

## Senate Economics Legislation Committee

### ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019

**Department/Agency:** Australian Competition and Consumer Commission

**Topic:** Retail Electricity Pricing Inquiry recommendations

**Date:** 30 October 2019

**Hansard page number:** 27

#### Question:

**Senator GALLACHER:** The inquiry that you mentioned began in March 2017?

**Mr Cosgrave:** Yes.

**Senator GALLACHER:** It began by identifying the root causes of high electricity prices across the entire electricity supply chain and has now made 56 recommendations detailing ways to fix that. Of those 56 recommendations, how many have been enacted?

**Mr Cosgrave:** If you want a precise number, I'd need to take it on notice. As with many reports and recommendations, some are implemented fairly readily. Perhaps the most obvious reflection of that in relation to this report would be the enactment of the default market offer. There are some that are taken up through other market processes. You'd be aware that, in the energy sector, we've got a range of bodies that consider recommendations of this sort, including the Australian Energy Market Commission, the Energy Security Board et cetera.

**Senator GALLACHER:** Perhaps you could take on notice how many have been accepted and implemented. I accept that they go to a wide variety of places for resolution.

**Mr Cosgrave:** I'm happy to provide that.

**Senator GALLACHER:** Could you give us a sense of the level of progress? Is it 30 per cent of 40 per cent?

**Ms Camilleri:** In our report that we published in August this year, from our current inquiry, in appendix B we go through all 56 recommendations and note the stage of progress in implementation of those recommendations. We have reported that some of them have been implemented, such as the default market offer that Michael mentioned. Others are progressing. A number of processes are in train at the moment. Some are being considered by the AEMC and some by the Energy Security Board, and they're in the process of considering those recommendations. Others are progressing but in a different form to the recommendations that we made in the previous inquiry. We note that. All that detail is in appendix B of our report, which is available on our website.

**Mr Cosgrave:** We're happy to supply that independently. That would be the documentation we'd supply.

#### Answer:

On 16 September 2019 the ACCC released its second report as part of its inquiry into the prices, profits and margins in the supply of electricity in the National Electricity Market. The report included Appendix B, summarising the progress of the 56 recommendations of the ACCC's Retail Electricity Pricing Inquiry. Please find Appendix B attached to this response.

## Appendix B: REPI recommendation progress

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
1	Prevent acquisitions that would result in greater than 20 per cent generation ownership	The National Electricity Law (NEL) should be amended to prevent any acquisition or other arrangement (other than investment in new capacity) that would result in a market participant owning, or controlling dispatch of, more than 20 per cent of generation capacity in any NEM region or across the NEM as a whole. The provision should be designed to prevent market participants circumventing the 20 per cent cap, including by way of ownership structure or contractual arrangements.	Progressing	In February 2019 the ESB consulted with stakeholders to inform its advice to the COAG Energy Council.	COAG Energy Council to consider advice from the ESB.
2	Divide Queensland generators into three similar portfolios and ensure they are separately owned	The Queensland Government should divide its generation assets into three generation portfolios to reduce market concentration in Queensland. The three portfolios should be of a similar size with a mix of generation assets to maximise competition in the wholesale market Once created, the Queensland Government should ensure that the three portfolios are separately owned and operated to maximise competition in the wholesale electricity market. The sale of any portfolios should be in line with recommendation 1.	Progressing but different to the REPI recommendation	In December 2018 the Queensland Government announced CleanCo, a third state-owned generator with a primarily renewable asset base. The Queensland Government has said it has no intention to sell any state-owned assets or structurally separate its generation assets.	CleanCo is expected to commence trading in the NEM by 31 October 2019.
3	Give the AER powers to address market manipulation	The NEL should be amended to provide the AER with powers to address behaviour which has the effect of manipulating the proper functioning of the wholesale market, together with the necessary investigation powers and appropriate remedies. The current market manipulation powers in respect of gas market supply hubs represent a good framework for equivalent powers in respect of the electricity market.	Progressing but different to the REPI recommendation	The Australian Government has signalled its intention to re-introduce the <i>Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018</i> (Cth) (the Bill) in 2019. The Bill introduces a new prohibition in relation to distorting or manipulating prices in the electricity spot market.	

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4	Underwrite investment in new generation capacity	<p>The Australian Government should operate a program under which it will enter into low fixed-price (for example, \$45–50/MWh) energy offtake agreements for the later years (say 6–15) of appropriate new generation projects which meet certain criteria. In doing so, project developers will be able to secure debt finance for projects where they do not have sufficient offtake commitments from C&amp;I customers for later years of projects. This will encourage new entry, promote competition and to enable C&amp;I customers to access low-cost new generation. The program should operate for at least a four-year period, with support provided for qualifying projects. To qualify, a project proposal must:</p> <ul style="list-style-type: none"> <li>- have at least three customers who have committed to acquire energy from the project for at least the first five years of operation</li> <li>- not involve any existing retail or wholesale market participant with a significant market share (say a share of 10 per cent or more in any NEM region)</li> <li>- be of sufficient capacity to serve the needs of a number of large customers</li> <li>- be capable of providing a firm product so that it can meet the needs of C&amp;I customers.</li> </ul>	Progressing but different to the REPI recommendation	<p>The Australian Government is establishing the Underwriting New Generation Investments program. The multi-phased program will be open over four years to June 2023.</p> <p>The Government received 66 submissions in response to registrations of interest for projects under the program.</p> <p>In March 2019 the Government shortlisted 12 projects including six renewable pumped hydro projects, five gas projects and one coal upgrade project.</p> <p>The shortlisted projects include every NEM region and represent a combined capacity of 3818 MW of new generation.</p> <p>The Government also announced that it will continue to engage with proponents of projects that have not made the shortlist but may meet the program’s objectives and eligibility criteria. The Government says this will support the development of a pipeline of mature projects that the Government can work with over the four year program.</p>	Program guidelines and delivery model to be developed by the Government.
5	Commit to the National Energy Guarantee (NEG)	<p>The NEG seeks to provide a settled policy framework under which new investment is incentivised in a way that enables achievement of the objective of reducing carbon emissions at low-cost while promoting investment in a manner that ensures demand for energy is met.</p> <p>The ACCC agrees that this is an important policy objective and, with the policy incorporating appropriate safeguards for competition in the contract market, recommends that governments commit to develop and implement the NEG.</p>	Progressing	<p>The Australian Government has implemented the reliability component of the NEG.</p> <p>The Retailer Reliability Obligation (RRO) came into effect on 1 July 2019. If the RRO is triggered, it will require retailers to demonstrate they are sufficiently contracted to meet their share of expected system peak demand.</p>	<p>AEMO to publish 2019 Electricity Statement of Opportunities , including a five-year Reliability Forecast by 15 August 2019.</p> <p>The AER is developing guidelines to support operation of the RRO over 2019-20.</p>

