30 January 2026

Department of Climate Change, Energy, the Environment and Water
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To Whom It May Concern,

Strengthening the prohibiting energy market misconduct provisions in the *Competition and Consumer Act 2010* consultation paper

Stanwell Corporation Limited (Stanwell) appreciates the opportunity to provide feedback to the Department of Climate Change, Energy, the Environment and Water (DCCEEW) *Strengthening the Prohibiting Energy Market Misconduct Provisions in the Competition and Consumer Act 2010 – Consultation Paper* (the Consultation Paper). We would also like to acknowledge DCCEEW's proactive approach in organising a meeting to discuss the consultation with Stanwell representatives on 20 January 2026.

Stanwell is Queensland's leading provider of electricity and energy solutions to the National Electricity Market (NEM), and large energy users along the eastern seaboard of Australia. With over 40 years of continuous operations, Stanwell maintains a reliable supply of power from two of the most efficient and reliable coal-fired power stations in Australia - the Tarong power stations near Kingaroy and Stanwell Power Station near Rockhampton.

Stanwell's experience in working with communities to build, operate and maintain reliable energy generation assets is being applied to the shift to renewable energy, as we work on a pipeline of renewable energy and storage projects throughout Queensland.

This submission contains the views of Stanwell only and should not be construed as indicative or representative of the views or policy of the Queensland Government.

Background:

The Prohibiting Energy Market Misconduct Act (PEMM Act), which came into effect on 10 June 2020 was notionally designed with two primary objectives:

- 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.

Stanwell believes that the PEMM Act remains duplicative, ineffective and unnecessary. We believe the "on balance" assumption that provisions in Part XICA of the PEMM Act would be likely to have a positive impact by protecting customers through containing behaviour on market participants to be tenuous at best. The Department should take this opportunity to reduce inefficient and duplicative arrangements, similar to the approach outlines in the recent Gas Market Code review.

In the absence of the option to abolish these provisions, as was supported by the majority of respondents to the consultation leading up to the release of the Consultation Paper, at a minimum the existing provisions should remain unchanged. We strongly oppose the expansion of powers under this Act as proposed in the Consultation Paper, as they will unnecessarily increase compliance costs, reduce innovation in retail pricing strategies and offer little to no additional consumer protections.

Stanwell is disappointed that, despite strong and consistent industry feedback to the *Review into the effectiveness of the PEMM Act,* recommending its repeal or allowing the 1 January 2026 sunset clause to take effect, the PEMM Act has been extended.

We note that the final report released 1 August 2025 concluded that Part XICA provisions of the *Competition and Consumer Act 2010* (CCA) are "on balance" likely to have a positive impact by protecting customers through constraining behaviour of market participants[1], but provided little evidence to support this statement, particularly given none of the provisions have ever been used since their introduction. The final report went on to recommend remaking the PEMM provisions, with legislation passed in late 2025 to extend operation of the PEMM Act until 1 January 2031. This recommendation was accepted despite very limited stakeholder support, with only two respondents supporting extending the PEMM provisions. In contrast, eleven respondents, including two energy industry bodies, eight energy retailers and the Law Council of Australia, supported allowing the provisions to lapse.[2]

In addition to our disappointment that the PEMM Act provisions have been extended until the 1 January 2031, Stanwell is very concerned that DCCEEW is proposing additional punitive provisions that will likely have significant negative impacts on the energy sector. The presence of the PEMM, even though largely duplicative, increases risk for participants which is priced into normal business activity, ultimately increasing prices for consumers. The consultation assessment approach describes how DCCEEW will consider the guidance provided by the Office of Impact Analysis (OIA) for regulatory change and notes that the purpose of this guidance is to ensure that any regulation introduced is adequately justified, well-designed, well-targeted and fit-for purpose. [3] Based on Stanwell's and other industry feedback as described above, we feel that these proposed additional provisions do not satisfy the guidance criteria as described by the OIA and we believe are duplicative, unnecessary and will not provide positive outcomes for the energy market, participants and most importantly customers.

Stanwell's feedback on the proposed new provisions is provided below.

