

Article Information

Author: Kathryn Walker, Martin Lovell

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Resistance to the price surge: ACCC releases guidelines to assist market participants in compliance with new laws aimed at protecting consumers from excessive energy prices.

New laws creating electricity sector-specific prohibitions on certain conduct in electricity markets will come into effect 10 June 2020.

Following its [inquiry](#) into retail electricity pricing, the ACCC has published new [guidelines](#) to assist electricity retailers and generators in complying with new laws protecting consumers and businesses from excessive electricity prices. The laws, which will form a new part XICA in the *Competition and Consumer Act 2010* by the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2019* to prohibit:

- electricity retailers from charging small customers a price that has not been reasonably adjusted to reflect sustained and sustainable reductions in the retailer's underlying cost of procuring electricity (**retail pricing prohibition - section 153E**).
- electricity generators from restricting access to electricity financial contracts for an anti-competitive purpose (**electricity financial contract liquidity prohibition - section 153F**); and
- electricity generators from engaging in bidding practices for the supply of electricity in relation to an electricity spot market if those practices are fraudulent, dishonest or done in bad faith and/or are engaged in for the purpose of distorting or manipulating prices in that electricity spot market (**electricity spot market prohibitions - section 153G and 153H**).

ACCC investigation, enforcement and remedies

The ACCC will monitor compliance with the new laws and investigate alleged contraventions. If the ACCC considers that a person has engaged in conduct that contravenes the new laws, a range of formal enforcement tools are available to it, including public warning notices, infringement notices and commencing legal proceedings in the Federal Court to seek orders including injunctions and pecuniary penalties in the order of 10 per cent of annual turnover.

The laws introduce two new remedies for specific breaches that are available to the Treasurer on recommendation by the ACCC. These are:

- Contracting orders (section 153X): the Treasurer may order a body corporate to make offers to enter into electricity financial contracts in relation to conduct that breaches the electricity financial contract liquidity prohibition and the electricity spot market prohibition; and
- Divestiture orders (section 153ZB): in respect of conduct that breaches specific aspects of the electricity spot market prohibition, the Treasurer may apply to the Court for an order that a body corporate divest some or all of its assets.

There are a number of steps outlined in the Act that the ACCC must follow before making a recommendation to the Treasurer to make a contracting order or to apply for a divesting order.

The ACCC will expect market participants to comply with the new guidelines from the date they come into effect (10 June 2020). Now is the time to ensure that your representatives are clearly aware of the new requirements to avoid engaging in prohibited conduct relating to retail pricing, financial contract markets and electricity spot markets.



If you would like to know more about the new prohibitions and how they may impact you or would like to discuss some training, please contact one of our team.