Australian Government
Department of Climate Change, Energy, the Environment and Water

Australian Government
Department of Industry, Science and Resources

Competition and Consumer (Gas Market Code) Regulations 2023

Joint submission to the Senate Economics Legislation Committee

Department of Climate Change, Energy, the Environment and Water

Department of Industry, Science and Resources

25 August 2023

Contents

Introduction

On 8 August 2023, the Senate referred the Competition and Consumer (Gas Market Code) Regulations 2023 to the Economics Legislation Committee (the Committee) for inquiry and report by 6 October 2023.

The Department of Climate Change, Energy, the Environment and Water (DCCEEW) and the Department of Industry, Science and Resources (DISR) welcome the invitation to provide a submission to the Committee regarding this inquiry.

The submission is prepared jointly by DCCEEW and DISR.

Any references in this submission to section numbers are references to provisions of the Gas Market Code (the Code), unless otherwise stated.

Background and context

On 9 December 2022, the Prime Minister announced a suite of measures under the Energy Price Relief Plan[1] to shield Australian families and businesses from the worst impacts of expected energy price spikes caused by a confluence of international and domestic factors. These factors range from Russia's illegal invasion of Ukraine and the consequent pressure on global energy markets throughout 2022, cold weather, and planned and unplanned coal plant outages.

These measures included introducing a mandatory code of conduct for the wholesale gas market with a central objective of facilitating a well-functioning domestic east coast gas market with adequate supply at reasonable prices and on reasonable terms for both gas suppliers and buyers.

The recent energy crisis was unforeseen and its economic impact on Australia and comparable countries has been considerable.[2] European gas prices peaked at over $120/GJ in September 2022 with the Northeast Asia price also rising above $90/GJ in that month. As domestic and export gas markets are linked, international prices drove high wholesale gas prices in Australia, affecting Australian households and businesses. While international prices have since moderated, the ACCC's netback price analysis indicates that they will likely average around $20/GJ for the next two years and volatility in international energy prices will continue while global uncertainty remains.[3]

The Government responded to these pressures in December 2022 with a Temporary Price Order[4] on supply from existing fields and by launching consultations on a Mandatory Gas Code of Conduct (the Code) with price and conduct provisions. The Government also brought forward reforms to the Australian Domestic Gas Security Mechanism from 1 July 2023 to 1 April 2023, which is a last resort measure to ensure there is sufficient natural gas supply to meet the needs of Australian energy users. These measures work alongside the Heads of Agreement, a voluntary industry-led agreement that commits Australia's east coast LNG producers to offer uncontracted gas to the Australian market on competitive terms before exporting it, and ensure domestic gas customers are not paying more for the LNG exporters' gas than international customers.

Two rounds of public consultations were conducted in December 2022 and April 2023, to allow stakeholders to input to the Code design and subsequently to comment on the exposure draft of the Code. Consultation responses informed the final design of the Code.

The Competition and Consumer (Gas Market Code) Regulations 2023[5] was made under Part IVBB of the *Competition and Consumer Act 2010*[6] (CCA) and is intended to facilitate a well-functioning domestic wholesale gas market with adequate gas supply at reasonable

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[1] Energy Price Relief Plan | Prime Minister of Australia (pm.gov.au)
[2] For example, the closure of Weston Energy, accessible at Global gas crunch claims Weston Energy - Energy Source & Distribution (esdnews.com.au)
[3] https://www.accc.gov.au/inquiries-and-consultations/gas-inquiry-2017-30/lng-netback-price-series, accessed 22 August 2023
[4] *The Competition and Consumer (Gas Market Emergency Price) Order 2022*, accessible on the Federal Register of Legislation at https://www.legislation.gov.au/Details/F2022L01743
[5] See the *Competition and Consumer (Gas Market Code) Regulations 2023*, accessible on the Federal Register of Legislation at https://www.legislation.gov.au/Details/F2023L00994
[6] See the *Competition and Consumer Act 2010*, accessible on the Federal Register of Legislation at https://www.legislation.gov.au/Details/F2023L00994

prices and on reasonable terms for both suppliers and buyers. It applies in the east coast gas market.

