undertaken fraudulently, dishonestly or in bad faith, thereby addressing deliberate price distortion in the primary wholesale market. In parallel, the contract liquidity provision prohibits generators from withholding or restricting the supply of electricity financial contracts for the purpose of substantially lessening competition in any electricity market. Together, these provisions already capture both physical market manipulation and strategic conduct in contract markets undertaken with anti-competitive intent.

Financial market regulation administered by the Australian Securities and Investments Commission (ASIC) also potentially provides a further safeguard against cross-market manipulation. For example, possessing inside information about the electricity spot market could, in certain situations, potentially trigger the insider trading prohibition where that information is used to trade financial products (i.e. electricity derivatives) in the contract market.²²

The Consultation Paper identifies examples where it is considered the current PEMM provisions, and the broader competition law and regulatory frameworks, may not fully capture cross market manipulation. However, as noted in the table below (and consistent with the above), these concerns are unfounded.

Table 2: Summary comments on examples of potential regulatory gaps outlined in the Consultation Paper

Examples ²³	Comments
<p><i>The current spot market provisions are limited in their ability to address manipulation that exploits the connections between different markets. They require proof that the primary purpose of price distortion is within that spot market, even when the main impact is potentially felt elsewhere. Consequently, manipulative strategies that rely on the interplay between markets may not be effectively addressed.</i></p>	<ul style="list-style-type: none"> ▪ The spot market is the central price formation mechanism from which contract pricing, risk premiums and ancillary service values are derived. As discussed above, any deliberate attempt to distort outcomes in contract markets therefore requires non-genuine conduct in the spot market itself that is already prohibited under the NER and current PEMM provisions. ▪ Any evidentiary concerns about proving ‘primary purpose’ should not be overstated. Purpose may be inferred from patterns of conduct, timing, operational inconsistency and economic irrationality absent downstream financial benefit, consistent with established regulatory practice. Addressing manipulation at the point of physical price formation is both sufficient and efficient.
<p><i>When multiple entities or actions across different markets are involved in a potential manipulation scheme, attributing the requisite purpose to a specific corporation, as required by these sections, can be complex. Proving a coordinated intent to manipulate across markets requires significant evidence of communication and agreement.</i></p>	<ul style="list-style-type: none"> ▪ Australian competition law is expressly designed to address coordinated conduct involving multiple market participants – in particular through the cartel provisions as well as through the prohibitions on concerted practices and anti-competitive agreements (see Part IV of the CCA).²⁴ The cartel provisions, in particular, would not require proof that the parties’ intent was to manipulate across markets. ▪ Within the energy sector specifically, this competition law framework operates alongside the false or misleading bidding prohibition and PEMM spot market provisions, providing multiple enforcement pathways against coordinated or strategic manipulation. Where several entities engage in conduct that collectively distorts market outcomes, regulators may pursue both market manipulation provisions and broader competition law remedies without needing to prove formal intent to manipulate across markets. ▪ The existence of evidentiary complexity does not justify creating new sector-specific prohibitions where established legal tools already address coordinated conduct effectively. The current framework is sufficiently flexible, robust and well-tested to capture multi-party manipulation strategies.
<p><i>Sophisticated actors might structure their cross-market</i></p>	<ul style="list-style-type: none"> ▪ Part IV of the CCA is not confined to formal rule breaches within discrete markets, but instead has the ability to target conduct that has

²² Corporations Act 2001 (Cth), s.1043A

²³ DCCEEW, ‘Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010 – Consultation Paper’, December 2025, pp. 48-9.

²⁴ Competition and Consumer Act 2010 (Cth)

<p><i>activities to fall within the letter of the law in each individual market, even if the overall effect is manipulative across the interconnected system. The absence of explicit prohibitions on strategies that exploit inter-market dependencies might provide a regulatory gap which could allow such behaviour to persist.</i></p>	<p>the purpose, effect or likely effect of substantially lessening competition, regardless of how it is structured or across how many markets it operates. This ensures that behaviour engineered to exploit inter-market linkages, even where each step appears lawful in isolation, may still be captured where the combined strategy has a substantial impact on competition. Courts and regulators routinely assess the overall economic substance of conduct rather than its formal compliance with narrow technical rule.</p>
<p><i>Methods of potential manipulation will evolve with the NEM. These specific provisions as currently drafted might not be sufficiently broad or adaptable to capture novel cross-market manipulation strategies that exploit new market mechanisms or regulatory interfaces.</i></p>	<ul style="list-style-type: none"> ▪ It is not reasonable to introduce additional regulation on the basis the market is changing and there is a level of uncertainty around the associated impact on market dynamics. The prudent approach would be to better understand these matters to form a clear evidence base for change, before seeking to implement fundamental reforms such as the introduction of a cross-market manipulation provision. ▪ We also consider structural trends within the energy sector are more likely to reduce, rather than amplify, the scope for sustained market power and strategic distortion over time, as we discuss further in response to Question 18.

