

EXPOSURE DRAFT

2022

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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Competition and Consumer Amendment (Gas Market) Bill 2022

No. , 2022

(Treasury)

**A Bill for an Act to amend the *Competition and
Consumer Act 2010*, and for related purposes**

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1 **A Bill for an Act to amend the *Competition and***
2 ***Consumer Act 2010*, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Competition and Consumer Amendment (Gas*
6 *Market) Act 2022*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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Commencement information

| Column 1 | Column 2 | Column 3 |
|--------------------------|---|---------------------|
| Provisions | Commencement | Date/Details |
| 1. The whole of this Act | The day after this Act receives the Royal Assent. | |

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

7 **3 Schedules**

8 Legislation that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

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Amendments **Schedule 1**
Main amendments **Part 1**

1 **Schedule 1—Amendments**

2 **Part 1—Main amendments**

3 *Competition and Consumer Act 2010*

4 **1 Subsection 4(1)**

5 Insert:

6 *civil penalty provision of a gas market instrument* means a
7 provision of a gas market instrument that is a civil penalty
8 provision (within the meaning of the Regulatory Powers Act).

9 *gas market code* means regulations made for the purposes of
10 section 53L.

11 *gas market emergency price order* means an order in force under
12 section 53M.

13 *gas market instrument* means:

- 14 (a) a gas market code; or
15 (b) a gas market emergency price order.

16 *gas market provision* means any of the following provisions:

- 17 (a) a provision of Part IVBB;
18 (b) a provision of the regulations made for the purposes of a
19 provision of Part IVBB (including a gas market code);
20 (c) a provision of a gas market emergency price order;
21 (d) another provision of this Act to the extent that it relates to a
22 provision covered by paragraph (a), (b) or (c).

23 *judicial power* means the judicial power of the Commonwealth
24 referred to in section 71 of the Constitution.

25 **2 After Part IVBA**

26 Insert:

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Part 1 Main amendments

1 **Part IVBB—Gas market**

2 **Division 1—Preliminary**

3 **Subdivision A—Object and simplified outline**

4 **53 Object of this Part**

5 The object of this Part is to enhance the welfare of Australians
6 through the regulation of the Australian gas market, including
7 through limitations on increases in gas prices.

8 **53A Simplified outline**

9 The regulations may prescribe rules (known as gas market codes)
10 regulating conduct relating to supplying or acquiring gas.

11 Without limiting what may be included in a gas market code, a gas
12 market code may include rules that:

- 13 (a) regulate dealings between persons who supply or
14 acquire gas, including negotiations and agreements
15 between such persons; or
16 (b) require a person to supply gas in particular
17 circumstances; or
18 (c) deal with resolving disputes between persons who
19 supply or acquire gas.

20 The Minister may make orders (known as gas market emergency
21 price orders) regulating the terms (including prices) on which gas
22 is supplied or acquired.

23 Note: The terms on which gas is supplied or acquired may also be regulated by
24 a gas market code.

25 A person must not enter into a scheme for the purpose of avoiding
26 the application of a gas market code or a gas market emergency
27 price order.

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Amendments **Schedule 1**
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1 Consequences of contravening the gas market provisions include
2 civil penalties, infringement notices, warning notices and orders
3 under Part VI.

4 **Subdivision B—Definitions**

5 **53B Definitions**

6 In this Part:

7 **agreement** includes a contract.

8 Note: For the meaning of **contract**, see subsection 4(1).

9 **Australia**: see subsection 53E(2).

10 **constitutional corporation** means a corporation to which
11 paragraph 51(xx) of the Constitution applies.

12 **constitutional trade or commerce** means any of the following:

- 13 (a) trade or commerce among the States;
- 14 (b) trade or commerce between Australia and places outside
15 Australia;
- 16 (c) trade or commerce within a Territory, between a State and a
17 Territory, or between 2 Territories.

18 **expression of interest** means a non-binding expression of interest
19 or invitation issued for the purpose of ascertaining whether a
20 person is interested in acquiring or supplying a gas commodity.

21 **gas** includes gas in a liquid state.

22 **gas commodity** means:

- 23 (a) gas; or
- 24 (b) goods or services relating to supplying or acquiring gas.

25 **gas exchange** means an exchange or other trading system, platform
26 or facility (including an electronic exchange, system, platform or
27 facility) on which:

- 28 (a) expressions of interest relating to supplying or acquiring gas
29 commodities are issued, received or responded to; or

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1 (b) offers relating to supplying or acquiring gas commodities are
2 made, received or responded to; or

3 (c) agreements relating to supplying or acquiring gas
4 commodities are entered into.

5 **gas market conduct**: see section 53C.

6 **gas market matter**:

7 (a) subject to paragraph (b), means any of the following:

8 (i) gas market conduct;

9 (ii) the operation, application or administration of a gas
10 market instrument;

11 (iii) compliance (including non-compliance) with a gas
12 market instrument;

13 (iv) a failure to supply a gas commodity;

14 (v) a matter prescribed by the regulations for the purposes
15 of this subparagraph; and

16 (b) does not include a matter prescribed by the regulations for
17 the purposes of this paragraph.

18 **gas market participant**: see section 53D.

19 **offer** includes:

20 (a) a counter-offer; and

21 (b) a bid on a gas exchange.

22 **price** includes price structure.

23 **price dispute** means a dispute arising because gas market
24 participants do not agree to the terms (including terms relating to
25 price) on which they are to supply or acquire gas commodities.

26 **prohibited conduct**: a person engages in **prohibited conduct** if the
27 person engages in conduct that contravenes any of the following
28 provisions:

29 (a) section 53ZV;

30 (b) subsection 53ZW(1);

31 (c) a civil penalty provision of a gas market instrument.

32 **regulating** includes prohibiting.

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1 *related contravention*: see subsection 53ZO(9).

2 *scheme* means:

- 3 (a) any agreement, arrangement, understanding, promise or
4 undertaking, whether express or implied; or
5 (b) any scheme, plan, proposal, action, course of action or course
6 of conduct, whether unilateral or otherwise; or
7 (c) any combination of 2 or more things that are schemes
8 because of paragraph (a) or (b).

9 **53C Gas market conduct**

10 (1) For the purposes of this Part, *gas market conduct* is:

- 11 (a) conduct relating to supplying or acquiring a gas commodity,
12 or to the potential supply or acquisition of a gas commodity;
13 or
14 (b) without limiting paragraph (a)—any of the following:
15 (i) supplying or acquiring a gas commodity;
16 (ii) issuing or receiving an expression of interest in relation
17 to supplying or acquiring a gas commodity;
18 (iii) responding to an expression of interest in relation to
19 supplying or acquiring a gas commodity;
20 (iv) offering to supply or acquire a gas commodity, or
21 receiving such an offer;
22 (v) responding to an offer to supply or acquire a gas
23 commodity;
24 (vi) agreeing to supply or acquire a gas commodity;
25 (vii) refusing to do anything mentioned in subparagraphs (i)
26 to (vi);
27 (viii) operating a gas exchange;
28 (ix) conduct prescribed by the regulations for the purposes
29 of this subparagraph.

30 Note: For the meaning of *conduct*, see subsection 4(2).

31 (2) For the purposes of this Part, *gas market conduct* does not include
32 any of the following:

- 33 (a) conduct engaged in by the Minister, the Commission or a
34 member of the Commission;

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- 1 (b) exercising a power or performing a function conferred by a
2 gas market provision;
3 (c) conduct engaged in by a mediator or arbiter of a dispute
4 between gas market participants;
5 (d) conduct that is prescribed by the regulations for the purposes
6 of this paragraph.

7 (3) Subsection (1) has effect subject to subsection (2).

8 (4) To avoid doubt, for the purposes of this section, it does not matter
9 whether conduct occurs inside or outside Australia.

10 Note: See also section 53H (geographical application of the gas market
11 provisions in relation to supplies and acquisitions).

12 **53D Gas market participants**

13 (1) For the purposes of this Part, a gas market *participant* is any of the
14 following:

- 15 (a) a person who engages, or is capable of engaging, in gas
16 market conduct;
17 (b) a person who has previously been a gas market participant
18 under paragraph (a), (c) or (d);
19 (c) a body corporate that is related to a body corporate that is a
20 gas market participant;
21 (d) any of the persons who carry on a joint venture, if:
22 (i) subparagraph 4J(a)(i) applies to the joint venture; and
23 (ii) the joint venture is, or includes, gas market conduct;
24 (e) a person or body prescribed by the regulations for the
25 purposes of this paragraph.

26 Note: For the meaning of *related*, see section 4A.

27 (2) For the purposes of this Part, a person or body prescribed by the
28 regulations for the purposes of this subsection is not a gas market
29 *participant*.