The Code came into force on 11 July 2023 with a 2-month transitional period to allow companies to adapt to the new conduct provisions, record keeping and reporting obligations.

Objectives and design of the Code

Objectives

The objectives for the Code include:

- addressing bargaining power imbalances between producers and buyers in the domestic wholesale gas market;
- providing a framework to ensure that domestic prices reflect reasonable levels governed by Australian market fundamentals; and
- maintaining incentives for investment in supply sufficient to meet ongoing demand.

The Code has been established to help shield east coast gas consumers from volatile international gas prices and minimise the risk of supply shortfalls forecast by the Australian Energy Market Operator (AEMO) and the ACCC.

Application

Like the Temporary Price Order,[7] the Code is intended to cover new wholesale supply contract negotiations for regulated gas[8] between covered suppliers and buyers in the physically interconnected east coast gas market.[9]

The Code defines a covered supplier as:

- a regulated gas producer (as defined in sections 4 and 5);
- an affiliate of a regulated gas producer who has an agreement[10] in force for the supply of gas from the regulated gas producer or another affiliate of the regulated gas producer (affiliate supply agreement); or
- an affiliate of a regulated gas producer with no affiliate supply agreement in force but who:
    - has entered into another agreement to supply the gas acquired under an affiliate supply agreement to another person, and that other agreement is in force, or
    - intends to enter into another agreement to supply the gas acquired under an affiliate supply agreement to another person.

Relevant parts of the Code have also been aligned with the Temporary Price Order, including its geographic application to the interconnected east coast gas market. The Code does not apply to gas exchange transactions on declared wholesale gas markets or short-term trading markets, and anonymous trades or pre-matched trades on gas exchanges of three days or less. These markets exist to balance gas supply and demand requirements on a day-to-day

[7] *The Competition and Consumer (Gas Market Emergency Price) Order 2022*, accessible on the Federal Register of Legislation at https://www.legislation.gov.au/Details/F2022L01743
[8] See section 4 for definition.
[9] The Western Australia gas market is not included.
[10] Section 6(1)(b)(iii) of the Code states that this agreement must not be a mandatory government agreement.

basis and thus play a different role to the wholesale gas contract market (which accounts for around 90 per cent of all gas supplied in the east coast gas market).

The Code does not apply to the sale of gas by retailers and some other intermediaries, as the Code is targeted to the wholesale gas market. The Australian Energy Regulator (AER) has identified the recent 2022 retail price increases have largely been driven by rising wholesale commodity prices.[11] The application of the Code to wholesale level transactions is expected to deliver reasonable prices in new supply agreements which will flow through to retail supply contracts.

The ACCC, the Australian Energy Regulator (AER) and other market bodies will monitor how costs are passed through to retail customers. In its *June 2023 Gas Inquiry interim report*[12], the ACCC stated it will monitor retailer behaviour and has commenced a review into retailer selling practices and pricing as it relates to the supply of gas to commercial and industrial customers. The review is being conducted in two stages, with the ACCC expected to report on its findings on retailer selling practices in December 2023 and retailer pricing in December 2024.

Section 47 of the Code provides a deemed exemption to a gas buyer who intends[13] to export that gas from Australia in a liquid state. This is because the Code is intended to apply to gas offers and agreements in relation to regulated gas for domestic use and to help address bargaining power imbalances between producers and buyers in the domestic wholesale market.

Final Code design informed by public consultations

The development of the Code reflects extensive and constructive engagement with gas producers, gas users and retailers during the first half of 2023. The Code also incorporates the ACCC's advice to Government in December 2022[14], specifically, the ACCC:

- Recommended a targeted interim emergency price requirement and a strengthened and mandated gas Code.
- Suggested the introduction of the Code will help address bargaining power imbalances between producers and buyers. The Code sets minimum standards to support producers and buyers to arrive at agreements on reasonable terms, including price.
- Viewed the Temporary Price Order and the price anchor in the Code will put downward pressure on prices and lead to a more sustainable domestic gas market.