17. Are there any other examples of cross-market manipulation that could potentially occur in the NEM?

Origin has not identified any other examples of cross-market manipulation that could potentially occur in the NEM.

18. Are there any other future developments, in addition to AI bidding and CER, that might impact the potential for cross-market manipulation?

Future developments in the NEM, including AI bidding and the growth in consumer energy resources (CER), are likely to further constrain, rather than expand, the scope for cross-market manipulation.

As noted in the Consultation Paper, there is evidence of substantial entry of new generators into the NEM and growing diversity of participants involved.²⁵ The continued growth of demand response and behind the meter CER will also progressively reduce the level of load to be met by the centralised system. Alongside the progressive retirement of incumbent thermal plant, these factors will lower market concentration. Increased interconnection between regions is also enhancing competitive pressure by enabling surplus supply to flow more readily across the system, limiting the feasibility of engineered scarcity or volatility in local markets.

Reforms in the Wholesale Market Settings Review aimed at improving contract market liquidity and risk management could also further reduce any risk of manipulation.²⁶ The greater supply of hedging instruments and enhanced transparency around market activity would diminish the extent to which participants could potentially benefit from short-term movements in the spot price. Where contract markets are deeper and more competitive, attempts to influence prices through spot price volatility are less likely to translate into meaningful financial gain, thereby further undermining the commercial rationale for cross-market manipulation.

²⁵ DCCEE, 'Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010 – Consultation Paper', December 2025, pg. 46.

²⁶ Expert Panel, 'National Electricity Market Wholesale Market Settings Review – Final Report', 16 December 2025.

It also should not be assumed that AI / algorithmic bidding would automatically increase the risk of market manipulation. As noted in the NEM Review Final Report, a program of work is required to develop a broader understanding of the risks, benefits, scale and nature of algorithmic bidding in the first instance.²⁷ Enhanced data availability, real-time analytics and increasingly sophisticated regulatory surveillance tools are also improving the ability of market bodies to detect anomalous behaviour across linked markets.

19. Are there other current or future market conditions that might curb or exacerbate the potential for cross-market manipulation and, if so, how?

Origin has not identified any other areas beyond those discussed under Question 18.

20. In which market or markets should cross-market manipulation be prohibited?

The spot market is the central price formation mechanism of the NEM, from which contract prices, risk premiums and ancillary service values are derived. Any attempt to influence outcomes in related markets necessarily requires behaviour in the spot market itself, most commonly through bidding or rebidding that affects dispatch outcomes and price formation. Regulating conduct at this primary physical interface would therefore be the most direct approach.

Consistent with this, the Consultation Paper itself expresses clear caution about extending any cross-market manipulation prohibition beyond conduct occurring in the wholesale spot market.²⁸ We agree with the sentiment expressed, namely that:

- broader coverage across ancillary and contract markets would materially increase compliance and enforcement complexity, including expanded monitoring, reporting and assessment burdens for both regulators and market participants;
- the financial contract markets are already regulated under separate legislative frameworks administered by ASIC, and that incorporating these markets into the PEMM regime would require careful coordination across governance regimes and risk regulatory duplication;
- given the significant existing oversight of financial markets, any manipulative behaviour is more likely – if it occurs – to arise in the spot or ancillary markets as a means of influencing downstream prices, rather than within contract markets themselves; and
- a potential negative consequence of the above factors could be participants decreasing trading resulting in lower liquidity, with consequent impacts to prices faced by customers.

21. Should the prohibition relate to the market participant's intent, market outcomes or both?

As acknowledged in the Consultation Paper, an effects-only standard would represent a material shift in the regulatory treatment of wholesale electricity markets.²⁹ The NEM inherently relies on participants responding to market signals, including to optimise their portfolios, manage the risk of operating across interconnected regions and flexibly responding to changes in underlying market dynamics, which can invariably impact pricing outcomes across related markets. Applying an effects test in this environment heightens the risk of legitimate conduct being cited as harmful, which could drive more conservative

²⁷ Ibid., p. 118.

²⁸ DCCEE, 'Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010 – Consultation Paper', December 2025, p. 53-4.

²⁹ Ibid., p. 51.

operating / trading strategies (as discussed further under Question 23) and materially undermine market efficiency. This is given it shifts the focus to the actual impact of the conduct in the market, irrespective of its purpose, which materially lowers the burden of proof for the regulator. For example, participants could be responding to market signals or changes in operational circumstances (that can be influenced by a range of factors, including weather events, plant outages, network constraints) and complying with the prohibition on false or misleading bidding, but still be exposed to breaching the provision should contract prices materially change (potentially due to a range of factors). While we recognise the intent would not be to capture such conduct, we do not see how this could be mitigated under effects-based approach, and note this issue would also persist to some degree under a purpose-based approach.

