

Profiteering, price gouging and collusion during a crisis

If you are in receipt, directly or indirectly, of Northern Territory Government funds, you meet the definition of 'public officer' and your business or company meets the definition of 'public body' under the *Independent Commissioner Against Corruption Act*. That means ICAC can investigate any matters that may be reported in relation to your conduct while you work on projects involving those funds.

When retailers take advantage of a crisis by charging exorbitant prices for necessities, this is called 'price gouging'.

In the case of government stimulus packages such as the Northern Territory Government's \$30 million Home Improvement Scheme, some suppliers inflate prices to take unfair advantage of government efforts to maintain economic activity during the COVID-19 downturn.

Price gouging during a time of emergency is considered unconscionable conduct.¹

Unconscionable conduct is particularly harsh or oppressive. It may also be where one party knowingly exploits the special disadvantage of another. It needs to be more than just hard commercial bargaining; it must be against conscience as judged against the norms of society. Australian courts have found transactions or dealings to be unconscionable when they are deliberate, involve serious misconduct or are clearly unfair and unreasonable – Australian Competition & Consumer Commission

Conduct of this nature constitutes improper conduct under the ICAC Act. It includes corrupt conduct, misconduct, unsatisfactory conduct, and secondary conduct including attempt, complicity, incitement and conspiracy – section 9 of the ICAC Act

1. See sections 20 and 21 of the *Competition and Consumer Act 2010* (Cth).

The penalties for unconscionable conduct are:

For a corporation, the greater of:

- \$10 million; OR
- three times the value of the benefit received; OR
- where the benefit cannot be calculated, 10 per cent of annual turnover in the preceding 12 months.

For an individual:

- \$500 000 per breach.²

Collusion or price fixing, is illegal. Collusion occurs when competitors work together to fix prices. This reduces competition, increase prices and restricts consumer choice.

Sign of price fixing can include:

- quotes that are much higher than expected. This may indicate collusive pricing
- all suppliers raise prices simultaneously and beyond what seems to be justified
- prices submitted are much higher than previous quotes or published price lists

2. Queensland Government, Fair Trading <https://www.qld.gov.au/law/laws-regulated-industries-and-accountability/queensland-laws-and-regulations/fair-trading-services-programs-and-resources/fair-trading-latest-news/disaster-assistance/profitteering-price-gouging>

- quotes are missing detailed 'workings' to show how the price was calculated
- a new supplier's price is lower than the usual businesses quoting
- prices drop markedly after a new supplier quotes.³

Lying about the reason for price gouging is also illegal. If suppliers fabricate the reasons for inflated price rises, that is a violation of Australian Consumer Law.⁴

By engaging in profiteering, price gouging or collusion—quite apart from it being illegal—suppliers are wasting government funds intended to help Territoryans in a time of crisis.

3. Australian Competition & Consumer Commission <https://www.accc.gov.au/business/anti-competitive-behaviour/cartels/price-fixing>

4. ACCC quoted by Choice <https://www.choice.com.au/shopping/online-shopping/selling-online/articles/coronavirus-and-price-gouging>

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