An initial consultation process was held between 9 December 2022 to 7 February 2023 on the Code as part of the Treasury's consultation on *Options to ensure the domestic wholesale gas market delivers for Australians*[15]. Over 60 submissions were received, which provided the Government with practical feedback from experiences implementing the previous Voluntary Code of Conduct, as well as observations on how to implement the proposed policy objectives in a manner that promoted policy certainty and stability.

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[11] See page 40 of AER's Annual retail markets report 2021-22, accessible at [Annual retail markets report 2021-22 (aer.gov.au)]
[12] https://www.accc.gov.au/system/files/Gas%20inquiry%20June%202023%20interim%20report%20%28July%202023%20update%29.pdf
[13] Intention is counted at the time an offer is made or an agreement is entered into.
[14] https://treasury.gov.au/sites/default/files/2022-12/c2022-343998-accc-advice-summary.docx
[15] https://treasury.gov.au/sites/default/files/2022-12/c2022-343998-cp_2.pdf

Feedback received through this consultation was considered carefully by the Government and informed the design of the Code. The Government conducted a second round of consultation between 26 April 2023 and 12 May 2023 to provide stakeholders the opportunity to comment on an exposure draft of the Code alongside consultation paper questions. The Government also held bilateral discussions with stakeholders as part of this consultation process.

Large gas producers were also asked to make submissions on the supply and price commitments they would be prepared to make in the context of the proposed exemption framework by 8 May 2023, to facilitate consideration ahead of the conclusion of the second consultation period.

Over 40 submissions were received from the second consultation, which informed the final design of the Code.

Key features of the Code

The Code aims to help shield east coast gas consumers from volatile international gas prices and minimise the risk of supply shortfalls forecasted by the AEMO and the ACCC. Like the Temporary Price Order, the Code is intended to cover new wholesale supply contract negotiations for regulated gas between covered suppliers and buyers in the physically interconnected east coast gas market.

Changes to the final code design addressed stakeholder feedback from the two rounds of consultation and were intended to provide additional flexibility for commercial negotiations, increase certainty for investors and, where appropriate, reduce compliance costs compared to the exposure draft of the Code.

Key elements of the Code include:

- A price anchor, initially set at $12/GJ, designed to anchor wholesale contract negotiations between non-exempt gas producers and buyers. The price anchor is subject to a review after two years or earlier if change in market conditions warrant.
- An exemptions framework to incentivise producers to commit more gas to the east coast gas market in the short term and facilitate new investment to meet ongoing demand in the medium term which supports the ability for east coast gas buyers to access gas at reasonable prices and on reasonable terms.
- Conduct provisions aimed at reducing bargaining power imbalances between producers and gas buyers and establishing minimum conduct and process standards for commercial negotiations.
- Reporting and transparency obligations to increase visibility of the amount of uncontracted gas to be produced, and when producers will bring that gas to the domestic market over the next 24 months.

Price Anchor

The Code prohibits a non-exempt covered supplier from entering an agreement to supply regulated gas, or supplying gas under such an agreement, at a price that exceeds a reasonable price (sections 26-27), initially set at $12/GJ. This price anchor is subject to review after 2 years unless the ACCC considers there has been a substantial change in market conditions or notified by the Energy and Resources Ministers jointly to undertake an earlier review.

The Government set the price anchor at $12/GJ based on ACCC advice and market analysis that it:

- balances the importance of more affordable gas prices and the need for gas producers to make a reasonable return to continue supplying;
- incentivises new investment to ensure the Australian gas market remains well-supplied, which will help market prices to remain affordable in the medium to long term;
- is supported by AEMO's estimates of gas production, covering the estimated costs of bringing new fields into production; and

- offers a more reasonable price in an east coast context than the international netback alternative which is forecast to average over $20/GJ in 2024.[16]

The price anchor applies to agreements made after the Code transition period concludes but does not apply to agreements to which the Temporary Price Order applies (section 7(8)). The Code also includes various deemed exemptions from the price provisions in the Code. A summary of theses deemed exemptions from the Code's price provisions are available on pages 3-6 of the *ACCC compliance and enforcement guidelines on the Gas Market Code*, accessible at: https://www.accc.gov.au/system/files/Gas%20mandatory%20code%20enforcement%20guide-publication.pdf.