22. In which markets should the outcomes of cross-market manipulation be considered?

As discussed throughout this section, we also do not agree that extending the existing provision to consider outcomes in the contracts market would provide a workable framework, or support efficient market outcomes. There is also unlikely to be any benefit in considering outcomes in the frequency control ancillary services (FCAS) market, as the financial materiality of that market is expected to continue to decline over time as the penetration of battery storage continues to increase. AEMO estimated that total FCAS costs represented only around 0.7 per cent of the cost of energy consumed in Q4 2025.³⁰

23. What are the risks and benefits of the design options outlined, including to:

- **consumers;**
- **participants in electricity and related markets, including financial markets; and**
- **the effective operation of markets?**

We expect the associated risks (discussed below) would outweigh any potential benefits of a cross-market prohibition to the extent such benefits can be identified, noting the absence of demonstrated harm and the strength of existing regulatory frameworks.

There is a material risk a cross-market manipulation provision would undermine market efficiency to the extent it introduces additional ambiguity around what is and is not acceptable behaviour. Market participants would likely adopt more conservative operating approaches, which could reduce their ability to respond to market signals (both in spot / contracts markets) in what is a highly dynamic environment, including to optimise their portfolios / hedging approaches. This would in turn impede the ability of retailers to minimise their cost to serve, the financial impact of which would ultimately flow through to consumers. This risk would be amplified under an effects (rather than a purpose) test, as noted in response to Question 21.

This is acknowledged in the Consultation Paper, which notes a cross-market provision that includes an effects test could unduly constrain trading behaviour, potentially to the detriment of consumers.³¹ It is important to also note international precedent, such as Great Britain's Secure and Promote Market Making obligations cited in the Consultation Paper. When removed in 2019,³² these reforms were found to distort the market and impose costs far outweighing the intended benefits of supporting competition.

³⁰ AEMO, 'Quarterly Energy Dynamics Q4 2025', January 2026, pg. 42.

³¹ DCCEE, 'Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010 – Consultation Paper', December 2025, p. 51.

³² Office of Gas and Electricity Markets, 'Decision to suspend the Secure and Promote Market Making Obligation with effect on 18 November 2019', 14 November 2019.

Ofgem revisited this framework in 2024 and concluded the costs continue to outweigh the potential benefits.³³

24. Are there other issues we should be considering in relation to these design options?

Origin has not identified additional issues to consider beyond those discussed above, and in Question 27 below with respect to implementation.

25. Are there any alternative approaches which should be considered?

Origin has not identified any alternative approaches.

26. Are there any other compliance and enforcement issues we need to consider?

Origin supports the recommendation in the Final Report of the *Review into the Effectiveness of the PEMM Act*³⁴ that the divestiture remedy should be removed from Part XICA of the CCA. Divestiture remains an extreme structural remedy that is traditionally reserved for addressing entrenched market power or correcting completed mergers that have permanently altered market structure, and is not appropriate in the context of the exiting, or any expanded provisions.

Consistent with the response to Question 12, it would also not be appropriate to shift the burden of proof to participants to support compliance / enforcement.

Consequential Impacts of Cross-Market Manipulation Provision on other PEMM Provisions

27. Are there any other implementation issues we need to consider in relation to a cross-market provision?

Consistent with our response to Question 15 in relation to the retail provision, if a cross-market manipulation provision was to be considered further, there would need to be extensive consultation to address the raft of implementation issues. This includes to inform the development of legislation and associated guidance material that would be required to try and clarify how it would be applied and interpreted, and the delineation of responsibilities across different regulators (noting there is a risk the additional provision could impact the effectiveness of the existing market misconduct protections in the Corporations Act and risk regulatory duplications, as noted above). As it currently stands, we do not see a credible pathway to adopting this measure that would allow for an efficient and well-functioning market under any of the reform options being considered.

28. Could the contracts provision be redrafted in an alternative way to better achieve the objective, including via the removal of the SLC test alongside any other policy amendments in relation to retail or cross-market provisions?

If the responsibility for administering the PEMM provisions were transferred to the AER, the contracts provision should maintain a purpose of substantially lessening competition (SLC) test in a form consistent with the current test.

³³ Office of Gas and Electricity Markets, 'Summary of Responses: Power Market Liquidity Call for Input', 29 August 2024, p. 23.

³⁴ DCCEEW, 'Final report: Review into the Effectiveness of the PEMM Act', June 2025.