1. Proposal to make the retail provisions "symmetrical"

Stanwell believes that existing and emerging policy initiatives must be afforded time to stabilise. These initiatives include:

- Default Market Offer (DMO) which introduces a Solar Sharer Offer (SSO) Standing Offer.
- National Energy Retail Rule (NERR) changes, including Improving consumer confidence in retail energy plans, Improving the ability to switch to a better offer, and Assisting hardship customers; and
- Current policies such as: Consumer Data Right, Consumer Energy Resources, AER's Better Bills Guideline, and reforms to the AER's Wholesale Market Monitoring and Reporting function[4]

The impacts of the above policies should in time be assessed quantitatively and holistically, before any consideration of changes to the retail pricing provision is considered. For this reason, Stanwell supports Option 1: Retain current retail pricing provision and make no further changes (do nothing). Other options proposed in the consultation will add complexity, compliance and regulatory risk, discourage new entrants, and reduce retail competition and innovation. Additionally, it will introduce a de-facto form of price regulation, retailers may be in a position where they are legally prevented from absorbing cost increases by reducing their margins.

[1] DCCEEW, Review into the effectiveness of the PEMM Act, Final Report, 1 August 2025 p.5
[2] Ibid. p.22
[3] DCCEEW, Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010, 5 December 2025 p.8
[4] Ibid. p.29

2. Defining the appropriate test for evidence of cross-market manipulation

Related markets naturally influence each other, and misconduct regulations must avoid penalising normal cross-market behaviour. There are strong links between the energy physical and financial markets, and we see this as a positive and necessary feature of the energy market. We would caution policymakers against regulating cross-market conduct in ways that could discourage competition. For example, the interaction between the spot and derivative markets is used by market participants to hedge risk, manage exposure, and provide efficient market responses. This should not be considered misconduct.

Section 46 of the CCA already includes a broad misuse of market power prohibition which covers the effect of conduct as well as its purpose. These provisions prohibit cross-market manipulation and provides the regulator with increased power to investigate and prosecute the alleged behaviour. As we understand, the new provisions as proposed in Option 2, 3 and 4 of the Consultation Paper intend to prevent a corporation with market power engaging in conduct with either the purpose, effect, or likely effect of substantially lessening competition in the market. The risk being that by changing the "appropriate test for cross-market manipulation" to "Purpose, effect or both" could (as noted above) capture activities that are now considered part of normal market operations.

However, in our view section 46 of the CCA appropriately makes provision to address market power in the energy market. Options 2, 3 and 4 as proposed in the Consultation Paper would unnecessarily duplicate the existing CCA provisions, result in a substantial increase in compliance costs on market participants, and introduce a regulatory risk to their operations. These provisions would also likely constrict competition by making it harder for new entrants to enter the market.

Stanwell supports *Option 1: Spot market only with no changes to the current rules*, noting that other options will add compliance costs on market participants as well introducing additional regulatory risk to their operations for little to no benefit to consumer protection or competition in the energy market.

Further, the Consultation Paper does not acknowledge the volatile environment in which participants operate. For example, the transition to higher levels of renewable energy is making the generation and supply of electricity more complex.[5] Stanwell feels that the proposed provisions will further inhibit the ability of market participants and retailers to manage their risks through offering innovative products, making it harder for existing retailers, and restricting the ability of new retailers to enter the market, thereby reducing competition. Energy market participants may be forced to build their pricing strategies around managing regulatory risk rather than exploring innovation and efficiencies – which is the purpose of a well-functioning competitive market. This will result in worse outcomes for customers.

Finally, it is not clear how the provisions would be applied to current (and likely future) Government policy implementations. The Federal Government is currently considering a mechanism which would create a government-run dominant buyer (and subsequent dominant seller) of financial products in order to alter physical market investment and outcomes. While the policymakers may contend that reducing competition and increasing control of the financial market is not the *purpose* of the policy, it appears at least a "*likely effect*".

3. Transitioning the National Electricity Market Inquiry and other governance-related matters

NEM Inquiry Reporting Functions

Through the PEMM Act and Gas Market Code reviews, there is an opportunity to consolidate reporting requirements to reduce reporting burden on industry.[6] Stanwell strongly supports work undertaken to identify any overlapping and duplicative reporting functions undertaken by the Australian Competition and Consumer Commission (ACCC), the AER and AEMO, with the aim of reducing regulatory burden.