Exemptions framework

The Code's exemptions framework contains a set of deemed exemptions and conditional Ministerial exemptions. The exemptions framework aims to incentivise covered suppliers to invest in and supply more gas to the domestic market in a manner that supports the ability of east coast gas users to access gas at reasonable prices and on reasonable terms.

Deemed exemptions from the Code's price rules automatically applies to small producers who produce less than 100 PJ of gas per year and from the commencement of the Code does not enter into, or varies[17], agreements to supply gas to persons who intend to export the gas.

Eligibility for a deemed exemption will be determined by the amount of counted gas that has been produced in the most recent calendar year (section 55). This will ensure that producers who drop below the 100 PJ threshold over time can benefit from the coverage of the deemed exemption, and those that increase production come within scope of the conditional exemptions framework. Suppliers are subject to ongoing obligations to inform the ACCC if their supplies drop below or increases beyond the threshold of 100 PJ (section 41) and if they enter into, or form the intention to enter into, an agreement to supply gas to a person that intends to export the gas. Small suppliers also do not lose their exemption if they enter into a volume neutral swap transaction with an LNG exporter.

Other deemed exemptions are covered in sections 45-54 of the Code. A summary of the deemed exemptions is available on pages 3-6 of the *ACCC compliance and enforcement guidelines on the Gas Market Code*, accessible at: https://www.accc.gov.au/system/files/Gas%20mandatory%20code%20enforcement%20guide-publication.pdf.

Covered suppliers who are ineligible for a deemed exemption may apply to the Energy Minister who, together with the Resources Minister, are responsible for making exemption decisions.

An exemption from the price provisions of the Code could be granted on conditions, based on commitments made by producers that support the adequate supply of gas to the domestic market at reasonable prices and on reasonable terms. Penalties will apply for non-compliance

[16] https://www.accc.gov.au/inquiries-and-consultations/gas-inquiry-2017-30/lng-netback-price-series, accessed 22 August 2023

[17] A variation for this purpose occurs where a supplier seeks "…to increase the amount of regulated gas to be supplied under the agreement…" see s55(2)(b) of the Code.

with the conditions of an exemption. In considering an exemption application, the Energy Minister and Resources Minister may consider matters set out in section 61(4).

Conduct provisions

The Code contains conduct provisions which set minimum requirements for how gas producers and buyers negotiate gas supply agreements. These seek to establish a more level playing field between covered suppliers and buyers when negotiating wholesale gas supply agreements. These provisions build on requirements in the voluntary code[18] developed by producers in consultation with gas users in 2021 but are supported by a compliance and enforcement regime overseen by the ACCC, including financial penalties for non-compliance.

The conduct provisions require gas producers and buyers to negotiate in good faith.[19]
If producers propose to issue an Expression of Interest (EOI) to three or more persons for gas supply contracts with a term of 12 months or more, the Code prescribes minimum timelines for how long the EOI is open for, and maximum timelines for producers to assess the EOI and notify the potential buyer of the outcome. It also requires the EOI to be published.

More generally, the Code prescribes minimum timeframe and content requirements for initial offers, final offers, and gas supply agreements with a term of 12 months or more.[20]

The Code also includes a set of material changed in suppliers' circumstances under which a covered supplier can withdraw or terminate a gas EOI, an initial offer or final offer (section 22). This provides flexibility for parties to terminate or withdraw from negotiations for a proposed agreement to supply regulated gas, ensure gas supply is not unintentionally quarantined during negotiations and clarify that covered suppliers are able to negotiate with multiple parties in relation to a given volume of regulated gas.