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6	Amend the NEL to require reporting of over-the-counter (OTC) trades	The NEL should be amended so as to require the reporting of all OTC trades to a repository administered by the AER. Reported OTC trades should then be disclosed publicly in a de-identified format that facilitates the dissemination of important market information without unintentionally revealing the parties involved. The requirement should be implemented to align with (or be eligible for) any OTC reporting requirements under the NEG. The AER, AEMC and AEMO should have access to the underlying contract information, including the identity of trading partners.	Progressing but different to the REPI recommendation	<p>This recommendation is related to recommendation 41 which recommended the AER's wholesale market monitoring should be expanded to include the contract market, including the OTC repository.</p> <p>The ESB is considering recommendation 6 together with recommendation 41. A consultation paper on Recommendation 41 was released in February 2019 to inform its advice to the COAG Energy Council.</p> <p>The AEMC indicated in the market making draft rule determination that it will work with market bodies and participants to address information gaps, including:</p> <ul style="list-style-type: none"> <li>• to improve the transparency of the OTC market</li> <li>• to enhance the AER's powers to monitor market liquidity, including the compliance of participants in the Australian Stock Exchange (ASX) market making scheme, and with reference to the structural characteristics of each jurisdiction.</li> </ul>	<p>Marking making rule change expected completion 16 September 2019.</p> <p>ESB to reconsider following completion of the market making rule change request (recommendation 7).</p> <p>COAG Energy Council to consider advice from the ESB.</p>

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7	The AEMC should introduce market-making obligations in SA for vertically integrated retailers	<p>The AEMC should introduce market-making obligations in SA, which require large, vertically integrated retailers to make offers to buy and sell specified hedge contracts each day, in order to boost hedge market activity. The parameters of a market-making obligation should have regard to:</p> <ul style="list-style-type: none"> <li>– the size of the SA market</li> <li>– the distribution of generation ownership in the region</li> <li>– the benefits to market liquidity and efficiency of regular trading activity</li> <li>– the burden of the requirements on obligated entities</li> <li>– any impact on the incentives of intermittent generators to invest in firming technology.</li> </ul> <p>After an appropriate period of time (for example, after two years) the mechanism should be assessed for its effect on market activity, liquidity and risk to determine if it should be continued, amended or removed in SA and, potentially, extended to other NEM regions.</p>	Progressing but different to the REPI recommendation	<p>The AEMC is considering a rule change request for voluntary market making obligations across the NEM. The AEMC has proposed in its draft determination not to make a rule to introduce additional market making schemes in the NEM because a number of initiatives are already underway that should increase contract market liquidity.</p> <p>On 1 July 2019 the ASX commenced a voluntary market making scheme to the Electricity Futures market with at least two obligated parties agreeing to market making contracts in each region across the NEM.</p> <p>The RRO commenced from July 1 and includes a Market Liquidity Obligation (MLO) to enhance market liquidity and pricing transparency in retail and wholesale electricity markets. For example, if the RRO is triggered by AEMO, a MLO will require the largest participants to offer to buy and sell contracts with all participants in the region. The AER will have powers to monitor compliance with the MLO.</p> <p>In SA, the minister also has the ability to trigger the RRO and thus the MLO process within SA.</p> <p>The <i>Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2018</i> proposes a new prohibition on generators withholding or limiting their offers for electricity contracts with the purpose of substantially lessening competition in the market; and a power for the Treasurer to direct participants to provide market making services.</p>	<p>AEMC rule change process expected completion 16 September 2019.</p> <p>The Government has indicated it intends to re-introduce the Bill in 2019.</p>
8	Shorten timeframes for retailer notification of customer transfers	AEMO amend its rules and procedures so that losing retailers are only given a loss notification on the actual date of transfer of financial responsibility for the customer to the new retailer. This will limit the opportunity of 'losing' retailers to conduct 'save' activity before a customer transfer has taken place.	Progressing	<p>Recommendations 8 and 9 are being considered together in a rule change request to reduce customers' switching times.</p> <p>The COAG Energy Council jointly tasked AEMO and the AEMC with improving processes surrounding customer transfers.</p> <p>On 24 May 2019 AEMO submitted a rule change to the AEMC proposing a high level model and associated rule changes to enable customer transfers to be completed within two days of the cooling-off period expiring. The requirement in the current transfer process for the losing retailer to be given advanced notice would also likely be removed.</p>	AEMC draft determination – September 2019.

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9	Speed up customer transfers between retailers	The AEMC should make changes to speed up the customer transfer process, for example by enabling customers to use self-reads of their electricity meters. This will ensure that customers move to new offers quickly and will limit the time available for 'losing' retailers to conduct 'save' activity.	Progressing	See recommendation 8.	
10	Do not reintroduce limited merits reviews	The ACCC supports the removal by the Australian Government of limited merits review of AER revenue decisions. Limited merits review of AER decisions should not be reinstated in the future.	Implemented	In August 2018 the COAG Energy Council affirmed that the Limited Merits Review Scheme, which has been repealed, should not be reinstated.	
11	State governments should write down network assets	<p>The governments of Queensland, NSW and Tasmania should take immediate steps to remedy the past over-investment of their network businesses in order to improve affordability of the network.</p> <p>With appropriate assistance from the Australian Government, this can be done:</p> <ul style="list-style-type: none"> <li>• in Queensland, Tasmania and for Essential Energy in NSW, through a voluntary government write-down of the regulatory asset base</li> <li>• in NSW, where the assets have since been fully or partially privatised, through the use of rebates on network charges (paid to the distribution company to be passed on to consumers) that offset the impact of over-investment in those states.</li> </ul> <p>Such write-downs would enhance economic efficiency by reducing current distorting price signals. The amount of the write-downs and rebates should be made by reference to the estimates of overinvestment by the Grattan Institute, and should result in at least \$100 a year in savings for average residential customers in those states.</p>	No progress		

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12	The AER should be given the power to monitor the effect of write-downs on retail prices	The AER should be given the power to monitor the effect of the write-downs and rebates on network charges effectively faced by retail customers.	No progress		
13	Amend the National Electricity Rules (NER) to allow stranded asset costs to be shared	The NER should explicitly allow for a process whereby network assets may be stranded and the costs of that stranding is shared between users and networks. The AEMC should determine the definition of 'stranding' and how the costs of 'stranding' can be shared.	No progress		