Stanwell supports the winding down of the ACCC NEM Inquiry function, as legislated in 2026. We note

[5] Price Waterhouse Coopers, '*Renewable energy market gives developers and investors pause for thought*', 2021; The Centre for Independent Studies 'Risky Business. *How The Energy Transition Introduces Risk That Raise Retail Costs*' Jude Bilk, October 2025; The Australian Energy Council, '*The energy transition and power bills: Why aren't they cheaper?*', Carl Kitchen, July 2025.
[6] DCCEEW, Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010, 5 December 2025 p.20

that since this report, the AER have new information gathering and reporting powers, including the expanded Wholesale Market Monitoring and Reporting (WMMR) functions and its Retail Performance Procedures and Guideline which extend beyond the end of the ACCC Inquiry function in 2026.

Compliance functions

Stanwell does not support the transfer of the enforcement of the PEMM Act and Electricity Retail Code to the AER. We instead believe this enforcement power should remain within the remit of the ACCC.

While the ACCC and the AER hold regulatory power, there are key differences in their respective functions. The ACCC oversees competition, fair trading and consumers protections across all sectors as it enforces and ensure compliance with the CCA. The ACCC has broad ranging experience in the electricity market and is respected and trusted regulatory body. On the other hand, the AER is specifically tasked with monitoring, data collection, and enforcing compliance with the National Energy Rules (NER or the Rules).

We are concerned that should the enforcement of the PEMM Act and Electricity Retail Code shift to the AER, not only would there be knowledge gaps within the AER, there is also the potential for previously consistent applications of existing law to be misapplied to unsettled "nuances" and interpretations of existing competition law to the unfair determent to market participants. This primarily results from the unnecessary degree of overlap between the ACCC and the AER within the PEMM Act such as investigation and enforcement, information gathering, and the remedies and recommendations.

For example, fraudulent, dishonest or bad faith conduct of corporations in the electricity spot market are covered under s153G and 153H of the PEMM Act, respectively. These provisions are a less comprehensive restatement of Clause 3.8.22A of the NER where market participant offers, bids and rebids must not be false or misleading [7] – breaches of this provision may attract a Tier 1 civil penalty.[8]

There is also further overlap between the AER's existing powers and ACCC powers within the PEMM Act specifically relating to market monitoring and reporting, and enforcement powers as briefly noted above.

Further, legislative changes required to support such a transfer of powers would impose significant cost and effort to accommodate a new regulator in a time of cost-of-living pressures and rising energy costs, inconsistent with the National Electricity Objective (NEO).

The separation of roles is important, as the AER is responsible for setting prices under the ERC, and the ACCC monitors and enforces compliance regulations. This separation should remain in place.

Conclusion:

Stanwell believes that the PEMM Act remains duplicative, ineffective and unnecessary. We believe the "on balance" assumption that provisions in Part XICA of the PEMM Act would be likely to have a positive impact by protecting customers through containing behaviour on market participants to be tenuous at best.

In the absence of the option to abolish these provisions, as was supported by the majority of respondents to the consultation leading up to the release of the Consultation Paper, at a minimum the existing provisions should remain unchanged. We strongly oppose the expansion of powers under this Act as proposed in the Consultation Paper, as they will unnecessarily increase compliance costs, reduce innovation in retail pricing strategies and offer little to no additional consumer protections.

Additionally:

- Stanwell is disappointed that despite overwhelming industry support to repeal the PEMM Act, it has been extended.

[7] *National Electricity Rules* clause 3.8.22A.
[8] Stanwell Corporation Limited response to the Department of Climate Change, Energy, the Environment and Water consultation on Review of the effectiveness of the Prohibiting Energy Market Misconduct (PEMM) Act, 30 January 2025.

- Stanwell supports *Option 1: Retain current retail pricing provision and make no change (do nothing).*
- The proposed new cross-market manipulation tests risk capturing normal commercial behaviour and does not recognise the strong interaction between the physical and financial markets essential to efficient market functioning.
- In the absence of an option to repeal the PEMM Act provisions, Stanwell supports *Option 1: Spot market only with no changes to the current rules*. Section 46 of the CCA already provides adequate protections against misuse of market power, and expanding PEMM provisions would increase compliance burden without any clear benefit.
- Stanwell supports the winding down of the NEM Inquiry function, as legislated.
- Enforcement of the PEMM and Electricity Retail Code should remain with the ACCC to preserve regulatory expertise, continuity, and efficient use of resources.