Reporting requirements

The Code introduces a range of information reporting and publication obligations to improve transparency about when offers to supply gas will be made to the market, and to support ACCC's compliance monitoring and enforcement activities.

To support negotiation of contracts for terms of 12 months or longer, covered suppliers must publish information about future planned EOI processes, and the volumes of uncontracted gas that a producer expects it will have available to supply over the next 24 months.
This includes how much of this gas the producer intends to offer into the east coast gas market through an EOI, initial offer, final offer and how much it intends to supply under an agreement.

The Code's reporting framework as set out in Part 6, is in place to ensure the ACCC has the information it needs to properly monitor and enforce producers' compliance with the Code's price rules and conduct provisions.

[18] Annex 3 of https://www.industry.gov.au/sites/default/files/2022-09/heads_of_agreement_the_australian_east_coast_domestic_gas_supply_commitment.pdf
[19] Part 5 of the Code refers.
[20] Part 3 and Division 1 of Part 4 of the Code refers.

What is the rationale for the Code?

Supply-demand balance outlook and wholesale gas prices

The Australian gas supply-demand balance has been tightening over recent years due to the reduction in reserves in southern states with a greater reliance now being placed on gas supply from Queensland. The supply-demand balance is expected to deteriorate further, with AEMO forecasting the risk of substantial declines in production in southern states from 2023.[21]

The domestic east coast gas market has become more susceptible to external shocks. For example, in 2022, the global pandemic recovery and the resource constraints resulting from the Russian invasion of Ukraine increased international demand for Australian gas (in the form of Liquefied Natural Gas). Concurrently, coal generator outages and lower renewable energy generation during winter 2022 increased demand for gas powered generation. This confluence of factors, amongst others, led to record high spot gas prices during mid-2022 and interventions by AEMO[22] to address supply adequacy risks in Victoria.

AEMO's 2023 Gas Statement of Opportunities (GSOO) notes that existing, committed and anticipated production is forecast to be inadequate to meet demand from 2027 and new investment is needed in the near term.[23] The ACCC's *January 2023 Gas Inquiry interim report* echoed AEMO's findings that without expansion in production, gas shortfalls are anticipated from 2027 arising from export and domestic demand even when there are greater shifts to electrification that are consistent with net-zero emissions targets.[24]

The ACCC's *June 2023 Gas Inquiry interim report* points to the need for significant volumes of gas to flow south in 2024 to avoid a shortfall in the southern states, due to declining gas reserves in the south and high levels of residential gas demand during winter.[25] However, the report also notes that sufficient gas should be available to meet demand in 2024 based on supply information provided by producers against AEMO's 2023 GSOO demand forecast for 2024.[26] The report shows a significant contrast between northern and southern supply outlooks, with a net shortfall of 44 PJ of gas shortfall forecast in the Southern states in 2024 and a surplus of 71-135 PJ[27] of gas in Queensland over the same period.[28]

While international gas prices have dropped in recent months compared to the historical highs that were reached in 2022, international prices are expected to remain higher than long term

[21] See section 3.2.2 of the 2023 AEMO GSOO: 2023 Gas Statement of Opportunities v1.2 (aemo.com.au)
[22] Declared Wholesale Gas Market – Intervention report October 2022: dwgm-intervention-report-19-jul-30sep-2022.pdf (aemo.com.au)
[23] See page 4 of AEMO GSOO 2023 report: https://aemo.com.au/-/media/files/gas/national_planning_and_forecasting/gsoo/2023/2023-gas-statement-of-opportunities.pdf?la=en
[24] See chapter 5 of the ACCC January 2023 Gas Inquiry interim report: https://www.accc.gov.au/system/files/Gas%20Inquiry%20-%20January%202023%20interim%20report%20-%20FINAL_0.pdf
[25] See pages 10-11 of the ACCC June 2023 Gas Inquiry interim report: FINAL June 2023 Interim Report(15371759.2) (accc.gov.au)
[26] The report finds that if LNG producers export all uncontracted gas in 2024, there is a potential supply surplus of 27 PJ. If LNG producers only export what they currently anticipate they will sell as LNG spot cargoes or additional sales, there could be a supply surplus of 90 PJ in 2024.
[27] Depending on how much uncontracted gas is exported by LNG producers
[28] Ibid.