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
14	Accelerate the take up of cost-reflective network pricing	<p>The ACCC considers that steps should be taken to accelerate the take up of cost-reflective network pricing. Governments should agree to mandatory assignment of cost-reflective network pricing on retailers, ending existing opt-in and opt-out arrangements. Mandatory assignment of the network tariff should apply for all customers of a retailer that have metering capable of supporting cost-reflective tariffs (that is, a smart or interval meter).</p> <p>Retailers should not be obligated to reflect the cost-reflective network tariff structure in their customers' retail tariffs, but should be free to innovate in the packaging of the network tariff as part of their retail offer.</p> <p>Given the potential for negative bill shock outcomes from any transition to cost-reflective network tariffs should retailers pass these network tariffs through to customers, governments should legislate to ensure transitional assistance is provided for residential and small business customers. This assistance should focus on maximising the benefits, and reducing the transitional risks, of the move to cost-reflective pricing structures. This includes:</p> <ul style="list-style-type: none"> <li>– a compulsory 'data sampling period' for consumers following installation of a smart meter</li> <li>– a requirement for retailers to provide a retail offer using a flat rate structure</li> <li>– additional targeted assistance for vulnerable consumers.</li> </ul> <p>Demand tariffs, which charge retailers based on their customers' maximum demand during pre-determined typical system peak times, represent an appropriate structure for the initial mandatorily assigned network tariffs. This tariff structure provides a balance of the objectives of cost reflectivity, simplicity and price certainty. We note that the extent to which cost-reflective tariffs can be introduced is limited to the extent that a retailer's customers have smart (or interval) meters. We therefore note the importance of recommendation 15 in achieving outcomes in this area.</p> <p>Governments should appropriately fund communication campaigns around the benefits of cost-reflective pricing and smart meters to build community acceptance and awareness of individual and community wide benefits, as well as customer awareness of their rights.</p>	Progressing	<p>In December 2018 the COAG Energy Council noted the AER's approach in regulatory determinations to increase the uptake of cost reflective pricing.</p> <p>There are initiatives underway to promote network tariff reform. This includes the progressive introduction of more flexible network pricing which is broadly aligned with the deployment of smart metering infrastructure and distributed energy resources under the AER's tariff structure statement process at each network reset.</p> <p>The AER is also facilitating discussions between networks, retailers and consumer groups (and market bodies) to get broader agreement on the need and urgency for tariff reform, including promoting tariff trials between networks and retailers.</p> <p>This recommendation is related to recommendation 56 which acknowledges that targeted assistance programs may be needed to assist businesses adversely impacted by the transition to more cost-reflective network tariffs.</p>	

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15	Support the take up of smart meters	<p>The ACCC considers that steps should be taken to support the take up of smart meters, and ensure customers receive the benefits of this technology. In particular:</p> <ul style="list-style-type: none"> <li>– governments should regularly audit the rollout of smart meters to ensure: <ul style="list-style-type: none"> <li>- the rollout continues at an acceptable pace</li> <li>- that no gaps emerge in respect of customers' ability to access meters</li> <li>- that consumers do not experience problems with the smart meters that are installed.</li> </ul> </li> <li>– the AER should require retailers, as a part of their market performance reporting, to report on their smart meter community and customer engagement strategy to ensure retailers are delivering the expected customer benefits associated with smart meters, and meeting community expectations in how the rollout is undertaken</li> <li>– the AER should require retailers, as a part of their hardship program, to include policies on how they will support customers with smart meters in payment difficulty through targeted advice or services</li> <li>– jurisdictions should remove regulatory requirements that limit the benefits and full functionality of smart meters.</li> </ul>	Progressing	<p>The AEMC introduced a maximum timeframe for meter installations through a rule change which commenced in February 2019.</p> <p>The AEMC has plans to extend its smart meter monitoring program to include the general rollout of smart meters across the national grid. The AEMC is developing an approach to understand challenges and opportunities linked to the spread of smart meters.</p> <p>One of the AER's compliance and enforcement priorities for 2019-20 is supporting the transition to metering contestability to ensure consumer and market benefits are delivered. The AER has also started reporting on smart meter installations and complaints through its quarterly and annual retail market performance reporting.</p>	
16	Transfer responsibility for setting network reliability requirements to the AER	<p>Responsibility for setting network reliability requirements should be placed on the AER or other NEM market body, based on a value of customer reliability (VCR) methodology. The responsible market body must ensure changes to requirements are in line with customer preferences on affordability.</p>	Implemented	<p>The AEMC finalised a rule change to make the AER responsible for calculating VCR estimates. This rule requires the AER to develop a VCR methodology and calculate the first VCR estimates under that methodology by 31 December 2019.</p> <p>The AER is undertaking a review of value of VCR methodology.</p> <p>IPART has been directed by the Premier of NSW to review electricity distribution reliability standards, taking into account the VCR values to be published by the AER as a result of this VCR review.</p>	The AER's VCR decision will be published in December 2019.

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17	Simplify regulatory framework and continue to minimise framework complexity when amending rules	<p>The AEMC should:</p> <ul style="list-style-type: none"> <li>- as part of its annual network regulatory framework review, examine areas which can reduce the complexity of the existing framework and the time needed to implement changes</li> <li>- in amending any rules, be required to minimise additional complexity in the overall rules framework.</li> </ul>	Progressing	<p>In August 2018 the COAG Energy Council agreed to act quickly to progress this recommendation.</p> <p>The annual Electricity Network Economic Regulatory Framework Review examines whether the economic regulatory framework is robust, flexible and continues to support the efficient operation of the energy market in the long term interest of consumers.</p> <p>For the 2019 review the AEMC has two work streams.</p> <ol style="list-style-type: none"> <li>(1) continuing to implement the Finkel recommendation on network incentives.</li> <li>(2) regulatory sandboxes.</li> </ol> <p>The AEMC's draft report released on 11 July recommends that a regulatory sandbox be introduced. A regulatory sandbox is a simplified regulatory framework within which innovative technologies and business models can be trialled. The AEMC has proposed three new tools to facilitate proof-of-concept trials:</p> <ul style="list-style-type: none"> <li>• an innovation inquiry service, to provide guidance and feedback and help businesses get trials up and running quickly where they are feasible under current laws and regulation</li> <li>• a new regulatory waiver power for the AER so they can temporarily exempt trials from existing rules where this is creating a barrier</li> <li>• a new AEMC trial rule change process that can quickly and temporarily change existing rules or temporarily introduce a new rule of limited application to allow a trial to go ahead.</li> </ul>	The Final Report on the AEMC review is expected in September 2019.

