



Our ref: 64737

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Dear Sir/Madam

### **ACCC guidelines on the Prohibiting Energy Market Misconduct Bill**

On 25 November 2019, Parliament passed the *Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Bill 2019 (the Bill)* introducing new prohibitions into the *Competition and Consumer Act 2010 (CCA)*. The new prohibitions will come into effect six months after the Bill receives royal assent.

The Australian Competition and Consumer Commission (**ACCC**) will be responsible for enforcing the new prohibitions. The ACCC will issue guidelines setting out the approach to our enforcement role.

The guidelines are intended to outline the ACCC's approach to the interpretation and enforcement of the prohibitions. The purpose of the guidelines will be to clarify the types of conduct and circumstances likely to cause the ACCC concern, and the types of conduct and circumstances that are unlikely to cause the ACCC concern. The guidelines will set out the views of the ACCC. Ultimately it will be a matter for the court to determine if particular conduct contravenes the CCA.

The purpose of this letter is to set out the process the ACCC will undertake to produce the guidelines and to initiate a consultation process on the guidelines.

#### **Indicative process and timeline for the guidelines**

The ACCC welcomes stakeholder input on the issues to be addressed in the guidelines. To facilitate this input, the ACCC will engage in a multi-staged consultation process.

First, interested parties will be invited to make a written submission setting out issues which they consider the ACCC should address in the guidelines for the new prohibitions. Following this, the ACCC will prepare draft guidelines. The draft guidelines will be released for consultation. The ACCC also intends to hold forums on the draft guidelines and will provide further information on these events in the coming months. Feedback received on the draft guidelines will then inform the final guidelines.

The ACCC's guidelines will relate to Schedule 1 of the Bill only.

An indicative timeline of the ACCC's proposed process is provided in Table 1 below.

**Table 1: Indicative process and timeline**

<b>Time</b>	<b>Event</b>
25 November 2019	Passage of the Bill through Parliament
29 November 2019	Commence initial consultation process
Late November/Early December 2019	Bill receives royal assent. Six month time period until the amendments contained in Schedule 1 of the Bill come into effect
6 January 2020	Deadline for written submissions on initial consultation
February 2020	Draft guidelines issued
February – March 2020	Consultation on draft guidelines
April – May 2020	Finalisation and release of guidelines
Late May/Early June 2020	Amendments contained in Schedule 1 of the Bill come into effect six months after Bill receives royal assent

### **Request for submissions**

You are invited to make a submission on the ACCC's approach to guidelines.

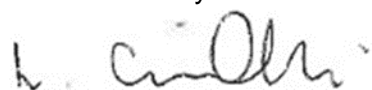
The ACCC considers that input from market participants is crucial to informing the ACCC's approach to enforcing the prohibitions. The ACCC has reviewed public submissions made to previous consultation processes on the Bill and understands the broader policy issues raised by stakeholders in those submissions. The ACCC now seeks detailed input on the issues set out in [Attachment A](#). Feedback on additional issues is also welcome.

We would appreciate receiving submissions by **Monday 23 December 2019**, and not later than **Monday 6 January 2020** to [electricitymonitoring@acc.gov.au](mailto:electricitymonitoring@acc.gov.au).

Submissions received by the ACCC will be placed on the ACCC's website, subject to any requests for exclusion. Please see the ACCC's publication [Guidelines for excluding information from the public register](#).

If you wish to discuss any aspect of this matter, please contact Michael Drake on 03 9658 6517 or [electricitymonitoring@acc.gov.au](mailto:electricitymonitoring@acc.gov.au).

Yours sincerely



Lyn Camilleri  
General Manager  
Electricity Markets Branch

## **Attachment A – List of issues for consultation**

### **1. Key concepts**

The ACCC seeks stakeholder input on:

- (a) Key concepts in the Bill that ACCC guidelines could meaningfully clarify and any views on appropriate interpretation in the context of the electricity industry, including precedents or overseas examples in support.

Key concepts includes:

- "reasonable adjustments"
- "sustained and substantial"
- "underlying cost of procuring electricity"
- "preventing, limiting, or restricting acceptance of ... offers"
- "fraudulently, dishonestly, or in bad faith"
- "distorting or manipulating prices"

### **2. Processes and remedies**

The Bill provides the ACCC with a number of new remedies and processes it must undertake in respect of those remedies. The ACCC seeks stakeholder input on:

- (a) What information regarding the ACCC's approach to these new remedies should be included in the guidelines?
- (b) What, if any, elements of the relevant processes should the ACCC seek to clarify in the guidelines, and why clarity is required?

### **3. Examples of conduct that is unlikely to breach the prohibitions**

The guidelines will include examples of conduct that the ACCC considers is unlikely to breach the prohibitions. To inform these examples, participants are invited to provide details of conduct that they consider would not breach the prohibitions, including an explanation of why these examples should not breach the prohibitions.

### **4. Examples of conduct that is likely to breach the prohibitions**

The guidelines will include examples of conduct that the ACCC considers is likely to breach the prohibitions. To inform these examples, participants are invited to provide details of conduct that they consider would contravene the prohibitions, including an explanation of why these examples breach the prohibitions.

### **5. Further guidance**

The ACCC welcomes input on any other issues not canvassed in this attachment that you consider should be included in the ACCC's guidelines.