

30 January 2025

Department of Climate Change, Energy, the Environment and Water  
GPO Box 3090  
Canberra ACT 2601

Submitted Via email: [PEMMReview@dcceew.gov.au](mailto:PEMMReview@dcceew.gov.au)

Dear Sir / Madam

**Re: Stanwell Corporation: consultation on Review of the effectiveness of the *Prohibiting Energy Market Misconduct (PEMM) Act*.**

Stanwell Corporation Limited (Stanwell) welcomes the opportunity to provide feedback to the Department of Climate Change, Energy, the Environment and Water's (DCCEEW) Review of the effectiveness of the Prohibiting Energy Market Misconduct (PEMM) Act<sup>1</sup>. Stanwell appreciates DCCEEW's proactive approach in organising a meeting to discuss the review directly with Stanwell on 8 January 2025.

Stanwell is a major provider of electricity to Queensland, the National Electricity Market (NEM) and large industry users throughout Australia. We are committed to providing reliable and affordable energy and supporting the changes in the energy market to achieve State and Commonwealth emissions reduction targets.

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

**Background:**

The PEMM Act, which came into effect on 10 June 2020 was designed with two primary objectives:

1. To ensure electricity retail, contract and wholesale markets are operating competitively, efficiently and to the benefit of consumers: and
2. To ensure that consumers realise the benefits of reduced supply chain costs, resulting from more effective competition, policy reform and other factors.

**1. Assessment Framework**

The Consultation paper notes "...the review acknowledges that drawing firm conclusions from quantitative analysis may be difficult due to the inability to isolate changes in market monitoring metrics resulting from the introduction of the PEMM Act."<sup>2</sup> Therefore, Stanwell believes the application of the proposed Assessment Framework to assess the effectiveness of the PEMM Act provisions to be problematic.

The dynamic nature of the energy market complicates this further, with continuous regulatory changes occurring since the introduction of the PEMM Act with the major changes including, the Retail Reliability Obligation; 30 to 5 minutes settlement; the AERs Default Market Offers; the Victorian Default Offer and the Wholesale Electricity Performance Report and Market Monitoring Guideline.

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<sup>1</sup> [Federal Register of Legislation - Treasury Laws Amendment \(Prohibiting Energy Market Misconduct\) Act 2019](#)

<sup>2</sup> [Review of the effectiveness of the Prohibiting Energy Market Misconduct \(PEMM\) Act 2019 \(Cth\) Consultation Paper](#)

In addition, because DCCEEW needs to incorporate “...*qualitative analysis informed by comprehensive public and targeted consultation across industry and interested stakeholders*” to compensate for the absence of quantitative data, a definitive answer as to the effectiveness of the PEMM Act in improving the benefit to consumers will be difficult due to the inherently subjective nature of stakeholder responses<sup>3</sup>.

## **2. Retail Market Prohibition**

Stanwell only holds retail electricity licenses for large customers. Stanwell is not impacted by the retail market regulations under the PEMM Act which relate to residential and small business customers only.

## **3. Contract Market Prohibition**

The electricity financial contract liquidity prohibition under section 153F of the PEMM Act, prevents generators from refusing to offer contracts, limiting or restricting offers to enter such contracts, or making offers in a manner that limits, restricts, or prevents acceptance if their purpose is to substantially lessen competition in any electricity market.

The AER's wholesale market monitoring and reporting functions were expanded in May 2024, increasing the AER's information on market participant behavior with the ability to collect contracts and contract related information, including Over the Counter (OTC) trades.<sup>4</sup> While there are limitations on the use of these expanded powers,<sup>5</sup> they are more than sufficient for the AER to determine whether wholesale market outcomes are reflective of effective competition and efficiency.

Stanwell also considers the PEMM Act provisions to be unnecessary as dealings in electricity financial products are already subject to regulation under Part 7.10, Chapter 7 of *the Corporations Act 2001* and the general provisions of the *Competition and Consumer Act 2010*.<sup>6</sup>

## **4. Spot Market Prohibition**

Under the PEMM Act, fraudulent, dishonest or bad faith conduct of corporations in the electricity spot market are covered under s153G and 153H respectively. These provisions are a less comprehensive restatement of Clause 3.8.22A of the *National Electricity Rules (NER)* <sup>7</sup> where market participant offers, bids and rebids must not be false or misleading otherwise tier 1 civil penalty provisions can be attracted.

Stanwell believes that sections 153G and 153H of the PEMM Act are covered by clause 3.8.22A of the NER and should therefore be left to expire on the sunset date.

## **5. Australian Competition and Consumer Commission NEM Enquiry Function**

The Australian Competition and Consumer Commission (ACCC) NEM inquiry function involves monitoring and reporting on prices, profits, and margins in the supply of electricity in the NEM. In addition, the AER has statutory obligations under Clause 3.13.7 of the NER to produce quarterly reports of significant price outcomes. Importantly, Clause 3.13.7 (iii) of the NER, enables any information potentially required and published in the ACCC NEM Inquiry Function to be requested by, and included in the AER's Quarterly Price Reports.

Given the substantial duplication and overlap of information being collected from market participants for the purposes of the ACCC NEM inquiry and the AER's Quarterly Price Reports, Stanwell believes that it would be sensible for the ACCC NEM Inquiry Function six monthly report to sunset on the 31 August 2025.

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<sup>3</sup> [Review of the effectiveness of the Prohibiting Energy Market Misconduct \(PEMM\) Act 2019 \(Cth\) Consultation Paper](#)

<sup>4</sup> The National Electricity Law set out in the schedule to the National Electricity (South Australia) Act 1996 (SA) Part 3, Subdivision 1A.

<sup>5</sup> The National Electricity Law set out in the schedule to the National Electricity (South Australia) Act 1996 (SA), s18EA.

<sup>6</sup> [Federal Register of Legislation - Competition and Consumer Act 2010](#)

<sup>7</sup> [NER Clause 3.8.22A: Offers, bids and rebids must not be false or misleading - AEMC Energy Rules](#)

**Conclusion:**

Stanwell believes that where the PEMM Act is duplicative of or has an unclear impact upon or relationship with other market specific regulation it should lapse. Furthermore, the concerns the PEMM Act was developed to address have been surpassed by the AER's statutory responsibilities for monitoring and reporting compliance in the energy market.

For these reasons Stanwell believes that:

- the PEMM Act should be repealed; and
- the ACCC's Electricity Pricing Enquiry should sunset.

Stanwell welcomes the opportunity to further discuss the matters outlined in this submission. Please don't hesitate to contact Brad Supple, Market Regulation Analyst via email at [Bradley.supple@stanwell.com](mailto:Bradley.supple@stanwell.com)

Yours sincerely



**Zi Ying Koh**

**A / Manager Market Policy & Regulatory Strategy**