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18	AEMC consider moving more of the framework out of regulations and into AER guidelines	To further assist with reducing the complexity of the rules and improving the timely adaptability of the framework, consideration should be given by the AEMC as part of its ongoing reviews of the NER to areas where the NER can be amended to make greater use of AER guidelines, rather than the codification of detailed regulatory assessment methodologies and processes within the NER. The AER should be able to initiate reviews of its guidelines to ensure they evolve with market developments and best regulatory practice. This additional flexibility will mean that regulatory proposal assessment methodologies are able to be kept up to date without always needing a rule change process. Guidelines could only be developed within the scope of the rules and in accordance with the processes set out in the rules. The AEMC could consider the impact on the overall framework of any changed or new guidelines as part of its annual network regulatory framework review.	No progress	In August 2018 the COAG Energy Council agreed to act quickly to progress this recommendation.	
19	Remove government specific charges that do not relate to the provision of network services	Governments should remove jurisdictional specific costs (taxes) that do not relate to the provision of network services. For example, Victoria should remove the easement land tax included in AusNet Services' transmission network costs.	No progress		
20	The AER should have more flexibility in making regulatory determinations	The NER should be amended to allow the AER more flexibility in undertaking the process of making regulatory determinations. This should allow for streamlined and more efficient assessment of network costs and allow the framework to adapt to the changing role of networks in providing electricity to consumers. Greater flexibility would allow the AER to better take into account any agreements between customers and networks, and use processes that are better aligned with the quality of the proposal, reducing regulatory burden on businesses and consumers. This in turn will incentivise networks to better engage with their consumers, improving engagement and consumer outcomes.	Progressing	The AEMC considers these issues through its annual Electricity Network Economic Regulatory Framework Reviews. In its 2019 review approach paper, the AEMC advised that it will continue to monitor and liaise with the COAG Energy Council on potential responses to this recommendation, so that it can respond appropriately to any COAG decisions and referrals.  In June 2017 the AER, Energy Networks Australia (ENA) and Energy Consumers Australia (ECA) launched a joint initiative called 'New Reg' to explore ways to improve sector engagement and identify opportunities for regulatory innovation. The goal of this initiative is to ensure that customers' preferences drive energy network businesses' proposals and regulatory outcomes.  AusNet Services is conducting the trial of the New Reg process in the development of its regulatory proposal for the 2021-25 period.	The Final Report on the AEMC review is expected in September 2019.

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21	Third parties should be able to offer demand response directly into the wholesale market	<p>In relation to wholesale demand response, a mechanism should be developed for third parties to offer demand response directly into the wholesale market. Design of the mechanism should commence immediately, building on work undertaken in the AEMC’s Reliability Frameworks Review.</p> <p>The mechanism should:</p> <ul style="list-style-type: none"> <li>- promote competition through allowing the widest range of businesses to directly offer demand response services</li> <li>- not allow retailers to limit the ability of their customers to engage a third-party demand response provider (to the extent it is not inconsistent with the retail contract)</li> <li>- ensure load and generation response are valued appropriately based on the benefit they provide to the wholesale market</li> <li>- limit technical requirements placed on the customer that may inhibit take up or scope of these services (for example, requirements for multiple meters at the customer site).</li> </ul>	Progressing	<p>The AEMC has commenced consultation on three rule change proposals from the SA Government, Public Interest Advocacy Centre (PIAC) and the Australian Energy Council (AEC) seeking to implement a wholesale demand response mechanism.</p> <p>The AEMC’s draft determination proposes to allow third parties other than retailers to offer demand response directly into the wholesale market.</p>	The AEMC’s final determination is expected in November 2019.

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22	Promote greater network utilisation of demand response	<p>In relation to network demand response:</p> <p>The AER, in undertaking the revenue determination process, should include a more explicit focus on assessing the efficient use of non- network expenditure. This should involve a robust assessment of a network business’s actual and proposed non-network expenditure, including a comparison of the overall proportions of non-network expenditures against the network’s capital expenditure, and benchmarking across businesses. Further, consultation by the AER and networks through the process should include engagement with third-party demand response providers.</p> <ul style="list-style-type: none"> <li>– Distribution businesses should apply to the AER for early application of the new Demand Management Incentive Scheme (DMIS) (ahead of their next regulatory determination) to bring forward incentives for greater use of demand response. The DMIS and Demand Management Innovation Allowance (DMIA) should also be extended to transmission businesses.</li> <li>– The AEMC should consider in its annual review of the electricity network economic regulatory framework whether network assets are being used efficiently to provide benefits in addition to distribution services (for example, as a substitute for generation in the wholesale, Reliability and Reserve Trader (RERT) or Frequency Control Ancillary Services (FCAS) markets). This assessment should explore whether: <ul style="list-style-type: none"> <li>- clarification is needed of what services can be provided directly by network businesses in contestable markets</li> <li>- there are any aspects of the existing framework or technical barriers that prevent network assets being used to provide efficient non distribution services</li> <li>- the shared asset arrangements provide for a reasonable share of value extracted from the provision of non-distribution services flowing to customers</li> <li>- it is appropriate for some non-distribution services (such as voltage control) to be obtained from network assets under direction from AEMO rather than procured through competitive markets.</li> </ul> </li> </ul>	Progressing	<p>The AEMC is currently consulting on a rule change request that would require the AER to develop a DMIS and DMIA to apply to transmission networks.</p> <p>With regard to distribution businesses:</p> <ul style="list-style-type: none"> <li>• The AER has approved applications from AusNet Services, Energy Queensland, Ausgrid and Endeavour for early application of the DMIS.</li> <li>• United Energy also applied for early application of the DMIS in June 2019 for starting the new scheme in November 2019.</li> <li>• All distributors have applied to implement the new DMIS and DMIA in the next regulatory period.</li> </ul>	AEMC’s draft report on DMIS and DMIA for transmission network service providers (TNSPs) – 26 September 2019.