30 (3) Subsection (1) has effect subject to subsection (2).

1 **Subdivision C—Geographical application**

2 **53E Extension to external Territories**

- 3 (1) The gas market provisions extend to every external Territory.
- 4 (2) A reference in the gas market provisions to *Australia* is taken to
- 5 include a reference to the external Territories.

6 **53F Extraterritorial operation**

7 The gas market provisions extend to acts, omissions, matters and

8 things outside Australia.

9 **53G Geographical application of offences**

10 Division 14 (Standard geographical jurisdiction) of the *Criminal*

11 *Code* does not apply in relation to an offence against the gas

12 market provisions.

13 Note: The extended geographical application that section 53F gives to the

14 gas market provisions applies to offences against the gas market

15 provisions.

16 **53H Geographical application—supplies and acquisitions**

- 17 (1) The gas market provisions apply in relation to supplying a gas
- 18 commodity if the supply:
- 19 (a) occurs in Australia; or
- 20 (b) is:
- 21 (i) to a person in Australia, including by means of
- 22 importing the gas commodity into Australia; or
- 23 (ii) by means of exporting the gas commodity from
- 24 Australia.
- 25 (2) The gas market provisions apply in relation to acquiring a gas
- 26 commodity if the acquisition:
- 27 (a) occurs in Australia; or
- 28 (b) is the direct result of a supply mentioned in subsection (1).

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1 **Subdivision D—Application to government entities**

2 **53J Gas market provisions bind the Crown**

- 3 (1) The gas market provisions bind the Crown in each of its capacities.
- 4 (2) However, the gas market provisions do not make the Crown:
- 5 (a) liable to a pecuniary penalty or to be prosecuted for an
- 6 offence; or
- 7 (b) subject to a remedy under Part VI (about enforcement); or
- 8 (c) subject to Part XIX (about search and seizure).

9 **53K Application to government entities**

- 10 (1) The gas market provisions apply in relation to an entity covered by
- 11 subsection (3) or (4):
- 12 (a) if the entity is not a person—as if the entity were a person;
- 13 and
- 14 (b) with the modifications (if any) prescribed by the regulations
- 15 for the purposes of this paragraph.

16 Note: See also subsection 53ZZA(1), which provides that the gas market

17 provisions apply in relation to gas market conduct only if it is carried

18 out by certain persons, or in certain circumstances.

- 19 (2) To avoid doubt, this section does not limit the ability of a gas
- 20 market instrument to limit the application of:
- 21 (a) the instrument; or
- 22 (b) a provision of the instrument; or
- 23 (c) a rule included in the instrument;
- 24 in relation to an entity covered by subsection (3) or (4).

25 *Commonwealth government entities*

- 26 (3) This subsection covers an entity that:
- 27 (a) is part of the Commonwealth; or
- 28 (b) is a Commonwealth entity (within the meaning of the *Public*
- 29 *Governance, Performance and Accountability Act 2013*); or
- 30 (c) is a body (whether or not incorporated) established for a
- 31 public purpose by or under a law of the Commonwealth; or

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- 1 (d) is:
2 (i) holding or performing the duties of an office established
3 by or under a law of the Commonwealth; or
4 (ii) holding an appointment made under a law of the
5 Commonwealth; or
6 (e) is prescribed by the regulations for the purposes of this
7 paragraph.

8 *State or Territory government entities*

- 9 (4) This subsection covers an entity that:
10 (a) is part of a State or Territory; or
11 (b) is a body (whether or not incorporated) established for a
12 public purpose by or under a law of a State or Territory; or
13 (c) is:
14 (i) holding or performing the duties of an office established
15 by or under a law of a State or Territory; or
16 (ii) holding an appointment made under a law of a State or
17 Territory; or
18 (d) is prescribed by the regulations for the purposes of this
19 paragraph.

20 **Division 2—Gas market instruments**

21 **Subdivision A—Gas market instruments**

22 **53L Regulations may prescribe gas market codes**

- 23 (1) The regulations may prescribe matters required or permitted by this
24 Act to be prescribed by a gas market code.

25 Note: For the matters that may be included in a gas market code, see
26 Subdivisions B and D and subsection 53ZJ(1).

- 27 (2) To avoid doubt, subsection (1) does not limit section 172 (power to
28 make regulations).

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Part 1 Main amendments

1 **53M Minister may make gas market emergency price orders**

2 (1) The Minister may, by legislative instrument, make an order
3 prescribing matters required or permitted by this Act to be
4 prescribed by a gas market emergency price order.

5 Note: For the matters that may be included in a gas market emergency price
6 order, see Subdivisions C and D and subsection 53ZJ(1).

7 (2) To avoid doubt, a gas market emergency price order may not do
8 the following:

9 (a) create an offence;

10 (b) provide powers of:

11 (i) arrest or detention; or

12 (ii) entry, search or seizure;

13 (c) impose a tax;

14 (d) set an amount to be appropriated from the Consolidated
15 Revenue Fund under an appropriation in this Act;

16 (e) directly amend the text of this Act.

17 (3) A gas market emergency price order that is inconsistent with the
18 regulations has no effect to the extent of the inconsistency, but a
19 gas market emergency price order is taken to be consistent with the
20 regulations to the extent that the gas market emergency price order
21 is capable of operating concurrently with the regulations.

22 *Consultation before making gas market emergency price orders*

23 (4) Before the Minister makes a gas market emergency price order, the
24 Minister must consult with the Commission.

25 (5) To avoid doubt, subsection (4) does not limit section 17 of the
26 *Legislation Act 2003*.

27 *Sunsetting of gas market emergency price orders*

28 (6) The Minister must not make a gas market emergency price order at
29 or after the time specified by subsection (8).

30 (7) A gas market emergency price order is repealed by force of this
31 subsection at the time specified by subsection (8), unless the gas
32 market emergency price order is repealed earlier.

- 1 (8) For the purposes of subsections (6) and (7), the time is the time
2 occurring:
3 (a) if any provision of any gas market emergency price order
4 commences during the 12 months starting on the
5 commencement of this section—12 months after the earliest
6 time any provision of any gas market emergency price order
7 commences; or
8 (b) otherwise—12 months after the commencement of this
9 section.

10 **53N Scope of gas market instruments**

11 *Gas commodities*

- 12 (1) A gas market instrument may limit the application of:
13 (a) the instrument; or
14 (b) a specified provision of the instrument; or
15 (c) a specified rule included in the instrument;
16 such that the instrument, the specified provision or the specified
17 rule applies only in relation to supplying or acquiring specified gas
18 commodities.

19 *Geography*

- 20 (2) A gas market instrument may limit the application of:
21 (a) the instrument; or
22 (b) a specified provision of the instrument; or
23 (c) a specified rule included in the instrument;
24 such that the instrument, the specified provision or the specified
25 rule applies:
26 (d) only in relation to parts of Australia in relation to which
27 specified requirements are met; or
28 (e) in relation to all parts of Australia other than parts of
29 Australia in relation to which specified requirements are met.

- 30 Note: A gas market instrument may specify a requirement for the purposes
31 of this subsection:
32 (a) by reference to the Minister, the Commission or another person
33 or body being satisfied that particular requirements are met; or
34 (b) by providing for the Minister, the Commission or another person
35 or body to make a legislative, notifiable or other instrument.

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1 See sections 53ZB and 53ZD.

2 (3) Subsection (2) is subject to section 53ZG.

3 Note: Section 53ZG provides that a gas market instrument must not give
4 preference to one State or any part thereof.

5 *Time*

6 (4) A gas market instrument may provide that:

7 (a) the instrument; or

8 (b) a specified provision of the instrument; or

9 (c) a specified rule included in the instrument;

10 applies:

11 (d) at a specified time; or

12 (e) during a specified period; or

13 (f) on an ongoing basis (subject to subsection 53M(7)).

14 (5) Subsection (4) does not limit Part 4 of Chapter 3 of the *Legislation*
15 *Act 2003*.

16 Note: Part 4 of Chapter 3 of the *Legislation Act 2003* is about sunseting of
17 legislative instruments.

18 *Interaction with Acts Interpretation Act 1901*

19 (6) This section does not limit subsection 33(3A) of the *Acts*
20 *Interpretation Act 1901*.

21 Note: Under subsection 33(3A) of the *Acts Interpretation Act 1901*, a gas
22 market instrument may make different provision with respect to
23 different matters or different classes of matters.

