

EXPOSURE DRAFT



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Competition and Consumer Legislation Amendment (Electricity Retail) Regulations 2019

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2019

David Hurley
Governor-General

By His Excellency's Command

Angus Taylor [**DRAFT ONLY—NOT FOR SIGNATURE**]
Minister for Energy and Emissions Reduction
for the Treasurer

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1 Name

This instrument is the *Competition and Consumer Legislation Amendment (Electricity Retail) Regulations 2019*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 4 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	
2. Schedule 1	The day after this instrument is registered.	
3. Schedule 2	1 July 2020.	1 July 2020
4. Schedules 3 and 4	The later of: (a) immediately after the commencement of the provisions covered by table item 2; and (b) the commencement of Schedule 2 to the <i>Treasury Laws Amendment (Prohibiting Energy Market Misconduct) Act 2019</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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Schedule 1 Amendments commencing day after registration

Part 1 Solar photovoltaic units

Schedule 1—Amendments commencing day after registration

Part 1—Solar photovoltaic units

Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019

1 Subsection 2(1) (table item 2)

Repeal the item.

2 Paragraph 6(3)(c)

Omit “network; or”, substitute “network.”.

3 Paragraph 6(3)(d)

Repeal the paragraph.

4 At the end of Division 3 of Part 1

Add:

8A Solar feed-in tariffs

For the purposes of this instrument, disregard any amount that an electricity retailer must pay (or credit) to a consumer for electricity generated by a solar photovoltaic unit of the consumer.

5 Section 11

Repeal the section.

6 Subsection 19(2)

Repeal the subsection (not including the heading).

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Amendments commencing day after registration **Schedule 1**
Demand tariffs and flexible tariffs **Part 2**

Part 2—Demand tariffs and flexible tariffs

Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019

7 Section 5

Insert:

demand tariff: a tariff for supplying electricity is a *demand tariff* if working out the amount a consumer is charged for the supply of electricity during a period at prices that include that tariff requires identifying, from among particular sub-periods of the period, the sub-period during which the consumer’s demand for the supply of electricity is the highest.

8 Section 5 (definition of *flexible tariff*)

After “a tariff”, insert “(other than a demand tariff)”.

9 Paragraph 6(3)(a)

Repeal the paragraph, substitute:

- (a) the prices for the supply include a demand tariff; or

10 Subsection 10(1)

Repeal the subsection (not including the note), substitute:

- (1) This section applies on a day in a financial year to an electricity retailer’s standing offer prices for supplying electricity in a distribution region to a small customer of a particular type if:
 - (a) a model annual usage; and
 - (b) a reference price;are in force for the year in relation to the supply.

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Schedule 1 Amendments commencing day after registration

Part 3 Other amendments

Part 3—Other amendments

Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019

11 Paragraph 8(a)

Omit “standing office prices”, substitute “standing offer prices”.

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Amendments commencing day after registration **Schedule 1**
Application of amendments **Part 4**

Part 4—Application of amendments

Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019

12 In the appropriate position in Part 4

Insert:

Division 2—Amendments made by the Competition and Consumer Legislation Amendment (Electricity Retail) Regulations 2019

21 Application of amendments—Schedule 1

The amendments made by Parts 1 and 2 of Schedule 1 to the *Competition and Consumer Legislation Amendment (Electricity Retail) Regulations 2019* apply:

- (a) to the extent the amendments relate to the operation of section 14 of this instrument—in relation to advertising that occurs on or after 1 July 2020; and
- (b) otherwise—in relation to financial years starting on or after 1 July 2020.

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Schedule 2 Amendments commencing 1 July 2020

Part 1 Main amendments

Schedule 2—Amendments commencing 1 July 2020

Part 1—Main amendments

Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019

1 Section 5 (after paragraph (c) of the note to the heading)

Insert:

(ca) personal information;

2 Section 5

Insert:

communicate, to a small customer of a particular type, prices for supplying electricity in a distribution region to a small customer of that type, means:

- (a) advertise or publish the prices; or
- (b) offer to supply electricity in the region to the small customer at those prices; or
- (c) notify (other than as mentioned in paragraph (a) or (b)) the small customer of the prices in writing.

3 Subsection 10(1)

Omit “on a day in a financial year to an electricity retailer’s standing offer prices”, substitute “to an electricity retailer’s standing offer prices on a day in a financial year”.

4 At the end of section 10

Add:

Record keeping

- (4) The electricity retailer must:
 - (a) make a record demonstrating how the retailer calculated the total amount mentioned in subsection (3) in relation to the standing offer prices; and
 - (b) keep the record for 6 years from the end of the financial year mentioned in subsection (1).

Civil penalty: 300 penalty units.

5 Subdivision B of Division 2 of Part 2 (heading)

Repeal the heading, substitute:

Subdivision B—Communicating prices to small customers

6 Section 12 (heading)

Omit “Advertisements etc.”, substitute “Communication to small customers”.