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23	Improving regulatory certainty around stand-alone power systems	In relation to stand-alone systems, immediate work should be undertaken to identify and implement changes to the NEL and NER, and the National Energy Retail Law (NERL) and National Energy Retail Rules (NERR), to allow distributors to develop off-grid supply arrangements for existing customers or new connections where efficient. These arrangements should: <ul style="list-style-type: none"> <li>- subject customers under these arrangements to equivalent costs and protections as if they were connected to the grid, including in respect of the obligation to supply, reliability and security of supply</li> <li>- be adopted on a consistent basis across the NEM, replacing current state-based regulation of off-grid systems</li> <li>- be operated under a contestable framework, with distribution businesses restricted to operating them through ring-fenced entities.</li> </ul>	Progressing	The AEMC is undertaking a review of the regulatory frameworks for stand-alone power systems (SAPS). <p>There are two priorities – Priority 1 and Priority 2.</p> <p>Priority 1 is to develop a national framework to facilitate the transition of grid-connected customers to SAPS supply provided by the current Distribution Network Service Provider, as well as a mechanism for the transition of grid-connected customers to third party SAPS supply.</p> <p>Priority 2 is to develop a national framework for the ongoing regulation of third party led SAPS.</p>	Final report for priority 2 – 31 October 2019.
24	Abolish the SRES by 2021	The SRES should be wound down and abolished by 2021.	No progress		
25	States should absorb costs from premium solar feed-in tariff schemes	To reduce the costs associated with premium solar FiT schemes: <ul style="list-style-type: none"> <li>– any costs remaining from such schemes should be borne by state governments through their budgets, as Queensland has done for the next three years, rather than being recovered through charges to electricity users, and this should be done on a permanent basis where:</li> <li>– a premium solar FiT scheme has finished, as is the case in NSW, the collection of charges previously used to pay FiTs through network premiums should also end</li> <li>– ongoing scheme eligibility rules should be reviewed and tightened to ensure that costs of these schemes are minimised.</li> </ul>	Progressing	The Queensland Government agreed to pay for the costs of its premium FiT scheme (Solar Bonus Scheme) for three years from 2017-18 to 2019-20.	

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26	Victoria should join the National Energy Customer Framework (NECF)	Victoria should join the NECF to streamline regulatory obligations on retailers in the NEM and reduce retailers' costs to serve. In any interim period before joining the NECF, Victoria should take steps to harmonise its regulatory approach with the NECF.	No progress		
27	States should review NECF derogations to apply consistent framework	Each NECF jurisdiction should review its derogations from the NECF and unwind any derogations that are not based on jurisdiction-specific characteristics or needs that cannot be met by NECF-wide rules.	No progress		
28	Future derogations from the NECF should be limited	Future derogations from the NECF should be limited to situations where there are jurisdiction-specific needs that cannot be addressed by a NECF-wide rule change.	No progress		
29	Make end of contract notices consistent with end of benefit notices	The requirements for notices sent by retailers to customers prior to the end of a contract should be consistent with the new requirements for expired benefit notices.	No progress	In August 2018 the COAG Energy Council agreed to act quickly to progress this recommendation.	

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
30	Introduce the default market offer	<p>In non-price regulated jurisdictions, the standing offer and standard retail contract should be abolished and replaced with a default market offer at or below the price set by the AER.</p> <ul style="list-style-type: none"> <li>– Designated retailers, as defined in the NERL, should be required to supply electricity to consumers under a default offer on request, or in circumstances where the consumer otherwise does not take up a market offer.</li> <li>– The default offer should contain simple pricing, minimum payment periods, and access to bill smoothing and paper bills.</li> <li>– The AER should be given the power to set the maximum price for the default offer in each jurisdiction. This price should be the efficient cost of operating in the region, including a reasonable margin as well as customer acquisition and retention costs.</li> <li>– The default offer should be used by retailers in all circumstances where a standing offer is currently used. This includes circumstances where a consumer has moved into a premises but has not contacted the retailer, where a consumer has not selected a market offer before the expiry of a market contract, and where a consumer is switched through a retailer of last resort event.</li> </ul>	Implemented	<p>The Australian Government implemented recommendations 30, 32, 49 and 50 through a mandatory code under the <i>Competition and Consumer Act 2010</i>.</p> <p><i>The Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019</i> (the Electricity Retail Code) came into force on 1 July 2019.</p> <p>The Electricity Retail Code applies to all retailers that supply electricity to small customers in the distribution regions of NSW, SA and SEQ. Under the Electricity Retail Code, standing offer prices must not exceed a reference price set out in the AER's DMO determination.</p> <p>On 30 April 2019 the AER published its Final Determination on DMO prices for 2019-20. It has commenced work on the 2020-21 DMO. As outlined in the Electricity Retail Code, the AER will make their next Determination by 1 May 2020.</p> <p>The Victorian Government also introduced the VDO (which came into force on 1 July 2019) in the Victorian retail market.</p>	<p>AER to make a DMO determination for 2020-21 by 1 May 2020.</p> <p>ESCV to publish a draft decision in September 2019 for the VDO tariffs to apply from 1 January 2020.</p>
31	Apply the CDR to the electricity sector	The application of the CDR to the electricity sector should be pursued as a priority under the CDR framework regulated by the ACCC. Consumers and their authorised representatives should have access to at least historical consumption data, product data, meter data and customer data.	Progressing	<p>In February 2019 the ACCC consulted on three data access models for the CDR to apply in the energy sector.</p> <p><i>The Treasury Laws Amendment (Consumer Data Right) Bill 2019</i>, the legislation that will underpin the CDR, was passed by both houses of Parliament on 1 August 2019.</p>	The ACCC will publish its position paper on its preferred data access model for the energy sector.

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
32	Discounts should be advertised against an AER reference bill	<p>If a retailer chooses to advertise using a headline discount claim it must calculate the discount from the reference bill amount published by the AER.</p> <ul style="list-style-type: none"> <li>– The AER should publish a reference bill amount for each distribution zone using AER bill benchmarks for medium (2–3 person) households and the price set by the AER for default offers (recommendation 30).</li> <li>– Retailers must calculate all discounts off the reference bill, including win-back and retention offers that have discounts attached to them.</li> <li>– Headline discounts in advertising must only include guaranteed (unconditional) discounts.</li> </ul>	Implemented	<p>The Australian Government implemented recommendations 30, 32, 49 and 50 through a mandatory code under the <i>Competition and Consumer Act 2010</i>.</p> <p>The Electricity Retail Code came into force on 1 July 2019.</p> <p>The Electricity Retail Code sets out how prices and discounts must be advertised, published or offered. The Electricity Retail Code requires retailers to compare their prices to the reference price, expressing the difference as a percentage of the reference price.</p> <p>In addition, the Electricity Retail Code prohibits retailers from presenting conditional discounts as the ‘headline’ or most prominent discount.</p>	
33	Limit conditional discounts to reasonable expected savings	<p>Conditional discounts should be no higher than the reasonable savings that a retailer expects that it will make if a consumer satisfies the conditions attached to the discount. Retailers should bear the onus of substantiating that the conditional discount is reasonable.</p>	Progressing	<p>In February 2019 the federal Minister for Energy submitted a rule change proposal to the AEMC.</p> <p>The proposed rule change will limit conditional discounts for both gas and electricity retail offers to reasonable costs. Under the proposed rule change, retailers will be required to substantiate to the AER that the costs are reasonable.</p> <p>The AEMC published a consultation paper on 1 August 2019 seeking submissions in relation to the rule change request on conditional discounting. Submissions close 19 September 2019.</p>	Draft determination - September 2019.
34	Introduce a mandatory code of conduct for comparator sites	<p>The Australian Government should prescribe a mandatory code of conduct for third-party intermediaries, which addresses the issues discussed in chapter 14 of the REPI final report. For example, offers should be recommended based on price benefit to the consumer rather than the size of the commission received by the third-party. The code should contain civil penalty provisions for any breaches.</p>	Progressing	<p>In August 2018 the then Treasurer announced that the Australian Government will accept the ACCC recommendation to establish a mandatory code of conduct for energy comparator websites.</p> <p>In April 2019 the NSW Parliament passed the <i>Fair Trading Legislation Amendment (Reform) Act 2018 No 65</i>. The new law requires that commissions and referral fees will need to be disclosed when providing advice to consumers. This will help ensure that all consumers are made aware of conflicts of interest arising from commissions and referral fees paid to third parties.</p>	