24 **Subdivision B—Matters that gas market codes may deal with**

25 **53P General**

26 A gas market code may include rules regulating gas market
27 conduct.

28 Note: The other provisions of this Subdivision and Subdivision D do not
29 limit this section: see section 53ZF.

1 **53Q Dealing with other gas market participants**

2 A gas market code may include any of the following rules:

- 3 (a) rules about how a gas market participant deals with another
4 gas market participant;
- 5 (b) rules requiring a gas market participant to deal with another
6 gas market participant in a specified manner, including in
7 good faith;
- 8 (c) rules about the matters that, for the purposes of a gas market
9 code, must, may or must not be taken into account in
10 determining whether a gas market participant is dealing with
11 another gas market participant in good faith;
- 12 (d) rules about the period within which a gas market participant
13 does something in dealing with another gas market
14 participant, including the period within which a gas market
15 participant responds to a request made by another gas market
16 participant.

17 **53R Negotiations, expressions of interest and offers**

18 *Negotiations*

- 19 (1) A gas market code may include rules about negotiations relating to
20 supplying or acquiring a gas commodity.

21 *Expressions of interest*

- 22 (2) A gas market code may include rules about expressions of interest
23 relating to supplying or acquiring a gas commodity, including:
- 24 (a) rules requiring a gas market participant to issue, or not to
25 issue, an expression of interest in specified circumstances; or
- 26 (b) rules about any of the following matters:
- 27 (i) matters to which regard is had before issuing an
28 expression of interest;
- 29 (ii) the manner in which an expression of interest is issued
30 (for example, in writing);
- 31 (iii) information that is included in an expression of interest
32 or made available in connection with an expression of
33 interest (including the manner in which the information
34 is made available);

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- 1 (iv) the content of an expression of interest;
- 2 (v) the period during which an expression of interest is
- 3 open;
- 4 (vi) responding to an expression of interest;
- 5 (vii) dealing with a response to an expression of interest,
- 6 including by providing information, making an offer or
- 7 entering into an agreement;
- 8 (viii) withdrawing an expression of interest.

9 *Offers*

- 10 (3) A gas market code may include rules about offers relating to
- 11 supplying or acquiring a gas commodity, including:
- 12 (a) rules requiring a gas market participant to make, or not to
- 13 make, an offer in specified circumstances; or
- 14 (b) rules about any of the following matters:
- 15 (i) matters to which regard is had before making an offer;
- 16 (ii) the manner in which an offer is made (for example, in
- 17 writing);
- 18 (iii) information that is included in an offer, or made
- 19 available in connection with an offer (including the
- 20 manner in which the information is made available);
- 21 (iv) the content of an offer;
- 22 (v) the period during which an offer is open;
- 23 (vi) responding to an offer;
- 24 (vii) dealing with a response to an offer, including by
- 25 providing information;
- 26 (viii) withdrawing an offer.

27 **53S Agreements**

- 28 (1) A gas market code may include rules about agreements relating to
- 29 supplying or acquiring a gas commodity, including:
- 30 (a) rules requiring a gas market participant to enter, or not to
- 31 enter, into an agreement in specified circumstances; or
- 32 (b) rules about any of the following matters:
- 33 (i) the manner in which an agreement is made (for
- 34 example, in writing);

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- 1 (ii) matters dealt with in an agreement, including, in the
2 case of an agreement to supply or acquire a gas
3 commodity, the matters mentioned in subsection (2);
4 (iii) withdrawing from or ending an agreement.

5 Example: Rules requiring specified matters to be dealt with, or not dealt with, in
6 an agreement.

- 7 (2) For the purposes of subparagraph (1)(b)(ii), the matters are the
8 following:
9 (a) how much of the gas commodity is to be supplied or
10 acquired;
11 (b) flexibility of the volume of the gas commodity to be supplied
12 or acquired;
13 (c) where the gas commodity is to be supplied or acquired;
14 (d) when the gas commodity is to be supplied or acquired;
15 (e) payment terms;
16 (f) a communication protocol for major interruptions to the
17 supply of the gas commodity;
18 (g) the period of the agreement;
19 (h) the consequences of a breach of the agreement;
20 (i) dispute resolution.

21 **53T Terms on which gas commodities are supplied or acquired,**
22 **including price**

- 23 (1) A gas market code may include rules about the terms on which a
24 person offers to supply or acquire, agrees to supply or acquire or
25 supplies or acquires a gas commodity, including rules about any of
26 the following matters:
27 (a) how such a term is expressed;
28 (b) fees payable in relation to such an offer, agreement, supply or
29 acquisition;
30 (c) terms (including terms relating to price) specified in an
31 expression of interest relating to supplying or acquiring a gas
32 commodity.
33 (2) A gas market code may include rules about the price at which a
34 person offers to supply or acquire, agrees to supply or acquire or
35 supplies or acquires a gas commodity, including the following:

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- 1 (a) rules setting a price;
- 2 (b) rules setting a maximum price;
- 3 (c) rules setting a minimum price;
- 4 (d) rules setting a maximum and a minimum price;
- 5 (e) rules requiring a price to be reasonable;
- 6 (f) rules about the matters that, for the purposes of a gas market
- 7 code, must, may or must not be taken into account in
- 8 determining whether a price is reasonable;
- 9 (g) rules about determining a price, including matters taken into
- 10 account in determining a price;
- 11 (h) rules about how a price is expressed.
- 12 Note 1: A gas market code may confer on the Minister, the Commission or
- 13 any other person or body the function of setting a price: see section
- 14 53ZB.
- 15 Note 2: Rules of the kind mentioned in this subsection may:
- 16 (a) refer to the prices of any gas commodity inside or outside
- 17 Australia or any published information about any market; or
- 18 (b) require a price to be equal to the amount worked out by using a
- 19 specified formula or method.
- 20 See subsection 53ZE(3).
- 21 Note 3: A gas market code may include rules requiring a gas market
- 22 participant not to offer to supply or acquire, not to agree to supply or
- 23 acquire or not to supply or acquire a gas commodity if rules of the
- 24 kind mentioned in subsection (1) or (2) are not complied with in
- 25 relation to the offer, agreement, supply or acquisition: see sections
- 26 53R, 53S and 53V.

27 **53U Gas exchanges**

28 A gas market code may include rules regulating the operation of a

29 gas exchange.

30 **53V Requirements to supply or not to supply gas commodities etc.**

- 31 (1) A gas market code may include rules requiring a gas market
- 32 participant to supply, or not to supply, gas commodities in
- 33 specified circumstances.
- 34 (2) To avoid doubt, such a rule may apply to a gas market participant
- 35 even if the gas market participant:

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- 1 (a) is a gas market participant only because of paragraph
2 53D(1)(b) (about former participants) or (e) (prescribed
3 persons and bodies); or
4 (b) would not supply the gas commodity at all, or would not
5 supply the gas commodity in or from Australia, apart from
6 the rule.
- 7 (3) A gas market code that includes a rule requiring a gas market
8 participant to supply a gas commodity may include rules about that
9 supply, including rules about any of the following matters:
10 (a) how much of the gas commodity is to be supplied;
11 (b) where the gas commodity is to be supplied;
12 (c) when the gas commodity is to be supplied;
13 (d) agreements relating to the supply of the gas commodity;
14 (e) the terms (including terms relating to price) on which the gas
15 commodity is to be supplied.
- 16 (4) A gas market code may include rules requiring a gas market
17 participant not to acquire gas commodities in specified
18 circumstances.

19 **53W Dispute and complaint resolution**

- 20 (1) A gas market code may include rules about disputes between gas
21 market participants, including:
22 (a) disputes or complaints arising under, or in relation to, a gas
23 market code; or
24 (b) disputes arising during negotiations between gas market
25 participants, including any of the following:
26 (i) disputes relating to a prospective agreement between
27 gas market participants;
28 (ii) price disputes.
- 29 (2) A gas market code may include rules:
30 (a) requiring a gas market participant to have internal or external
31 dispute resolution processes; and
32 (b) requiring those processes to meet specified criteria.
- 33 (3) A gas market code may do any of the following:

