National Seniors AUSTRALIA

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

Thank you for the opportunity to make a submission on potential improvements to the Prohibiting Energy Market Misconduct Act (PEMM Act).

National Seniors Australia (NSA) is the leading advocacy organisation for older Australians. Through our research and advocacy activities, NSA works to improve the wellbeing of all older Australians, including pensioners, part-pensioners, self-funded retirees, veterans, and carers.

Electricity prices are of particular concern at this time of cost-of-living pressure, especially for those on fixed incomes such as the Age Pension. This is exacerbated by the recent announcement that federal electricity rebates would not continue into 2026.

While NSA is supportive of enhanced consumer protections, such as applying the PEMM provisions when prices rise as well as fall or applying a new general requirement for “reasonable” pricing, we believe that significant and coordinated reform of the energy retail market is required to ensure that Australian households and businesses are not subject to unfair pricing. The energy sector is overrun by layers of complex and competing regulations for the delivery of what is an essential public good – all for limited benefit. Rather than having competition as a goal in itself, which has largely failed consumers, electricity regulatory frameworks should be guided by simplicity and efficiency.

Yours Sincerely

Chris Grice
Chief Executive Officer

Retail electricity pricing (consultation paper questions 7-11)

Under the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2019*, it is prohibited conduct in the electricity market for reasonable adjustments in the price of electricity to not be passed on to small customers where there are 'sustained and substantial' reductions in the cost of a retailer purchasing electricity, with exceptions.[1] While this prohibition is worthwhile, it has yet to be tested because electricity prices have risen since the Act was enacted.[2]

The consultation paper sets out three main options:

- Option 1: Keep the existing rules, only applying when costs to retailers decrease
- Option 2: Expand the rules so they are symmetrical, applying when costs increase or decrease
- Option 3: Introduce a requirement for 'reasonable' pricing

NSA agrees with the AER and ACCC existing consumer protections could be extended to apply symmetrically to include circumstances when costs increase and decrease. If enacted, consumers would simultaneously benefit from decreasing costs while also not being subject to excessive cost increases. As the consultation paper notes, this could particularly benefit customers experiencing financial hardship which may be vulnerable to "opportunistic pricing by electricity retailers".

However, NSA regard 'option 3', a new general requirement for "reasonable" pricing, as a potentially the superior option. This has multiple aspects, set out below.

Firstly, the electricity retailers are not operating in a perfectly competitive market. Instead, they are resellers of a commodity product sold by a single, highly regulated wholesaler. This gives them very little pricing power. Focussing on 'sustained and substantial' changes in their costs may just reflect the pass-through of pricing set further up the supply chain.

Secondly, by having a broader view of a "reasonable" price this would allow a fuller consideration of factors impacting consumers.

As part of a reasonable pricing option, the margins of retailers should be subject to scrutiny as a proxy for efficient pricing. Government should set, as part of the PEMM legislation, an acceptable margin variance, with penalties for retailers with excessively high margins and regulatory scrutiny of those with excessively low or negative margins.

[1] Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019 | Parliament of Australia
[2] Review into the effectiveness of the Prohibiting Energy Market Misconduct- Final Report | DCCEEW

Both of these extremes are of concern, high margins could indicate excessive price gouging, while low or negative margins raises questions about the ongoing financial viability of the retailer which would also impact consumers.

A previous ACCC National Electricity Market (NEM) report showed extreme increases in retail margins between 2022/23 and 2023/24.[3] For this period the average EBITDA (earnings before interest, tax, depreciation and amortisation) in dollars per customer across the NEM increased from $35 to $110, an increase of more than 200%. In some states the increase was higher, with EBITDA as a percentage of revenue in South Australian increasing from just over 4% to over 12%.

Unfortunately, the ACCC did not investigate which factors contributed to these increases, or if they have persisted, in the following reports but they should have.

This margin test could account for year-to-year variability by taking an average over a set timeframe, such as three or five years.

Regardless of which option to strengthen the PEMM is taken, significant work will be required to ensure the regulatory approach is workable and effective. At this stage we ask that the DCCEWW commits in principle to expanding protections, rather than keeping the PEMM as-is, with details set out and subject to future consultation.

More fundamental reform

While NSA is supportive of enhanced consumer protections, such as those proposed in the consultation paper, we are concerned that the regulatory environment is fragmentary and overly complicated with efficiency impacts negatively affecting the price of electricity.

As it is pointed out in the consultation paper, there is a range of separate regulatory changes ongoing, at different level of progress, all aimed at different aspects of the electricity market. These include:

[3] Inquiry into the National Electricity Market report - December 2024 | ACCC

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DCCEEW:

- Strengthening the Prohibiting Energy Market Misconduct provisions in the Competition and Consumer Act 2010 (this consultation)
- Solar Sharer Offer

AEMC:

- Accelerated roll-out of smart meters
- Real-time data for consumers
- Improving the application of concessions to bills
- Improving the ability to switch to a better offer
- The pricing review: Electricity pricing for a consumer-driven future

AER:

- DMO 2026/27

NSW Government:

- Requirement for explicit informed consent to demand tariff assignment
- Require designated retailers to offer flat rate tariff structures

Our concern is not that these changes are being considered, but that there appears to be limited coordination. In medicine this is called a cascade of intervention, where one change leads to further treatment, when a fundamentally different approach may have been required. This level of policy action to address concerns about pricing does not suggest a healthy system.

It seems that separate failures in the electricity market are each subject to a small fix, rather than undertaking substantial reform. The PEMM review represents a further worthy, though incremental, approach to regulation that does not address the root cause of rising prices.

We believe that a complete overhaul of the energy market regulatory framework, led by the Federal Minister for Energy and the DCCEEW, is required to put consumers at the centre of a simple and efficient energy market. This may require policy makers to question if consumers are best served by retail electricity competition in form but not in substance over an indistinguishable commodity.

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