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
35	Allow consumers to provide consent for third parties to access their data	Consumers should be able to provide their consent to third-party intermediaries to give Explicit Informed Consent (EIC) on their behalf. The mandatory code (recommendation 34) should outline the process that third-party intermediaries must undertake to ensure that they give EIC in a way that satisfies retailers' obligations under the NERL.	No progress		
36	Provide funding to promote Energy Made Easy and the Victorian Energy Compare sites	The Australian Government and Victorian Government should commit to ongoing funding to raise awareness of the government-run comparator websites similar to the approach taken in New Zealand with the 'What's My Number' campaign.	Progressing	The Victorian Government Power Saving Bonus program offers \$50 for households that use the Victoria Energy Compare website from 2018-19 to 2019-20.	
37	Improve concession schemes	COAG should improve concession schemes across the NEM to ensure that, to the extent possible, there is a uniform, national approach to electricity concessions. Concession schemes should: <ul style="list-style-type: none"> <li>- be means tested to ensure that they are targeted at those most in need</li> <li>- include a fixed dollar amount to offset daily supply charges and a percentage discount to offset variable usage charges</li> <li>- only require consumers to reapply for concessions where this is necessary for the administration of the concession scheme.</li> </ul>	No progress		
38	Provide funding for energy literacy	In addition to existing funding, the Australian Government and the relevant state or territory government should fund (to a value of \$5 per household in each NEM region, or \$43 million NEM-wide, per annum) a grant scheme for consumer and community organisations to provide targeted support to assist vulnerable consumers to improve energy literacy. This grant scheme should be modelled on the approach taken by the Queensland Council of Social Services in administering the Switched on Communities program. This targeted support will assist vulnerable consumers to participate in the retail electricity market and choose an offer that suits their circumstances.	Progressing	There has been some progress in Victoria. Victoria's Home Energy Assist program helps households reduce their energy consumption and determine whether they are receiving the best deal on energy bills. The Energy Brokerage Pilot (funded by Victorian Government and run by Brotherhood of St Lawrence) offers assistance to find and switch to a better energy offer.	

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
39	The AEMC makes the hardship rule change	The hardship rule change, proposed by the AER, should be made. This would allow the AER to issue an enforceable hardship guideline that stipulates what retailers must include in hardship policies, and require retailers to amend their hardship policies to meet the guideline. This new rule should be a civil penalty provision.	Implemented	In November 2018 the AEMC made a rule to help customers who are having trouble paying their bills due to hardship. On 29 March 2019 the AER published its Final Customer Hardship Policy Guideline which came into force on 2 April 2019.	
40	Better price monitoring	Retail price monitoring should be streamlined, strengthened and appropriately funded to ensure greater transparency in the market, reduced costs, and allow governments to more effectively respond to emerging market issues. This should be done by: – COAG Energy Council agreeing to streamline price monitoring and reporting to the AER and the AER receiving all the necessary powers to obtain information from retailers – COAG Energy Council agreeing to extend price reporting for retail electricity services to small to medium business customers state governments agreeing to close their own price reporting and monitoring schemes in favour of an expanded and strengthened NEM-wide regime customers. A NEM-wide price reporting and monitoring framework be implemented which includes a combination of price monitoring with full EBITDA data (including standardised costs to serve, attract and retain consumers, and margins), and consumer expenditure surveys. This reporting should be done on a regular basis and include customer expenditure data, based on representative customer surveys and retailer billing and offer data, and be reflective of demographic information.	Progressing	This recommendation is related to recommendation 54 which recommended improved and streamlined price reporting for SMEs. The Treasurer tasked the ACCC with a NEM price monitoring inquiry from 2018-2025.	

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
41	Expand AER market monitoring to include the contract market	The AER's wholesale market monitoring should be expanded and appropriately funded to include monitoring, analysing and reporting on the contract market. This should include analysing the data reported to the OTC repository (recommendation 6), ASX data and data gathered directly from generators and retailers (including through the use of compulsory information gathering powers).	Progressing	<p>This recommendation relates to recommendation 6 which recommends all OTC trades be reported to the AER.</p> <p>The ESB is considering recommendation 6 together with recommendation 41. A consultation paper on recommendation 41 was released in February 2019 to inform its advice to the COAG Energy Council.</p> <p>The ESB has released a consultation paper to inform its advice to the COAG Energy Council and supported the ACCC's position. It proposed that the AEMC and AER work to draft law changes required to give effect to the AER's expanded role. The recommended law changes are to be provided to the COAG.</p> <p>The AEMC has considered the AER's expanded contract market monitoring role as part of the market making rule change request (recommendation 7). The AEMC has identified specific AER monitoring that should be enabled. This includes the ability of the AER to monitor compliance of participants in market making schemes, including the ASX market making scheme.</p> <p>The AEMC also proposes to work with the AER to determine whether large vertically integrated market participants should regularly report specific additional data to the AER.</p>	<p>Final determination on market making rule change request scheduled for 16 September.</p> <p>COAG Energy Council to consider advice from the ESB.</p>