trends, as reflected in the ACCC's short-term LNG Netback forward price based on forward Japan-Korea Marker (JKM) prices.[29]

- The most recent ACCC forward short-term LNG netback price, updated on 16 August 2023, is $13.93/GJ (for September 2023), a 15 per cent increase on the July 2023 netback price of $12.08/GJ.[30] While this price is significantly lower than the $48.91/GJ observed in August 2022, forward short-term netback prices are anticipated to increase to an average of $17.67/GJ for the remainder of 2023, and an average of $22.07/GJ for 2024.[31]

The intent of the Code's design is to help shield east coast gas consumers from volatile international gas prices and reduce the risk of supply shortfalls forecasted by the AEMO and ACCC. This is achieved by an initial price anchor of $12/GJ, which in conjunction with the exemption framework is expected to incentivise producers to commit more gas to the domestic market in the short term and provide certainty to facilitate new investment to meet ongoing demand in the medium term.

The Code provides small gas suppliers supplying the domestic market[32] with deemed exemptions from the price anchor. This provides eligible small gas suppliers with regulatory certainty, allowing them to enter into long-term foundational contracts with buyers for new supply without being constrained by the price anchor, hence increasing diversity and competition in domestic gas supply. The Code also allows covered suppliers who are not eligible for deemed exemptions the ability to apply for a conditional Ministerial exemption from the price anchor. Granting of conditional Ministerial exemptions will be based on commitments made by the applicant that support the adequate supply of gas to the domestic market at reasonable prices and on reasonable terms.

Producers have already offered indicative domestic supply commitments of at least 260PJ to 2027 under the Code. These indicative commitments are a significant contribution to reducing the risk of shortfalls as assessed by the ACCC and AEMO.

Imbalance in bargaining powers between gas producers and buyers

As documented throughout the ACCC's Gas Inquiry interim reports, many gas buyers and their representatives have indicated that negotiating gas supply contracts is a complex, confusing and opaque process and that a lack of competition between producers has contributed to a 'take it or leave it' approach by producers.

For example, the ACCC noted in its *July 2019 Gas Inquiry interim report*[33] that commercial and industrial (C&I) gas users had reported increasingly restrictive terms and conditions. The ACCC's *July 2020 Gas Inquiry interim* report noted consistent concerns raised by users when

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[29] The short-term LNG netback is an export parity price benchmark that reflects what a gas supplier can expect to receive for exporting its gas (calculated by taking Asian LNG spot prices and subtracting or 'netting back' the costs incurred by the supplier to convert gas to LNG and ship it to the destination port.
[30] LNG netback price series | ACCC, accessed 23 August 2023
[31] https://www.accc.gov.au/system/files/LNG%20netback%20price%20series%20-%20Public%20version%20-%2016%20August%202023.xlsx, accessed 24 August 2023
[32] Who satisfy the requirement under s55 of the Code
[33] See section 3.2 of July 2019 ACCC Gas Inquiry Interim report Gas inquiry July 2019 interim report | ACCC

negotiating gas supply agreements. Several users noted their request for supply resulted in no offers or they were given minimal time to accept an offer. Stakeholders also raised concerns about the opaqueness of EOI processes, and the lack of a breakdown of charges applied under gas supply agreements.[34] The ACCC continued to find in 2022 that C&I users reported that suppliers are unwilling to negotiate offers and are offering reduced flexibility in non-price terms.[35]