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- 1 (a) provide for a gas market participant to complain to the
2 Minister or the Commission about:
3 (i) a contravention of a gas market code; or
4 (ii) a dispute between gas market participants;
5 (b) include rules about any of the following matters:
6 (i) the manner in which such a complaint is made;
7 (ii) how the Minister or the Commission deals with such a
8 complaint.
- 9 (4) A gas market code may provide for the mediation of disputes
10 between gas market participants, including providing for any of the
11 following matters:
12 (a) a process for appointing a mediator;
13 (b) the powers or functions of a mediator;
14 (c) a process for commencing mediation;
15 (d) the mediation process, including rules about any of the
16 following matters:
17 (i) a party giving information to another party or to a
18 mediator (including on request);
19 (ii) a mediator providing a party with an opportunity to be
20 heard;
21 (iii) terminating a mediation;
22 (e) the extent (if any) to which mediation is compulsory;
23 (f) the consequences of not participating in mediation;
24 (g) reporting;
25 (h) generating and keeping records;
26 (i) confidentiality;
27 (j) the costs of mediation, including providing for:
28 (i) determining the costs; or
29 (ii) who is liable to pay the costs.
- 30 (5) A gas market code may provide for the arbitration (including
31 compulsory arbitration) of disputes between gas market
32 participants, including providing for any of the following matters:
33 (a) establishing or maintaining a register of arbiters;
34 (b) a process for appointing an arbiter;
35 (c) the powers or functions of an arbiter;
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- 1 (d) a process for commencing arbitration, including rules
2 requiring a party to a dispute to take reasonable steps (such
3 as mediation) to resolve a dispute before proceeding to
4 arbitration;
- 5 (e) the arbitration process, including rules about any of the
6 following matters:
7 (i) a party giving information to another party or to an
8 arbiter (including on request);
9 (ii) an arbiter providing a party with an opportunity to be
10 heard;
11 (iii) terminating an arbitration;
- 12 (f) the extent (if any) to which arbitration is compulsory;
- 13 (g) the consequences of not participating in arbitration;
- 14 (h) decision-making by an arbiter, including processes an arbiter
15 uses in decision-making;
- 16 (i) rules about how a decision of an arbiter binds a party to an
17 arbitration;
- 18 (j) the consequences of not complying with a decision of an
19 arbiter;
- 20 (k) reporting;
- 21 (l) generating and keeping records;
- 22 (m) confidentiality;
- 23 (n) the costs of arbitration, including providing for:
24 (i) determining the costs; or
25 (ii) who is liable to pay the costs.
- 26 (6) The powers or functions conferred on an arbiter by a gas market
27 code must not involve the exercise of judicial power.

28 **Subdivision C—Matters that gas market emergency price**
29 **orders may deal with**

30 **53X Terms on which gas commodities are supplied or acquired,**
31 **including price**

- 32 (1) A gas market emergency price order may include rules about the
33 terms on which a person offers to supply or acquire, agrees to

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- 1 supply or acquire or supplies or acquires a gas commodity,
2 including rules about any of the following matters:
- 3 (a) how such a term is expressed;
4 (b) fees payable in relation to such an offer, agreement, supply or
5 acquisition;
6 (c) terms (including terms relating to price) specified in an
7 expression of interest relating to supplying or acquiring a gas
8 commodity.
- 9 (2) A gas market emergency price order may include rules about the
10 price at which a person offers to supply or acquire, agrees to
11 supply or acquire or supplies or acquires a gas commodity,
12 including the following:
- 13 (a) rules setting a price;
14 (b) rules setting a maximum price;
15 (c) rules setting a minimum price;
16 (d) rules setting a maximum and a minimum price;
17 (e) rules requiring a price to be reasonable;
18 (f) rules about the matters that, for the purposes of a gas market
19 emergency price order, must, may or must not be taken into
20 account in determining whether a price is reasonable;
21 (g) rules about determining a price, including matters taken into
22 account in determining a price;
23 (h) rules about how a price is expressed.
- 24 Note 1: A gas market emergency price order may confer on the Minister, the
25 Commission or any other person or body the function of setting a
26 price: see section 53ZB.
- 27 Note 2: Rules of the kind mentioned in this subsection may:
- 28 (a) refer to the prices of any gas commodity inside or outside
29 Australia or any published information about any market; or
30 (b) require a price to be equal to the amount worked out by using a
31 specified formula or method.
- 32 See subsection 53ZE(3).
- 33 (3) To avoid doubt, a gas market emergency price order may include
34 rules requiring a gas market participant not to offer to supply or
35 acquire, not to agree to supply or acquire or not to supply or
36 acquire a gas commodity if rules of the kind mentioned in

1 subsection (1) or (2) are not complied with in relation to the offer,
2 agreement, supply or acquisition.

3 **53Y Gas exchanges**

4 A gas market emergency price order may include rules regulating
5 the operation of a gas exchange.

6 **Subdivision D—Incidental and other matters that gas market 7 codes and gas market emergency price orders may 8 deal with**

9 **53Z Transparency**

10 (1) A gas market instrument may include rules about a gas market
11 participant, the Minister or the Commission publishing information
12 that relates to a gas market matter, including rules about any of the
13 following:

- 14 (a) the type of information that is published;
- 15 (b) the circumstances in which information is published;
- 16 (c) the manner in which information is published.

17 Example: A rule requiring information to be published at specified intervals.

18 (2) A gas market instrument may include rules requiring a gas market
19 participant to give to another gas market participant information or
20 documents relevant to a gas market matter.

21 **53ZA Reporting, records and auditing**

22 (1) A gas market instrument may include rules about:

- 23 (a) reporting; or
- 24 (b) generating or keeping records (including financial records);
- 25 or
- 26 (c) auditing;

27 relating to a gas market matter.

28 (2) A gas market instrument may include rules requiring a gas market
29 participant to give:

- 30 (a) financial or other reports, records or documents; or

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- 1 (b) information;
2 relating to a gas market matter to the Minister or the Commission,
3 including requiring such reports, records, documents or
4 information to be given periodically or on request.
- 5 (3) A gas market instrument may include rules requiring a gas market
6 participant to do any of the following:
7 (a) report to the Minister or the Commission the occurrence of a
8 specified event relating to:
9 (i) a gas market matter; or
10 (ii) a price dispute;
11 (b) give to the Minister or the Commission specified information
12 relating to such an event.

13 **53ZB Conferral of powers and functions**

- 14 (1) A gas market instrument may confer on a person or body a power
15 to do, or a function of doing, any of the following:
16 (a) monitoring compliance with a gas market instrument;
17 (b) conducting investigations in relation to a gas market matter;
18 (c) providing exemptions from:
19 (i) a gas market instrument; or
20 (ii) a specified provision of a gas market instrument; or
21 (iii) a specified rule included in a gas market instrument;
22 (d) reviewing, or reporting on:
23 (i) the operation, application or administration of a gas
24 market instrument; or
25 (ii) activities under, or in relation to, a gas market
26 instrument;
27 (e) reviewing a decision made under a gas market instrument, or
28 in the exercise or performance of a power or function
29 conferred by a gas market instrument.
- 30 (2) A gas market code may confer on a person or body any of the
31 following powers or functions:
32 (a) a power to determine, or a function of determining, any
33 matter that may be dealt with by a gas market code;

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- 1 (b) a power or function relating to the operation, application or
2 administration of a gas market code.
- 3 (3) A gas market emergency price order may confer on a person or
4 body any of the following powers or functions:
- 5 (a) a power to determine, or a function or determining, any
6 matter that may be dealt with by a gas market emergency
7 price order;
- 8 (b) a power or function relating to the operation, application or
9 administration of a gas market emergency price order.
- 10 (4) If a gas market code confers on a person or body a power or
11 function, a gas market code:
- 12 (a) may provide that the power is to be exercised, or the function
13 performed, by legislative instrument, notifiable instrument or
14 another kind of written instrument; and
- 15 (b) may provide for the person or body to delegate the power or
16 function.
- 17 Note: For limitations relating to a power to make a legislative instrument,
18 see section 53ZI.
- 19 (5) If a gas market emergency price order confers on a person or body
20 a power or function, a gas market instrument:
- 21 (a) may provide that the power is to be exercised, or the function
22 performed, by legislative instrument, notifiable instrument or
23 another kind of written instrument; and
- 24 (b) may provide for the person or body to delegate the power or
25 function.
- 26 Note: For limitations relating to a power to make a legislative instrument,
27 see section 53ZI.

28 **53ZC Fees**

- 29 (1) A gas market instrument may provide for the charging of a fee for
30 anything done by or in relation to the Commonwealth, the
31 Commission or any other person or body in relation to a gas market
32 instrument, including in the exercise of a power or the performance
33 of a function conferred by a gas market instrument.
- 34 (2) A gas market instrument that provides for the charging of a fee
35 may deal with any of the following matters:
-

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- 1 (a) the amount of the fee, including a method for working out the
2 amount of the fee;
3 (b) who is liable to pay the fee;
4 (c) the consequences of not paying the fee;
5 (d) when the fee becomes due and payable;
6 (e) waiving a fee;
7 (f) refunding a fee.

