

# EXPOSURE DRAFT



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## Competition and Consumer (Gas Market Emergency Price) Order 2022

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I, Dr Jim Chalmers, Treasurer, make the following Order.

Dated 2022

Dr Jim Chalmers **DRAFT ONLY—NOT FOR SIGNATURE**  
Treasurer

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Preliminary **Part 1**

Section 1

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## Part 1—Preliminary

### 1 Name

This instrument is the *Competition and Consumer (Gas Market Emergency Price) Order 2022*.

### 2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

### 3 Authority

This instrument is made under section 53M of the *Competition and Consumer Act 2010*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) agreement;
- (b) Australia (see subsection 53E(2) of the Act);
- (c) gas exchange.

In this instrument:

*Act* means the *Competition and Consumer Act 2010*.

*AEMO* has the same meaning as in the *Renewable Energy (Electricity) Act 2000*.

*National Gas Law* means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* of South Australia as in force from time to time.

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## Part 1 Preliminary

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***National Gas Rules*** means Rules as in force from time to time, made or having effect under the National Gas Law.

***price cap*** means \$12 per gigajoule.

***price cap period*** means the period:

- (a) starting on the day on which this instrument commences; and
- (b) ending 12 months after that day.

***regulated gas*** means a substance that:

- (a) is in a gaseous state at standard temperature and pressure; and
- (b) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and
- (c) is suitable for consumption; and
- (d) does not include liquefied natural gas (within the meaning of the *National Greenhouse and Energy Reporting Regulations 2008*).

## **Part 2—Application**

### **5 Geographical application**

- (1) For the purposes of subsection 53N(2) of the Act, Part 3 applies in relation to all parts of Australia other than each part of Australia in relation to which the requirements specified in subsection (2) are met.
- (2) For the purposes of subsection (1), the requirements are as follows:
  - (a) the part of Australia represents a market for regulated gas;
  - (b) that market is functionally separate from the primary market for regulated gas in Australia.

### **6 Application to gas**

This instrument only applies in relation to gas that:

- (a) is regulated gas; and
- (b) is sourced from a field (within the meaning of Part 18 of the National Gas Rules immediately before the commencement of this instrument) that commenced operation before the day on which this instrument commenced.

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## Part 3 Price cap and exceptions

### Division 1 Price cap

#### Section 7

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## Part 3—Price cap and exceptions

### Division 1—Price cap

#### 7 Price cap

- (1) A person covered by section 8 contravenes this subsection if:
  - (a) the person enters into an agreement for the supply of regulated gas; and
  - (b) the day on which the agreement is entered into is in the price cap period; and
  - (c) under the agreement, the person is to supply regulated gas; and
  - (d) the price payable under the agreement, for regulated gas to be supplied by the person in the price cap period, could exceed the price cap.
- (2) A person covered by section 8 contravenes this subsection if:
  - (a) the person entered into an agreement for the supply of regulated gas; and
  - (b) the day on which the agreement was entered into was in the price cap period; and
  - (c) the person supplies regulated gas under the agreement in the price cap period; and
  - (d) the price payable under the agreement, for that gas, exceeds the price cap.
- (3) Subsections (1) and (2) are civil penalty provisions (within the meaning of the Regulatory Powers Act).
- (4) Subsection (1) applies only if entering into the agreement mentioned in paragraph (1)(a) is gas market conduct described in subsection 53ZZA(1) of the Act.
- (5) Subsection (2) applies only if the supply mentioned in paragraph (2)(c) is gas market conduct described in subsection 53ZZA(1) of the Act.

#### 8 Persons subject to price cap

- (1) For the purposes of section 7, a person is covered by this section if any of the following conditions are met:
  - (a) the person carries on a business of producing regulated gas;
  - (b) the person:
    - (i) is covered by subsection (2) in relation to a person (the *producer*) that carries on a business of producing regulated gas; and
    - (ii) has entered into an agreement for the supply of gas by the producer to the person.
- (2) A person (the *affiliate*) is covered under this subsection in relation to the producer if any of the following conditions are satisfied:
  - (a) the affiliate and the producer are related to each other;
  - (b) the affiliate and the producer are related entities (within the meaning of the *Corporations Act 2001*);



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- (c) there is a joint venture in which the affiliate and producer are participants;
- (d) there is:
  - (i) a joint venture in which the affiliate and a third person are participants; and
  - (ii) another joint venture in which the producer and the third person are participants;
- (e) there is:
  - (i) a joint venture in which the affiliate and a third person are participants; and
  - (ii) another joint venture in which the producer and an associate of the third person are participants;
- (f) there is:
  - (i) a joint venture in which the producer and a third person are participants; and
  - (ii) another joint venture in which the affiliate and an associate of the third person are participants.

## **9 Price cap—variations to agreements**

- (1) This section applies if:
  - (a) the person enters into an agreement for the supply of regulated gas; and
  - (b) the day on which the agreement is entered into is before the start of the price cap period; and
  - (c) in the price cap period, the person enters into a variation of the agreement.
- (2) For the purposes of applying subsections 7(1) and (2) in relation to the variation, treat the agreement, to the extent that it is varied under the variation, as being an agreement entered into at the time the variation is entered into.

## **Division 2—Exceptions to price cap**

### **10 Exceptions to price cap**

Subsections 7(1) and (2) do not apply if any of the following conditions are met:

- (a) at the time the agreement is entered into, the person to whom the regulated gas is to be supplied under the agreement intends to export from Australia the regulated gas in a liquified state;
- (b) all of the following apply:
  - (i) the agreement is a subordinate contract under a master gas supply agreement;
  - (ii) the master gas supply agreement was entered into before the start of the price cap period;
  - (iii) the subordinate contract does not include a provision determining the price of the gas to be supplied under it;
- (c) the agreement is a contract for the storage of regulated gas;

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**Part 3** Price cap and exceptions

**Division 2** Exceptions to price cap

## Section 10

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- (d) the agreement results from a transaction on a gas exchange (other than a gas trading exchange established by AEMO under subsection 91BRK(1) of the National Gas Law).