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Amendments commencing 1 July 2020 **Schedule 2**
Main amendments **Part 1**

7 Subsection 12(2)

Repeal the subsection, substitute:

Civil penalty provision

- (2) The electricity retailer must not communicate the offered prices to a small customer of that type unless the communication meets the requirements of subsections (3), (6) and (7).

Civil penalty: 300 penalty units.

8 Subsection 12(3)

Omit “advertisement, publication or offer”, substitute “communication”.

9 Paragraph 12(3)(b)

Omit “advertisement, publication or offer”, substitute “communication”.

10 Subsection 12(4) (definition of *lowest possible price*)

Omit “advertisement, publication or offer”, substitute “communication”.

11 Subsection 12(4) (note to the definition of *lowest possible price*)

Omit “advertisement, publication or offer”, substitute “communication”.

12 Subsection 12(5)

Repeal the subsection.

13 Subsections 12(6) and (7)

Omit “advertisement, publication or offer”, substitute “communication”.

14 After section 13

Insert:

13A Keeping records

Scope of this section

- (1) This section applies if, during a financial year:
- (a) an electricity retailer communicates to a small customer of a particular type the electricity retailer’s prices (the *offered prices*) for supplying electricity in a distribution region to a small customer of that type; and
 - (b) both:
 - (i) a model annual usage; and
 - (ii) a reference price;are in force for the year in relation to the supply.
- (2) The electricity retailer must:
- (a) make a record of the following:
 - (i) the content of the communication;
 - (ii) the date of the communication;

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Schedule 2 Amendments commencing 1 July 2020

Part 1 Main amendments

- (iii) how the retailer calculated or estimated the matters mentioned in paragraphs 12(3)(a), (b) and (c) and subsection 13(2) (whichever are applicable) in relation to the offered prices; and
- (b) keep the record for 6 years from the end of the financial year in which the communication is made.

Civil penalty: 300 penalty units.

- (3) The record is not required to contain:
 - (a) the name or contact details of a small customer; or
 - (b) personal information about a small customer who is an individual.

Communications based on a single template or script

- (4) The electricity retailer may make a single record under paragraph (2)(a) in relation to 2 or more communications of the offered prices (whether to the same small customer, or to different small customers of the same type in the same distribution region) if the communications are:
 - (a) made during the same financial year; and
 - (b) based on a single template or script; and
 - (c) substantially identical in content and form (apart from being made to different small customers).
- (5) A record made in accordance with subsection (4):
 - (a) is taken to meet the requirement of subparagraph (2)(a)(i) if it records so much of the contents of the communications as are identical; and
 - (b) is taken to meet the requirement of subparagraph (2)(a)(ii) if it records the first and last dates on which the communications were made.

15 Before section 14

Insert:

Subdivision C—Advertising conditional discounts

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Amendments commencing 1 July 2020 **Schedule 2**

Application of amendments **Part 2**

Part 2—Application of amendments

Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019

16 In the appropriate position in Division 2 of Part 4

Insert:

22 Application of amendments—Schedule 2

The amendments made by Part 1 of Schedule 2 to the *Competition and Consumer Legislation Amendment (Electricity Retail) Regulations 2019* apply in relation to financial years starting on or after 1 July 2020.

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Schedule 3 Amendments relating to determinations

Part 1 Main amendments

Schedule 3—Amendments relating to determinations

Part 1—Main amendments

Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019

1 Section 5 (definition of *model annual usage*)

Omit “(subject to section 18)”.

2 Section 5 (definition of *reference price*)

Omit “(subject to section 18)”.

3 Section 15

Repeal the section, substitute:

14A Purpose of this Part

This Part is made for the purposes of paragraph 44AH(1)(b) of the Act.

15 Functions of the AER

The AER has the function of determining the matters required or permitted by the rest of this Part to be determined by the AER.

4 Subsection 16(5)

Repeal the subsection.

5 Paragraph 17(5)(b)

Omit “made, or is repealed under section 42 (disallowance) of the *Legislation Act 2003*,”; substitute “made.”.

6 Section 18

Repeal the section.

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Amendments relating to determinations **Schedule 3**
Application of amendments **Part 2**

Part 2—Application of amendments

Competition and Consumer (Industry Code—Electricity Retail) Regulations 2019

7 In the appropriate position in Division 2 of Part 4

Insert:

23 Application of amendments—Schedule 3

The amendments made by Part 1 of Schedule 3 to the *Competition and Consumer Legislation Amendment (Electricity Retail) Regulations 2019* apply in relation to a determination made under paragraph 16(1)(a) or (b) of this instrument on or after the commencement of this section.

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Schedule 4 Amendment of the Competition and Consumer Regulations 2010

Schedule 4—Amendment of the Competition and Consumer Regulations 2010

Competition and Consumer Regulations 2010

1 Regulation 7AA

Omit “paragraph 44AH(b)”, substitute “paragraph 44AH(1)(b)”.