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
42	Boost civil penalties to levels being considered for the ACL	<p>The COAG Energy Council should adopt all the suggested increased penalties to all civil penalty provisions listed in the consultation paper as a matter of priority, but instead of increasing the amount to \$1 million as proposed, increases should be to the same levels as parliament is currently considering for the ACL (\$10 million, three times the benefit gained or 10 per cent of turnover). The civil penalties suggested for increase to the maximum level across the NEL, NER, NERL and NERR relate to provisions listed in the consultation paper, such as:</p> <ul style="list-style-type: none"> <li>– information required for projected assessment of system adequacy</li> <li>– limitations on generators’ technical parameters— requirements only apply in certain circumstances</li> <li>– key requirements that generators must meet, regardless of the circumstances of their plant</li> <li>– the requirement to advise AEMO if a situation changes, and keep AEMO continuously informed obligations with respect to life support customers</li> <li>– wrongful disconnection by a retailer or network service provider requirement to implement hardship policy</li> <li>– explicit informed consent requirements for certain transactions.</li> </ul>	Progressing	<p>In August 2018 the COAG Energy Council agreed to act quickly to consider recommendations 42-46, relating to strengthening penalties and the AER’s investigative powers.</p> <p>In December 2018 the COAG Energy Council agreed to changes to the AER’s information gathering powers and reforms to civil penalty regimes.</p>	Legislation expected to be introduced into the SA Parliament by the end of 2019.
43	Boost the rebidding penalty to levels being considered by the ACL	<p>The rebidding rules that currently attract civil penalties of \$1 million should also be increased to the new higher level penalties. And the wholesale provisions, arising from the ACCC recommendations 1 and 3 associated with the conduct of participants under the NEL, should be increased to the same level as well, and these provisions should be subject to disgorgement (ill-gotten gain) penalties.</p>	Progressing	<p>In August 2018 the COAG Energy Council agreed to act quickly to consider recommendations 42-46, relating to strengthening penalties and the AER’s investigative powers.</p> <p>Refer to recommendation 42 for progress on this recommendation.</p>	
44	Allow the AER to seek community service and other orders	<p>The COAG Energy Council should amend the energy laws in line with the current recommendations before the COAG Energy Council to allow the AER to seek community service orders, probation orders, and adverse publicity orders, as well as enabling the AER to seek that a third-party is required to undertake a community service order.</p>	Progressing	<p>In August 2018 the COAG Energy Council agreed to act quickly to consider recommendations 42-46, relating to strengthening penalties and the AER’s investigative powers.</p> <p>Refer to recommendation 42 for progress on this recommendation.</p>	

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
45	Allow the AER to compel oral evidence	The COAG Energy Council should provide the AER with the power to require individuals to give evidence before it.	Progressing	In August 2018 the COAG Energy Council agreed to act quickly to consider recommendations 42-46, relating to strengthening penalties and the AER's investigative powers. Refer to recommendation 42 for progress on this recommendation.	
46	Introduce a lower penalty level for minor breaches of certain provisions	The COAG Energy Council should amend the energy enforcement regime to: - permit the AER to issue a new lower level infringement penalty (\$5000) for minor breaches of certain provisions for the NERL and NERR in addition to the current \$20 000 infringement penalty for current provisions. The COAG Energy Council should identify provisions most suited to lower levels of penalty or provisions directed at smaller market participants like exempt sellers - increase penalties for destroying evidence or providing false or misleading information to the AER under its information gathering powers to levels equivalent to the ACL.	Progressing	In August 2018 the COAG Energy Council agreed to act quickly to consider recommendations 42-46, relating to strengthening penalties and the AER's investigative powers. Refer to recommendation 42 for progress on this recommendation.	
47	COAG Energy Council to develop ministerial principles to guide consumer protection regulation	The COAG Energy Council should develop a set of ministerial principles that inform rule changes and ministerial decisions relating to consumer protection regulation, including requirements to: - reduce regulatory complexity where appropriate and focus regulation on consumer outcomes - ensure consumers have access to necessary information and resources to make informed decisions - promote fair and reasonable treatment of consumers in day-to-day engagement with market participants - reduce the risk of inequity in outcome between consumers in the retail market - ensure regulatory flexibility to support technological and market innovation - understand the needs of vulnerable consumers and supporting their increased participation in the market.	No progress	In August 2018 the COAG Energy Council agreed to act quickly to progress this recommendation.	

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
48	Review the NECF by 2022	The COAG Energy Council should undertake a review of the effectiveness of the NECF three years after the implementation of the inquiry recommendations and no later than four years after the release of the REPI final report.	No progress	In August 2018 the COAG Energy Council agreed to act quickly to progress this recommendation.	
49	Extend the default offer to SMEs	The ACCC's recommendation to abolish the standing offer and replace it with a 'default offer' at or below a price set by the AER (recommendation 30) should be extended to all generally available offers including offers for SME customers.	Implemented	<p>The Australian Government implemented recommendations 30, 32, 49 and 50 through a mandatory code under the <i>Competition and Consumer Act 2010</i>.</p> <p>The Electricity Retail Code came into force on 1 July 2019.</p> <p>The Electricity Retail Code applies to all retailers that supply electricity to small customers in the distribution regions of NSW, SA and SEQ. Under the code, standing offer prices must not exceed a price the (DMO determined by the AER. As outlined in the Electricity Retail Code, the AER will make their next Determination by 1 May 2020.</p> <p>The Victorian Government also introduced the VDO offer (which came into force on 1 July 2019) in the Victorian retail market.</p>	<p>AER to make a DMO determination for 2020-21 by 1 May 2020.</p> <p>ESCV to publish a draft decision in September 2019 for the VDO tariffs to apply from 1 January 2020.</p>
50	Discounts should be calculated from a reference bill for SMEs	<p>The ACCC's recommendation that all discounts must be calculated from a reference bill amount set by the AER (recommendation 32) should be extended to all generally available offers including offers for SME customers.</p> <p>The AER should develop a process for determining a benchmark for representative usage levels for an average SME customer. Similarly, restricting conditional discounts to the reasonable savings that a retailer expects to make if a consumer satisfies the conditions (recommendation 33) should also apply to offers for small business.</p>	Implemented	<p>The Australian Government implemented recommendations 30, 32, 49 and 50 through a mandatory code under the <i>Competition and Consumer Act 2010</i>.</p> <p>The Electricity Retail Code came into force on 1 July 2019.</p> <p>The Electricity Retail Code sets out how prices and discounts must be advertised, published or offered. The Electricity Retail Code requires retailers to compare their prices to the reference price, expressing the difference as a percentage of the reference price.</p> <p>In addition, the Electricity Retail Code prohibits retailers from presenting conditional discounts as the 'headline' or most prominent discount.</p>	