8 **53ZD Incidental or related matters**

- 9 (1) A gas market instrument may include any of the following:
10 (a) rules about the circumstances in which persons are, or may
11 be, relieved from complying with requirements in a gas
12 market instrument that that would otherwise apply to them;
13 (b) if a gas market instrument requires information or a
14 document to be given or published—exceptions to that
15 requirement, including exceptions that apply in any of the
16 following circumstances:
17 (i) circumstances in which publishing the information
18 would prejudice the commercial interests of a person;
19 (ii) circumstances in which publishing the information is
20 not in the public interest;
21 (iii) circumstances involving personal information;
22 (c) rules about the use, disclosure or publication of information
23 or a document by a person to whom the information or
24 document is given under a gas market instrument;
25 (d) rules about the manner or form in which persons or bodies:
26 (i) may exercise powers or perform functions conferred by
27 a gas market instrument; or
28 (ii) must comply with requirements imposed by a gas
29 market instrument;
30 which could include requiring the use of a form approved by
31 the Minister, the Commission or another person or body;
32 (e) rules providing for any of the following in relation to a
33 decision made under a gas market instrument, or in the
34 exercise or performance of a power or function conferred by
35 a gas market instrument:
36 (i) internal review of the decision;
-

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- 1 (ii) review of the decision by the Australian Competition
2 Tribunal;
- 3 (iii) the making of applications to the Administrative
4 Appeals Tribunal for review of the decision;
- 5 (f) rules requiring agents of a gas market participant to do or not
6 to do specified things when acting on behalf of the gas
7 market participant and within the agent's actual or apparent
8 authority;
- 9 (g) rules providing that, in specified circumstances, a partner in a
10 partnership is taken to contravene a specified provision of a
11 gas market instrument if another partner in the partnership
12 contravenes that provision;
- 13 (h) rules providing that, in specified circumstances, a person who
14 carries on a joint venture is taken to contravene a specified
15 provision of a gas market instrument if another person who
16 carries on the joint venture contravenes that provision.
- 17 (2) A gas market code may deal with any of the following matters:
- 18 (a) matters incidental or related to any matter that is or may be
19 included in, or dealt with by, a gas market code;
- 20 (b) matters of a transitional nature relating to:
- 21 (i) the making of a gas market code; or
22 (ii) a repeal of a gas market emergency price order by
23 subsection 53M(7).
- 24 (3) A gas market emergency price order may deal with any of the
25 following matters:
- 26 (a) matters incidental or related to any matter that is or may be
27 included in, or dealt with by, a gas market emergency price
28 order;
- 29 (b) matters of a transitional nature relating to the making of a gas
30 market emergency price order.
- 31 (4) A gas market instrument may make provision in relation to a
32 matter in a way that depends on a person being satisfied of one or
33 more specified matters.

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1 **53ZE What gas market instruments may refer to**

2 *Gas market instruments may refer to other instruments*

3 (1) A gas market instrument may make provision in relation to a
4 matter by applying, adopting or incorporating (with or without
5 modification) any matter contained in any other instrument or
6 writing:

7 (a) as in force or existing at a particular time; or

8 (b) as in force or existing from time to time.

9 (2) Subsection (1) has effect despite subsection 14(2) of the
10 *Legislation Act 2003*.

11 *Other matters*

12 (3) A gas market instrument may make provision in relation to a
13 matter (including setting a price):

14 (a) by reference to:

15 (i) the price of any gas commodity or other goods or
16 services anywhere inside or outside Australia; or

17 (ii) any published information about any market (whether
18 inside or outside Australia); or

19 (b) by reference to, or by providing for, a formula or method.

20 **Subdivision E—Miscellaneous matters**

21 **53ZF Provisions do not limit other provisions**

22 (1) A provision to which this section applies does not limit another
23 provision to which this section applies.

24 (2) This section applies to:

25 (a) subsection 53N(1); and

26 (b) subsection 53N(4); and

27 (c) each provision of Subdivision B; and

28 (d) each provision of Subdivision C; and

29 (e) each provision of Subdivision D; and

30 (f) subsection 53ZJ(1).

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1 **53ZG Constitution—gas market instruments must not give**
2 **preference to States etc.**

- 3 (1) A gas market instrument must not give preference to one State or
4 any part thereof within the meaning of section 99 of the
5 Constitution.
- 6 (2) A power or function conferred by a gas market instrument must not
7 be exercised or performed in such a way as to give preference to
8 one State or any part thereof within the meaning of section 99 of
9 the Constitution.

10 **53ZH Fees must not amount to taxation**

11 A fee charged under a gas market instrument must not be such as
12 to amount to taxation.

13 **53ZI Powers to make legislative instruments**

- 14 (1) A gas market instrument must not confer a power to make a
15 legislative instrument on a person or body other than:
16 (a) a Minister; or
17 (b) the Commission; or
18 (c) a member of the staff of the Commission; or
19 (d) an APS employee; or
20 (e) an entity covered by subsection 53K(3).
- 21 (2) A gas market instrument must not confer a power to delegate a
22 power to make a legislative instrument.

23 **Division 3—Compliance with gas market instruments**

24 **Subdivision A—Civil penalty provisions of gas market**
25 **instruments**

26 **53ZJ Civil penalty provisions of gas market instruments**

- 27 (1) A gas market instrument may:

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- 1 (a) set out at the foot of a provision of the gas market instrument
2 a pecuniary penalty, or penalties, indicated by the words
3 “Civil penalty”; or
4 (b) provide that a specified provision of a gas market instrument
5 is a civil penalty provision, or that a person is liable to a civil
6 penalty if the person contravenes the provision;
7 if the provision is of the kind mentioned in paragraph 79(2)(b) of
8 the Regulatory Powers Act.

9 Note: Sections 76 to 77 deal with enforcing the civil penalty provisions.

- 10 (2) If an act or thing is required under a civil penalty provision of a gas
11 market instrument to be done:
12 (a) within a particular period; or
13 (b) before a particular time;
14 then the obligation to do that act or thing continues until the act or
15 thing is done (even if the period has expired or the time has
16 passed).
- 17 (3) A person who contravenes a civil penalty provision of a gas market
18 instrument that requires an act or thing to be done:
19 (a) within a particular period; or
20 (b) before a particular time;
21 commits a separate contravention of that provision in respect of
22 each day during which the contravention occurs (including the day
23 the relevant order is made under subsection 76(1) or any later day).

24 Subdivision B—Infringement notices

25 53ZK Infringement notices

26 *Object*

- 27 (1) The object of this section is for Division 5 of Part XI to apply to a
28 provision to which this section applies in a corresponding way to
29 the way that Division applies to a provision of Part 2-2 of the
30 Australian Consumer Law.

31 Note: That Division is about infringement notices issued for alleged
32 contraventions of provisions of the Australian Consumer Law.

- 33 (2) This section applies to the following provisions:
-

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- 1 (a) subsection 53ZQ(1);
2 (b) subsection 53ZQ(2);
3 (c) subsection 53ZQ(3);
4 (d) section 53ZV;
5 (e) subsection 53ZW(1);
6 (f) a civil penalty provision of a gas market instrument, other
7 than a provision that is a requirement for a gas market
8 participant to deal with another gas market participant in
9 good faith as mentioned in paragraph 53Q(b).

10 *Extended application of Division 5 of Part XI etc.*

- 11 (3) Division 5 of Part XI, and any other provision of this Act that
12 relates to that Division, also apply in relation to a provision to
13 which this section applies as if:
14 (a) the substitutions in the following table were made; and
15 (b) the following substitutions were made:
16 (i) for a reference in item 1 of the table in section 134C to
17 60 penalty units, substitute a reference to 600 penalty
18 units;
19 (ii) for a reference in that item to 12 penalty units, substitute
20 a reference to 60 penalty units.
21

Substitutions to be made

| Item | Column 1 For a reference in Division 5 of Part XI to ... | Column 2 substitute a reference to ... |
|-------------|---|---|
| 1 | section 224 of the Australian Consumer Law | section 76 of this Act. |
| 2 | Chapter 4 or Part 5-2 of the Australian Consumer Law | Part VI of this Act. |
| 3 | a provision of Part 2-2 of the Australian Consumer Law | a provision to which section 53ZK of this Act applies. |

- 22 (4) To avoid doubt, Division 2 of Part XI does not limit the application
23 of section 53ZZA (about constitutional basis) to the extended
24 application of Division 5 of Part XI as described in this section.

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1 **Subdivision C—Public warning notices**

2 **53ZL Commission may give draft public warning notice**

- 3 (1) The Commission may give a person a notice in writing if the
4 Commission reasonably believes that:
- 5 (a) any of the following conditions are satisfied:
- 6 (i) the person has engaged in prohibited conduct;
- 7 (ii) the person is engaging in prohibited conduct; and
- 8 (b) one or more other persons has suffered, or is likely to suffer,
9 detriment as a result of the prohibited conduct; and
- 10 (c) it is in the public interest to issue the notice.
- 11 (2) The notice must:
- 12 (a) state the day on which the notice is given; and
- 13 (b) identify:
- 14 (i) the person mentioned in paragraph (1)(a); and
- 15 (ii) the prohibited conduct mentioned in paragraph (1)(a);
16 and
- 17 (c) explain the reasons why the Commission reasonably believes
18 that the requirements in paragraphs (1)(a), (b) and (c) are
19 met; and
- 20 (d) state that:
- 21 (i) the person may, within 21 days after being given the
22 notice, make representations to the Commission
23 regarding the matters mentioned in paragraphs (1)(a),
24 (b) and (c); and
- 25 (ii) the Commission may issue a public warning notice
26 under section 53ZM in relation to the prohibited
27 conduct after those 21 days have passed.
- 28 (3) A notice given under subsection (1) is not a legislative instrument.