The ACCC also commissioned research on C&I gas users experiences the East Coast Gas Market, undertaken by external expert SEC Newgate.[36] The SEC Newgate report, which was informed by surveys conducted in June and July 2022, confirmed C&I users concerns about the functioning of the east coast gas market, citing a range of factors including rapidly rising gas prices, difficulty in securing reasonably priced supply, and a lack of market competition.[37] The ACCC's *June 2023 Gas Inquiry interim report*, which captured market conditions between September 2022 and February 2023, continued to find that most C&I gas users reported they are receiving fewer offers for supply, while some users have not been able to obtain any offers at all. The ACCC also noted some C&I users have reported a deterioration in contract flexibility and selling practices since the ACCC's last survey in August 2022, with a number noting that suppliers are less willing to negotiate on non-price terms such as contract length, take-or-pay provisions[38] and delivery points. The ACCC has noted that these observations underscore the importance of the Code.[39]

The Code's conduct provisions aim to reduce bargaining power imbalances between gas producers and buyers, by establishing minimum conduct and process standards for commercial negotiations. The Code places obligations on both suppliers and buyers to deal with each other in good faith.

Providing certainty to support investment in new gas supply and sustain reasonable domestic gas prices

The immediate actions taken under the Energy Price Relief Plan were designed to take some of the sting out of energy price rises, while not compromising the Government's commitment to its emissions reduction targets. The Energy Price Relief Plan, is expected to reduce inflation by 0.75 percentage points in 2023-24, including the impact of both the coal and gas price caps as well as the electricity rebates. In the 2023-24 Budget, retail electricity and gas prices were

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[34] See section 3.4 of July 2020 ACCC Gas Inquiry Interim report: Gas inquiry 2017-2025 Interim Report July 2020 (accc.gov.au)
[35] See chapter 3 of July 2022 ACCC Gas Inquiry Interim report: ACCC Gas Inquiry - July 2022 interim report - FINAL
[36] *Commercial and Industrial Customer Attitudes to the East Coast Gas Market,* 24 August 2022 Final version, prepared by SEC Newgate, accessible at: Commercial and Industrial Customer Attitudes to the East Coast Gas Market (accc.gov.au)
[37] Ibid.
[38] This means the per centage of the contracted gas that must be paid for by the buyer regardless of whether the buyer actually takes delivery of the gas.
[39] Page 12 of the ACCC June 2023 Gas Inquiry Interim Report, accessible at: https://www.accc.gov.au/system/files/Gas%20inquiry%20June%202023%20interim%20report%20%28July%202023%20update%29.pdf

forecast to rise by around 10 per cent and 4 per cent in 2023-24 respectively.[40] This compares to estimates prior to the announcement of the Government's Energy Price Relief Plan of 36 per cent and 20 per cent respectively.

As part of the Energy Price Relief Plan, the Code is designed to secure additional supply commitments to anchor prices at $12/GJ and to provide certainty to investors to support investment in new supply. These measures are intended to avoid projected shortfalls and to sustain reasonable domestic gas prices over the medium term.

The Government expects the benefits of the Code to flow through to downstream markets, including industrial users and retail electricity and gas. The Code works together with other policies being pursued by the Government to put downward pressure on energy prices.

[40] Budget 2023-24 - Budget Paper No. 1

Interaction between the Code and other Government policies

Interactions with the Competition and Consumer (Gas Market Emergency Price) Order 2022 (Temporary Price Order)

Like the Temporary Price Order,[41] the Code is intended to cover new wholesale supply contract negotiations for regulated gas[42] between covered suppliers and buyers in the physically interconnected east coast gas market.

The price anchor of the Code applies to agreements between non-exempt covered suppliers and buyers that are made after the transition period concludes on 11 September 2023. The price anchor does not apply to agreements to supply regulated gas to which Part 3 of the Temporary Price Order applies (or, if the Temporary Price Order has been repealed, to which that Part applied immediately before that repeal), that were entered into between 23 December 2022 and 22 December 2023.[43]

Interaction with other Government policies

The Code works alongside other gas market reforms including the Australian Domestic Gas Security Mechanism (ADGSM) and Heads of Agreement (HoA), incentivising the supply of more gas to the east coast gas market to address potential supply shortfall risks.