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
51	Governments and market bodies should develop specific electricity market awareness campaigns targeted at small business customers	Governments and market bodies should develop specific electricity market awareness campaigns targeted at small business customers. As part of these communication campaigns governments and market bodies should look at how it can channel marketing material through departments and agencies that service small business (such as small business representative groups) as well as existing channels of communication for energy.	No progress		
52	State and territory funding for SME electricity advice	State and territory governments should fund small business organisations to provide tailored retail electricity market advice. The fund should total \$10 million over three years and be awarded on a competitive basis to small business representative organisations providing information, tools and advice to small businesses on retail electricity choices. This program could support individualised bill checking services and development of tools to help small businesses make better energy choices.	Implemented	In March 2019, the Australian Government announced the \$11.7 million Business Energy Advice Program. The NSW Business Chamber was selected to run an energy advisory service (\$10 million over 3 years). The service began in July 2019 and provides advice to small businesses to help them reduce their power use and better manage their bills. The program will also develop an energy benchmarking tool (\$1.6 million) to help small businesses compare their energy use against similar businesses.	The energy benchmarking tool is expected to be launched in August 2019.
53	Review of SME experiences in two years	After two years, the COAG Energy Council should review industry efforts to assist small businesses experiencing payment difficulties. The review should take into account metrics like customer satisfaction, disconnection levels and average debt levels for small businesses. The review should determine if industry-led improvements are effective or whether changes to the NERL are necessary to require retailers to have a hardship policy for small businesses.	No progress	In August 2018 the COAG Energy Council agreed to act quickly to progress this recommendation.	
54	Streamlined price reporting for SMEs	The ACCC's recommendation in respect of improved and streamlined price reporting (recommendation 40) should include expanded reporting for small to medium business. Price reporting for businesses should be consistent with residential electricity price reporting and retailer cost reporting. The expanded and streamlined reporting process would also allow for disaggregated data on business customer switching trends, reporting on what SMEs are paying, and reporting on the kinds of offers they are on.	Progressing	This recommendation is related to recommendation 40 which recommended improved and streamlined retail price reporting. The Treasurer tasked the ACCC with a NEM price monitoring inquiry from 2018-2025.	

No.	Short-form recommendation	Full recommendation	Stage of progress	Notes	Next milestone
55	State and territory governments to promote energy ombudsmen schemes for SMEs	State and territory governments should provide resourcing toward promoting energy ombudsman schemes as a part of a broader marketing campaign to build small business engagement with retail electricity markets.	No progress		
56	Provide government assistance for SMEs transitioning to cost reflective tariffs	Governments should make available well targeted assistance programs including energy efficiency audits to assist the businesses most adversely impacted by the transition to more cost network reflective tariffs.	No progress	This recommendation relates to recommendation 14 which recommends steps to accelerate the take up of cost-reflective network pricing.	

## Senate Economics Legislation Committee

### ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019

**Department/Agency:** Australian Competition and Consumer Commission

**Topic:** Information gathering powers

**Date:** 30 October 2019

**Hansard page number:** 32

#### Question:

**Senator PATRICK:** I'll leave that where it is. In terms of the powers in this bill that would be given to the Australian Energy Regulator, I note that you have powers in respect of investigations. Have you examined the powers that are intended to be provided to the AER and made some assessment, noting that you are in the privileged position of already having those powers under inquiry?

**Ms Camilleri:** The provisions giving the AER additional powers are in relation to the specific functions that the AER has, including the functions of setting the default market offer. I think they sit separately to the ACCC's functions.

**Senator PATRICK:** Yes, but you have tremendous powers. They're equivalent to a royal commission in some sense, aren't they, in your investigation?

**Mr Cosgrave:** We have compulsory acquisition of documents and compulsory hearing powers if triggered by a direction from the Treasurer, yes.

**Senator PATRICK:** So it is a valid question to be able to say you are in a position to have experienced the use of these powers and the sort of information that is obtained by way of these powers. You were in a unique position, noting you are the only industry that is in that position, to be able to say, 'Knowing the AER's functions, we are of the belief that those powers would be most useful or, in fact, would not be useful at all.'

**Mr Cosgrave:** I think you are asking around the extent of AER's powers and that is not something I think we have specifically commented on. It is fair to say that their information-gathering powers are somewhat less at the commission than at the ACCC but that is just a statement of fact, both in terms of the general provisions of the act and the inquiry provisions of the act.

**Senator PATRICK:** So the question goes to a judgement. Someone like me may wish to move amendments, increase powers, decrease powers whether or not those provisions are set in the right place based on your unique knowledge of what you are able to get through the use of powers of compulsion.

**Mr Cosgrave:** Yes. They are essentially matters of policy advice and therefore not something I feel like—

**Senator PATRICK:** Maybe if you could then take that on notice to perhaps have a look at that?

**Mr Cosgrave:** I will take it on notice. I think they are matters of policy advice which may not be appropriate for us to comment on but I will take it on notice and consult further.

#### Answer:

The ACCC has information-gathering powers in relation to enforcing provisions of the *Competition and Consumer Act 2010* and in relation to its prices surveillance powers, which include price inquiries. These include the ability to summon a person to give evidence and to produce documents and to require a person to provide information and documents.

The AER has compulsory information gathering powers under the national energy laws, which are State laws, (for example, section 28 of the National Electricity Law), but these powers cannot be used in relation to its Commonwealth functions, which includes its powers under the *Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019* to set default market offer values. The proposed information gathering powers under Schedule 2 to the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019* are intended to assist the AER in performing these functions. Whether these powers are appropriate is a matter of policy.

## Senate Economics Legislation Committee

### ANSWERS TO QUESTIONS ON NOTICE

Inquiry into the Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019

**Department/Agency:** Australian Competition and Consumer Commission

**Topic:** ACCC proceedings following changes to section 46 of the *Competition and Consumer Act 2010*

**Date:** 30 October 2019

**Hansard page number:** 32

#### **Question:**

**Senator PATRICK:** Out of curiosity, since section 46 changed, has the ACCC commenced proceedings against any particular company, not necessarily within the electricity sector but more broadly?

**Mr Cosgrave:** You would think I would know this but it is not specifically within my province. With any new enactment, you recognise the temporal element—that you can only prosecute for offences that occur thereafter—and I think we indicated we are actively considering a number of matters. I have a little concern that I may have missed something recently. I apologise for having to take that on notice but I will, just to confirm that.

#### **Answer:**

The ACCC has not commenced proceedings against any company following changes to section 46 of the *Competition and Consumer Act 2010*.