29 **53ZM Commission may issue public warning notice**

- 30 (1) This section applies if:
- 31 (a) the Commission gave a person a notice under section 53ZL
32 in relation to prohibited conduct; and

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- 1 (b) at least 21 days have passed since the Commission gave the
2 person the notice; and
- 3 (c) no more than 90 days have passed since the Commission
4 gave the person the notice; and
- 5 (d) the Commission reasonably believes that any of the
6 following conditions are satisfied:
7 (i) the person has engaged in the prohibited conduct;
8 (ii) the person is engaging in the prohibited conduct; and
- 9 (e) the Commission reasonably believes that one or more other
10 persons has suffered, or is likely to suffer, detriment as a
11 result of the prohibited conduct.
- 12 (2) This section also applies if the Commission reasonably believes
13 that:
14 (a) any of the following conditions are satisfied:
15 (i) a person has engaged in prohibited conduct;
16 (ii) a person is engaging in prohibited conduct; and
- 17 (b) there is a significant risk of imminent, serious harm to the
18 welfare of Australians as a result of the prohibited conduct;
19 and
- 20 (c) issuing a notice under this section in relation to the prohibited
21 conduct, without first giving a notice under section 53ZL in
22 relation to the prohibited conduct, is reasonably necessary to:
23 (i) prevent that harm or reduce that risk; or
24 (ii) reduce the seriousness of that harm.
- 25 (3) The Commission may issue to the public a written notice
26 containing a warning about the prohibited conduct if the
27 Commission reasonably believes that it is in the public interest to
28 issue the notice.
- 29 (4) The notice must:
30 (a) state the day on which the notice is issued; and
31 (b) identify:
32 (i) the person mentioned in paragraph (1)(a) or (2)(a); and
33 (ii) the prohibited conduct mentioned in that paragraph.
- 34 (5) A notice issued under subsection (3) is not a legislative instrument.

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1 **53ZN Proceedings for defamation not to lie**

2 (1) If the Commission issues a notice under section 53ZM, no action
3 or proceeding for defamation lies against the Commonwealth, the
4 Commission or a member of the staff of the Commission in
5 relation to the issuing of the notice.

6 (2) This section does not limit subsection 53J(2).

7 **Subdivision D—Orders to redress loss or damage suffered by**
8 **non-parties etc.**

9 **53ZO Orders to redress loss or damage suffered by non-parties etc.**

10 *Orders*

11 (1) If:

12 (a) a person engaged in conduct (the *contravening conduct*) that
13 constituted a contravention or a related contravention of a
14 civil penalty provision of a gas market instrument; and

15 (b) the contravening conduct caused, or is likely to cause, a class
16 of persons to suffer loss or damage; and

17 (c) the class includes persons (*non-parties*) who are not, or have
18 not been, parties to a proceeding (an *enforcement*
19 *proceeding*) instituted under Part VI in relation to the
20 contravening conduct;

21 any court having jurisdiction in the matter may, on the application
22 of the Commission, make such order or orders (other than an award
23 of damages) as the court thinks appropriate against a person
24 referred to in subsection (2).

25 Note: The orders that the court may make include all or any of the orders set
26 out in section 53ZP.

27 (2) An order under subsection (1) may be made against:

28 (a) the person mentioned in paragraph (1)(a); or

29 (b) a person involved in the contravening conduct.

30 (3) A court must not make an order under subsection (1) unless the
31 court considers that the order will:

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- 1 (a) redress, in whole or in part, the loss or damage suffered by
2 the non-parties in relation to the contravening conduct; or
3 (b) prevent or reduce the loss or damage suffered, or likely to be
4 suffered, by the non-parties in relation to the contravening
5 conduct.

6 *Application for orders*

- 7 (4) An application may be made under subsection (1) even if an
8 enforcement proceeding in relation to the contravening conduct has
9 not been instituted.
- 10 (5) An application under subsection (1) may be made at any time
11 within 6 years after the day on which the cause of action that
12 relates to the contravening conduct accrues.

13 *Determining whether to make an order*

- 14 (6) In determining whether to make an order under subsection (1)
15 against a person referred to in subsection (2), a court may have
16 regard to the conduct of:
17 (a) the person; and
18 (b) the non-parties;
19 in relation to the contravening conduct, since the contravention
20 occurred.
- 21 (7) In determining whether to make an order under subsection (1), a
22 court need not make a finding about either of the following
23 matters:
24 (a) which persons are non-parties in relation to the contravening
25 conduct;
26 (b) the nature of the loss or damage suffered, or likely to be
27 suffered, by such persons.

28 *When a non-party is bound by an order etc.*

- 29 (8) If:
30 (a) an order is made under subsection (1) against a person; and
31 (b) the loss or damage suffered, or likely to be suffered, by a
32 non-party in relation to the contravening conduct to which

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- 1 the order relates has been redressed, prevented or reduced in
2 accordance with the order; and
- 3 (c) the non-party has accepted the redress, prevention or
4 reduction;
- 5 then:
- 6 (d) the non-party is bound by the order; and
- 7 (e) any other order made under subsection (1) that relates to that
8 loss or damage has no effect in relation to the non-party; and
- 9 (f) despite any other provision of this Act or any other law of the
10 Commonwealth, or a State or Territory, no claim, action or
11 demand may be made or taken against the person by the
12 non-party in relation to that loss or damage.

13 *Meaning of related contravention*

- 14 (9) For the purposes of this Part, a person engages in conduct that
15 constitutes a ***related contravention*** of a civil penalty provision of a
16 gas market instrument if the person:
- 17 (a) aids, abets, counsels or procures another person to contravene
18 the provision; or
- 19 (b) induces, whether by threats or promises or otherwise, another
20 person to contravene the provision; or
- 21 (c) is in any way, directly or indirectly, knowingly concerned in,
22 or party to, a contravention of the provision by another
23 person; or
- 24 (d) conspires with others to effect a contravention of the
25 provision.

26 **53ZP Kinds of orders that may be made to redress loss or damage** 27 **suffered by non-parties etc.**

28 Without limiting subsection 53ZO(1), the orders that a court may
29 make under that subsection against a person (the ***respondent***)
30 include all or any of the following:

- 31 (a) an order declaring the whole or any part of a contract made
32 between the respondent and a non-party referred to in that
33 subsection, or a collateral arrangement relating to such a
34 contract:
35 (i) to be void; and

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- 1 (ii) if the court thinks fit—to have been void ab initio or
2 void at all times on and after such date as is specified in
3 the order (which may be a date that is before the date on
4 which the order is made);
5 (b) an order:
6 (i) varying such a contract or arrangement in such manner
7 as is specified in the order; and
8 (ii) if the court thinks fit—declaring the contract or
9 arrangement to have had effect as so varied on and after
10 such date as is specified in the order (which may be a
11 date that is before the date on which the order is made);
12 (c) an order refusing to enforce any or all of the provisions of
13 such a contract or arrangement;
14 (d) an order directing the respondent to refund money or return
15 property to a non-party referred to in that subsection;
16 (e) an order directing the respondent, at the respondent’s own
17 expense, to supply specified services to a non-party referred
18 to in that subsection.

19 **Subdivision E—Avoidance schemes**

20 **53ZQ Schemes for avoidance purposes**

21 *General prohibition*

- 22 (1) A person contravenes this subsection if:
23 (a) the person, either alone or with others, engages in any of the
24 following conduct:
25 (i) enters into a scheme;
26 (ii) begins to carry out a scheme;
27 (iii) carries out a scheme; and
28 (b) having regard to any matters as required under
29 subsection 53ZR(1), it would be reasonable to conclude that
30 the purpose of the person engaging in that conduct was to
31 avoid the application of a civil penalty provision of a gas
32 market instrument.

33 Note 1: For enforcement, see section 53ZK and Part VI.

34 Note 2: See section 4F (references to purpose).

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Main amendments

1

Constitutional corporations

2

(2) A constitutional corporation contravenes this subsection if:

3

(a) the corporation, either alone or with other persons, engages in any of the following conduct:

4

5

(i) enters into a scheme;

6

(ii) begins to carry out a scheme;

7

(iii) carries out a scheme; and

8

(b) having regard to any matters as required under

9

subsection 53ZR(1), it would be reasonable to conclude that

10

the purpose of the corporation engaging in that conduct was

11

to avoid the application of a civil penalty provision of a gas

12

market instrument.