The ADGSM framework will remain a measure of last resort to ensure domestic supply security. If gas producers make sufficient commitments to the market under the Code, this will also decrease the risk of domestic shortfalls and reduce the likelihood of the ADGSM being activated.

The HoA is a voluntary, industry-led agreement between the Commonwealth and the east coast Liquid Natural Gas (LNG) exporters. Signed in September 2022, its objective is to ensure a sufficient supply of natural gas to meet the forecast needs of energy users within Australia. The Australian Government and east coast LNG exporters have agreed to the commitments until 1 January 2026.

An assessment of the future of the HoA will be made after enforceable supply commitments are finalised with gas producers holding exemptions under the Code. The Resources Minister will then reconvene with the signatories of the HoA to ensure it complements the Code's framework and remains fit for purpose.

[41] *The Competition and Consumer (Gas Market Emergency Price) Order 2022*, accessible on the Federal Register of Legislation at https://www.legislation.gov.au/Details/F2022L01743
[42] See section 4 for definition.
[43] See section 7(8) of the Code

Role of Government and the ACCC in the Code

Ministers have the following roles in relation to the Code:

- The Energy Minister has joint decision-making power with the Resources Minister to notify the ACCC to make a determination under the reasonable price provision (s29) of the Code.
- The Energy Minister and Resources Minister have the power to assess and make decisions on conditional Ministerial exemptions applications, variations, revocations and renewals under Part 8 of the Code. This includes the issuing of corresponding conditions notices and decisions notices.
    - The Treasurer and the Industry Minister are to be consulted before the Energy Minister and Resources Minister grant a conditional Ministerial exemption.
- The Energy Minister and Resources Minister can jointly cause a review of the Code, and jointly decide on who is qualified to undertake the review.

The Energy Minister and the Resources Minister can delegate all or any of their powers or functions under Part 8 of the Code to the Secretary or SES employees of their corresponding departments.

What role does the ACCC have in relation to the Code?

The ACCC has a monitoring of compliance and enforcement role, including:

- Record keeping and information collection and reporting under Part 6 of the Code[44], and associated information publication;
- Making a determination under the reasonable price provision of the Code;
- Enforcing compliance with the Code, including the conduct provisions, price rules, good faith requirements, record keeping, information and publication, compliance with conditions to conditional Ministerial exemptions, and obligations to provide additional or corrected information.

The ACCC has a number of enforcement options available to it, including issuing infringement notices for alleged contraventions of civil penalty provisions in the code, accepting court-enforceable undertakings or litigation.

The ACCC is providing further guidance on how it will monitor and enforce the Code. The ACCC published a Compliance and enforcement guidelines on the Code in August 2023. [45] The ACCC indicated it will separately publish information about the record keeping, reporting and publication obligations on the Code.[46]

[44] The ACCC can make a determination to specify additional matters for record keeping and specify timing and form of information provision under some sections of Part 6 of the Code.
[45] https://www.accc.gov.au/system/files/Gas%20mandatory%20code%20enforcement%20guide-publication.pdf
[46] ibid

Review of Code

Part 9 of the Code requires the Code to be reviewed after two years of operation. This can be sooner if the Government determines the market to be workably competitive or the Code is not achieving the Government's objective of adequate supply at a reasonable price and on reasonable terms.

This Code's review mechanism gives the Government the ability to refine, strengthen or disable aspects of the Code, including the price cap, if they are no longer relevant or not achieving the Government's objectives.

The reasonable pricing provision (s29) of the Code enables the ACCC to review the price anchor every two years, or earlier if the ACCC determines gas market conditions have shifted substantially, or if the Energy Minister and the Resources Minister jointly notify the ACCC to conduct a review. To make changes to the reasonable price, the ACCC must consult with the public about its reasons for considering that a price it specifies is a reasonable price.

The price anchor review process includes a requirement for the ACCC to publicly consult and includes a list of matters that the ACCC may consider when specifying a reasonable price for regulated gas.