13

Note: For enforcement, see section 53ZK and Part VI.

14

Constitutional trade and commerce

15

(3) A person contravenes this subsection if:

16

(a) in the course of constitutional trade or commerce, the person, either alone or with others, engages in any of the following conduct:

17

18

(i) enters into a scheme;

19

(ii) begins to carry out a scheme;

20

21

(iii) carries out a scheme; and

22

(b) having regard to any matters as required under

23

subsection 53ZR(1), it would be reasonable to conclude that

24

the purpose of the person engaging in that conduct was to

25

avoid the application of a civil penalty provision of a gas

26

market instrument.

27

Note: For enforcement, see section 53ZK and Part VI.

28

Prohibitions independent of each other

29

(4) To avoid doubt, subsections (1), (2) and (3) are independent from and do not limit each other.

30

31

Note: However, a person can be ordered to pay a pecuniary penalty under only one of those subsections in relation to the same conduct: see subsection 76(3).

32

33

EXPOSURE DRAFT

Amendments **Schedule 1**
Main amendments **Part 1**

1 **53ZR Whether it is reasonable to draw conclusion as to purpose**

2 (1) Regard must be had to any matters prescribed by the regulations
3 for the purposes of this subsection in determining, for the purposes
4 of section 53ZQ, whether it would be reasonable to conclude that
5 the purpose of a person entering into or carrying out (to any extent)
6 a scheme was to avoid the application of a civil penalty provision
7 of a gas market instrument.

8 (2) Subsection (1) does not limit the matters to which regard may be
9 had in making a determination described in that subsection.

10 **53ZS This Subdivision does not limit Division 2**

11 This Subdivision does not limit a provision of Division 2.

12 **Division 4—Investigation powers**

13 **53ZT Commission may require person to provide information**

14 (1) This section applies if a person is required to keep, to generate or
15 to publish information or a document under a gas market
16 instrument.

17 (2) The Commission may give the person a written notice that requires
18 the person to give the information, or to produce the document, to
19 the Commission within a specified period and in a specified
20 manner.

21 (3) The notice must:

22 (a) name the person to which it is given; and

23 (b) specify:

24 (i) the information or document to which it relates; and

25 (ii) the provisions of the gas market instrument which
26 require the person to keep, to generate or to publish the
27 information or document; and

28 (c) explain the effect of sections 53ZU, 53ZV and 53ZW.

29 (4) The notice may relate to more than one piece of information or
30 more than one document.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Main amendments

1 **53ZU Extending periods for complying with notices**

- 2 (1) A person who has been given a notice under section 53ZT may, at
3 any time within the period within which the person must comply
4 with the notice (as extended under any previous application of
5 subsection (2) of this section), apply in writing to the Commission
6 for an extension of the period for complying with the notice.
- 7 (2) A member of the Commission may, by written notice given to the
8 person, extend the period within which the person must comply
9 with the notice.
- 10 (3) Subsection (2) does not affect any operation that subsection 33(3)
11 of the *Acts Interpretation Act 1901* has in relation to a notice under
12 section 53ZT of this Act.

13 *Delegation*

- 14 (4) A member of the Commission may, by writing, delegate the
15 member's powers under subsection (2) to a member of the staff of
16 the Commission who is an SES employee or an acting SES
17 employee.

18 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
19 provisions relating to delegations.

- 20 (5) In exercising a power under a delegation, the delegate must comply
21 with any directions of the member.

22 **53ZV Compliance with notices**

23 A person that is given a notice under section 53ZT must comply
24 with it within:

- 25 (a) the period specified in the notice; or
26 (b) if the period for complying with the notice has been extended
27 under section 53ZU—the period as so extended.

28 Note: For enforcement, see section 53ZK and Part VI.

29 **53ZW False or misleading information etc.**

- 30 (1) A person must not, in compliance or purported compliance with a
31 notice given under section 53ZT:
-

EXPOSURE DRAFT

Amendments **Schedule 1**
Main amendments **Part 1**

- 1 (a) give to the Commission false or misleading information; or
2 (b) produce to the Commission documents that contain false or
3 misleading information.

4 Note: For enforcement, see section 53ZK and Part VI.

- 5 (2) This section does not apply to:
6 (a) information that the person could not have known was false
7 or misleading; or
8 (b) the production to the Commission of a document containing
9 false or misleading information if the document is
10 accompanied by a statement of the person that the
11 information is false or misleading.

12 **53ZX This Division does not limit other provisions**

13 This Division does not limit:

- 14 (a) a provision of Division 2; or
15 (b) section 155 (which is about the general
16 information-gathering powers of the Commission).

17 **Division 5—Other matters**

18 **53ZY Certain provisions of this Act do not limit other provisions**

- 19 (1) A provision to which subsection (3) applies does not limit the gas
20 market provisions.
- 21 (2) The gas market provisions do not limit a provision to which
22 subsection (3) applies.
- 23 (3) This subsection applies to:
24 (a) Part IIIAA; and
25 (b) Part IIIA; and
26 (c) Part IVB; and
27 (d) Part V; and
28 (e) Part VIIA; and
29 (f) Part XICA.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 1 Main amendments

1 **53ZZ Concurrent operation of State and Territory laws**

- 2 (1) Subject to subsection (2), the gas market provisions are not
3 intended to exclude or limit the operation of a law of a State or
4 Territory that is capable of operating concurrently with the gas
5 market provisions.
- 6 (2) A gas market instrument may provide that a gas market instrument,
7 or a specified provision of a gas market instrument, excludes or
8 limits the operation of a law of a State or Territory.

9 **53ZZA Constitution—application of gas market provisions**

- 10 (1) The gas market provisions (other than Subdivision E of Division 3
11 of this Part) apply in relation to gas market conduct if the conduct:
12 (a) is engaged in by a constitutional corporation; or
13 (b) is engaged in, by a person who is not a constitutional
14 corporation, in a way that affects, is capable of affecting or is
15 taken with intent to affect the activities, functions,
16 relationships or business of a constitutional corporation; or
17 (c) occurs in the course of, or in relation to, constitutional trade
18 or commerce; or
19 (d) is engaged in by an entity covered by subsection 53K(3).

20 Note: Subsection 53K(3) covers Commonwealth government entities.

- 21 (2) Section 6 (about the application of this Act to persons who are not
22 corporations) does not apply in relation to the gas market
23 provisions.

24 **53ZZB Constitution—acquisition of property**

25 The gas market provisions have no effect to the extent (if any) to
26 which their operation would result in the acquisition of property
27 (within the meaning of paragraph 51(xxxi) of the Constitution)
28 otherwise than on just terms (within the meaning of that
29 paragraph).

30 **53ZZC Regulations referring to other instruments**

- 31 (1) Regulations (other than a gas market code) made for the purposes
32 of a provision of this Part may make provision in relation to a
-

EXPOSURE DRAFT

Amendments **Schedule 1**
Main amendments **Part 1**

1 matter by applying, adopting or incorporating (with or without
2 modification) any matter contained in any other instrument or
3 writing:

4 (a) as in force or existing at a particular time; or

5 (b) as in force or existing from time to time.

6 Note: For a gas market code, see subsection 53ZE(1).

7 (2) Subsection (1) has effect despite subsection 14(2) of the
8 *Legislation Act 2003*.

9 **3 Application of Part IVBB in relation to agreements**

10 For the purposes of Part IVBB of the *Competition and Consumer Act*
11 *2010*, as inserted by this Part, it does not matter whether an agreement
12 was entered into before, on or after the commencement of this item.

EXPOSURE DRAFT

Schedule 1 Amendments
Part 2 Other amendments

1 **Part 2—Other amendments**

2 *Competition and Consumer Act 2010*

3 **4 Section 4L**

4 After “section 51ADB”, insert “, 53ZO”.

5 **5 Subsections 8A(4) and 19(1) and (7)**

6 Before “or the consumer data rules”, insert “a gas market instrument”.

7 **6 Subsection 25(1)**

8 Before “the consumer data rules”, insert “a gas market instrument,”.

9 **7 Paragraph 29(1A)(a)**

10 After “IVBA”, insert “, IVBB”.

11 **8 Subsection 75B(1)**

12 After “IVBA”, insert “, IVBB”.

13 **9 Subsection 75B(1)**

14 Before “or a civil penalty provision of the consumer data rules”, insert
15 “, a civil penalty provision of a gas market instrument”.

16 **10 After subparagraph 76(1)(a)(iaa)**

17 Insert:

18 (iab) subsection 53ZQ(1), (2) or (3), section 53ZV,
19 subsection 53ZW(1) or a civil penalty provision of a gas
20 market instrument; or

21 **11 Subsection 76(1A) (after table item 7)**

22 Insert:

23

| | | | |
|----|--------------------------------|---|-------------------|
| 7A | subsection 53ZQ(1), (2) or (3) | the greater of the amounts mentioned in subsection (1B) | \$2,500,000 |
| 7B | section 53ZV or subsection | 3,000 penalty units | 600 penalty units |

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Amendments **Schedule 1**
Other amendments **Part 2**

53ZW(1)

| | | | |
|----|---|---|-------------|
| 7C | a civil penalty provision of a gas market instrument not covered by item 7D of this table | the greater of the amounts mentioned in subsection (1B) | \$2,500,000 |
|----|---|---|-------------|

| | | | |
|----|---|---|---|
| 7D | a civil penalty provision of a gas market instrument that sets out at its foot a pecuniary penalty indicated by the words “Civil penalty” | the lesser of: (a) the amount of the pecuniary penalty for a body corporate set out at the foot of the provision; and (b) the greater of the amounts mentioned in subsection (1B) | the lesser of: (a) the amount of the pecuniary penalty for a person other than a body corporate set out at the foot of the provision; and (b) \$2,500,000 |
|----|---|---|---|

1 **12 Subsection 76(1B)**

2 After “items 1, 3, 6”, insert “, 7A, 7C, 7D”.

3 **13 Paragraph 76(1B)(c)**

4 Omit “or 6”, substitute “, 6, 7A, 7C or 7D”.

5 **14 Subsection 76(3)**

6 After “45AG),” insert “or two or more provisions of section 53ZQ,”.

7 **15 Paragraph 79B(a)**

8 Before “or the consumer data rules”, insert “, a gas market instrument”.

9 **16 After subparagraph 80(1)(a)(iiaa)**

10 Insert:

11 (iiab) subsection 53ZQ(1), (2) or (3), section 53ZV,
12 subsection 53ZW(1) or a civil penalty provision of a gas
13 market instrument;

14 **17 Paragraph 82(1)(a)**

15 After “IVBA”, insert “, IVBB”.

EXPOSURE DRAFT

Schedule 1 Amendments
Part 2 Other amendments

1 **18 Before paragraph 82(1)(d)**

2 Insert:

3 (ca) a civil penalty provision of a gas market instrument; or

4 **19 Subsection 83(1)**

5 After “51ADB(1)”, insert “, 53ZO(1)”.

6 **20 Subparagraph 83(1)(b)(i)**

7 After “IVBA”, insert “, IVBB”.

8 **21 Before subparagraph 83(1)(b)(iii)**

9 Insert:

10 (ia) a civil penalty provision of a gas market instrument; or

11 **22 Paragraph 84(1)(b)**

12 After “IVBA”, insert “, IVBB”.

13 **23 Paragraph 84(1)(b)**

14 Before “or a civil penalty provision of the consumer data rules”, insert
15 “, a civil penalty provision of a gas market instrument”.

16 **24 Subsection 84(2)**

17 Before “and the consumer data rules”, insert “, a gas market
18 instrument”.

19 **25 Paragraph 84(3)(b)**

20 After “IVBA”, insert “, IVBB”.

21 **26 Paragraph 84(3)(b)**

22 Before “or a civil penalty provision of the consumer data rules”, insert
23 “, a civil penalty provision of a gas market instrument”.

24 **27 Subsection 84(4)**

25 Before “and the consumer data rules”, insert “, a gas market
26 instrument”.

EXPOSURE DRAFT

Amendments **Schedule 1**
Other amendments **Part 2**

- 1 **28 Subsection 86(1)**
2 Before “or the consumer data rules”, insert “, a gas market instrument”.
- 3 **29 Subsection 86(1A)**
4 After “IVB”, insert “or IVBB”.
- 5 **30 Subsection 86(1A)**
6 Before “or a civil penalty provision of the consumer data rules”, insert
7 “, a civil penalty provision of a gas market instrument”.
- 8 **31 Subsection 86(2)**
9 After “IVB”, insert “or IVBB”.
- 10 **32 Subsection 86(2)**
11 Before “or a civil penalty provision of the consumer data rules”, insert
12 “, a civil penalty provision of a gas market instrument”.
- 13 **33 Paragraph 86A(1)(b)**
14 After “IVB”, insert “or IVBB”.
- 15 **34 Paragraph 86A(1)(b)**
16 Before “or a civil penalty provision of the consumer data rules”, insert
17 “, a civil penalty provision of a gas market instrument”.
- 18 **35 Subsection 86C(4) (paragraph (a) of the definition of**
19 ***contravening conduct*)**
20 After “IVBA”, insert “, IVBB”.
- 21 **36 Subsection 86C(4) (paragraph (a) of the definition of**
22 ***contravening conduct*)**
23 Before “or a civil penalty provision of the consumer data rules”, insert
24 “, a civil penalty provision of a gas market instrument”.
- 25 **37 Paragraph 86E(1)(a)**
26 Before “or a civil penalty provision of the consumer data rules”, insert
27 “, a civil penalty provision of a gas market instrument”.

EXPOSURE DRAFT

Schedule 1 Amendments
Part 2 Other amendments

- 1 **38 Subsections 86F(1) and (3)**
2 Before “or the consumer data rules”, insert “, a gas market instrument”.
- 3 **39 Subsection 87(1)**
4 Before “or a civil penalty provision of the consumer data rules”, insert
5 “, a civil penalty provision of a gas market instrument”.
- 6 **40 Subsection 87(1A)**
7 After “51ADB”, insert “, 53ZO”.
- 8 **41 Paragraph 87(1A)(a)**
9 Before “or a civil penalty provision of the consumer data rules”, insert
10 “, a civil penalty provision of a gas market instrument”.
- 11 **42 Paragraphs 87(1A)(b) and (baa)**
12 Before “or a civil penalty provision of the consumer data rules”, insert
13 “, a civil penalty provision of a gas market instrument”.
- 14 **43 Subsection 87(1C)**
15 Before “or a civil penalty provision of the consumer data rules”, insert
16 “, a civil penalty provision of a gas market instrument”.
- 17 **44 Subsection 87B(1)**
18 Before “or the consumer data rules”, insert “, a gas market instrument”.
- 19 **45 Section 154**
20 Before “or the consumer data rules”, insert “, a gas market instrument”.
- 21 **46 Section 154A (paragraph (a) of the definition of *evidential***
22 ***material*)**
23 Before “or the consumer data rules”, insert “, a gas market instrument”.
- 24 **47 Paragraph 154V(2)(a)**
25 Before “or the consumer data rules”, insert “, a gas market instrument”.
-

EXPOSURE DRAFT

Amendments **Schedule 1**
Other amendments **Part 2**

1 **48 Subsection 155(1)**

2 After “served on that person”, insert “(whether in Australia or outside
3 Australia)”.

4 **49 Before subparagraph 155(2)(a)(iv)**

5 Insert:

6 (iiia) a gas market instrument; or

7 **50 Before subparagraph 155(2)(b)(ia)**

8 Insert:

9 (iaa) a gas market instrument matter (as defined by
10 subsection (9AAA) of this section); or

11 **51 Before subsection 155(9AA)**

12 Insert:

13 (9AAA) A reference in this section to a *gas market instrument matter* is a
14 reference to the performance of a function, or the exercise of a
15 power, conferred on the Commission by or under:

16 (a) Part IVBB; or

17 (b) regulations made under this Act for the purposes of that Part
18 (including a gas market code); or

19 (c) a gas market emergency price order.

20 **52 Subsection 155AAA(21) (paragraph (a) of the definition of**
21 **core statutory provision)**

22 Before “IVD”, insert “IVBB,”.

23 **53 Subsection 155AAA(21) (paragraph (a) of the definition of**
24 **core statutory provision)**

25 Before “or of the consumer data rules”, insert “, of a gas market
26 instrument”.

27 **54 Paragraph 157(1)(d)**

28 Omit “, subsection 51ADB(1)”, substitute “subsection 51ADB(1) or
29 53ZO(1)”.

EXPOSURE DRAFT

Schedule 1 Amendments

Part 2 Other amendments

1 **55 Subsection 157A(1)**

2 After “this Act”, insert “or a gas market instrument”.

3 **56 Subsection 163A(1)**

4 Before “or the consumer data rules” (first occurring), insert “, a gas
5 market instrument”.

6 **57 Paragraphs 163A(1)(a) and (aa)**

7 Before “or the consumer data rules”, insert “, a gas market instrument”.

8 **58 Subsection 163A(3)**

9 Before “or the consumer data rules”, insert “, a gas market instrument”.

10 **59 Paragraph 163A(4)(a)**

11 Before “or the consumer data rules”, insert “, a gas market instrument”.