

s 22

From: s 47F @appea.com.au>
Sent: Thursday, 30 March 2023 3:03 PM
To: Robinson, Marty; Francis, Geoff; Bultitude, Susan; s 22
Cc: PRRT; s 22 ; s 22 ; s 47F
 chevron.com); s 47F @woodside.com.au); s 47F
 @shell.com; s 47F
 @shell.com; s 47F
Subject: APPEA Letter | PPRT Review
Attachments: APPEA CEO_Letter to Treasurer - PPRT REVIEW_ 300323.pdf

Hi Marty, Susan, Geoff & s 22 ,

As discussed, we would appreciate attached correspondence from APPEA Chief Executive to the Treasurer be attached to your advice to government with respect the PRRT regime.

I understand some of APPEA members may also be providing additional information/submissions over the course of the next two days.

Kind regards,
 s 47F

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30 March 2023

The Hon Dr Jim Chalmers MP
Treasurer
Parliament of Australia
PO Box 6022
CANBERRA ACT 2600

Dear Treasurer

RE: Request for meeting: Proposed changes to the Petroleum Resource Rent Tax

Australia's oil and gas industry continues to be central to Australia's social and economic success. The industry has invested more than A\$300 billion in the development of liquefied natural gas (LNG) projects, supported the employment of 160,000 Australians, and spent billions of dollars on local goods and services. Over the past decade A\$69 billion of taxes, rents and royalties have been paid directly to state and federal governments with Australia's LNG industry to contribute more than A\$13.8 billion to government revenues in 2022-23. This has delivered local benefits through the provision of secure, reliable, and affordable energy to Australian homes and businesses and enabled investment in housing, hospitals, schools and critical infrastructure.

Since December 2022, the Australian Petroleum Production and Exploration Association (APPEA) along with our members, have been focused on engaging constructively with Treasury regarding outstanding matters from the Callaghan Review¹ and proposed changes to the Petroleum Resource Rent Tax (PRRT) regime.

Individual APPEA members have shared with Treasury confidential modelling of direct and indirect consequences of any changes to the PRRT regime (refer to Attachment A). We have also highlighted to Treasury our belief that the new dispositions would significantly impact Australia's reputation as a safe destination for investment.

As conveyed to Treasury throughout this process, we remain seriously concerned at:

- The new dispositions being proposed that effectively overturn core and longstanding principles of the PRRT regime, which have underwritten A\$300 billion in investment and thousands of jobs.
- The negative effects the new dispositions could have on investment and energy security in Australia.
- The speed by which the consultation process has occurred, noting the broader PRRT discussions have been ongoing for several years due to the complex nature and substantial impact of any changes that are retrospective in nature.

¹ [Review of the Petroleum Resource Rent Tax | Treasury.gov.au](https://www.treasury.gov.au/consultation/petroleum-resource-rent-tax)

- The Callaghan Review concluded the PRRT was operating as intended² however, responses received from Treasury have not substantiated why dispositions should now reject that conclusion.

Further, industry is committed to net zero by 2050 and is already investing heavily to support economy-wide policy to drive down emissions. APPEA members have committed more than \$20 billion to achieving Australia's lower emissions future. Advice being put forward by Treasury with respect to new disposition risks existing projects and future investment and therefore, Australia's energy transformation and our economic prosperity.

Finally, it is respectfully contended that any changes to PRRT need to be reviewed in the context of broader policy considerations currently being addressed by industry and Government - specifically, increased east coast gas supply and emissions reductions under the safeguard mechanism. While we appreciate the Government is working through a series of challenging policy and budgetary issues, we do not believe the dispositions will support the Government's agenda in the long-term.

With the consultation process nearing a conclusion, I request a meeting to discuss the proposed dispositions, and most importantly, directly convey to you the potential impacts of the changes being contemplated.

Understanding your time is limited at present, we would be happy to accommodate an online meeting if that is more convenient. To finalise arrangements, please contact me on s 47F or at s 47F [@appea.com.au](mailto:s47f@appea.com.au).

Yours sincerely,



Samantha McCulloch
Chief Executive Officer

² Being the PRRT remains the preferred way to achieve a fair return to the community for the extraction of petroleum resources without discouraging investment.

ATTACHMENT A: INDUSTRY SUBMISSIONS MADE TO TREASURY – PRRT Gas Transfer Pricing Review

	Company / Industry Body	Page count
1	APPEA – June 2019	39
2	APPEA –February 2020	17
3	APPEA – February 2022	8
4	Chevron Australia – June 2019	4
5	Chevron Australia – March 2022	5
6	ExxonMobil Australia – February 2020	8
7	ExxonMobil Australia - March 2023	3
8	INPEX – June 2019	5
9	INPEX – February 2020	5
10	INPEX February 2023	3
11	Japan LNG (MIMI) – June 2019	3
12	Japan LNG (MIMI) – February 2020	5
13	Japan LNG (MIMI) – February 2023	18
14	Shell – June 2019	3
15	Shell – March 202	13
16	Shell – February 2023	11
17	Woodside – June 2019	12
18	Woodside – February 2020	19
19	Woodside – February 2020	6
20	Woodside – March 2020	12
21	Woodside – February 2023	10

s 22

From: s 47F @appea.com.au>
Sent: Tuesday, 7 February 2023 7:15 PM
To: Gas Market Consultation
Cc: s 47F
Subject: APPEA Options to Ensure the Domestic Wholesale Gas Market Delivers for Australians | Proposed Mandatory Code of Conduct submission
Attachments: 230207 APPEA Mandatory Code of Conduct Submission.pdf
Follow Up Flag: Follow up
Flag Status: Completed

RE: OPTIONS TO ENSURE THE DOMESTIC WHOLESale GAS MARKET DELIVERS FOR AUSTRALIANS | PROPOSED MANDATORY CODE OF CONDUCT

Please find attached the Australian Petroleum Production and Exploration Association’s (APPEA) submission to the *Options to Ensure the Domestic Wholesale Gas Market Delivers for Australians | Proposed Mandatory Code of Conduct Consultation*.

APPEA would welcome this submission being made public.

If you can confirm receipt of the submission, that would be much appreciated.

Please do not hesitate to reach out if you have any questions or follow up points of discussion on the submission.

Regards,

s 47F

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CONSULTATION PAPER | *OPTIONS TO ENSURE THE DOMESTIC WHOLESALE GAS MARKET DELIVERS FOR AUSTRALIANS*

Australian Petroleum Production and Exploration Association | 7 February 2023

The Australian oil and gas industry is working to ensure the secure, reliable and affordable supply of natural gas for Australian households and businesses against a background of a global energy crisis and domestic market upheaval. The Russian invasion of Ukraine has compounded the underlying trend of energy price increases in the domestic energy market caused by underinvestment in new gas supply combined with increasing demand volatility.

New gas supply is key to putting sustained downward pressure on prices. In its January 2023 Gas Inquiry Interim Report, the Australian Competition & Consumer Commission (ACCC) anticipates gas shortfalls from 2027 that “*would place continued upward pressure on prices in the domestic gas market, as well as pressure on the electricity market*”. The ACCC concludes that “*avoiding long-term supply shortfalls will require development of new supply*”.

Government intervention is undermining investment confidence and increasing the risk of prolonged higher prices and future gas shortages. These interventions are creating enormous uncertainty in the market and have had an immediate and negative impact on investment plans. If Australia loses its reputation as a safe, dependable investment destination, it will have significant repercussions across the economy, not just in the gas market.

To ensure the domestic wholesale gas market continues to deliver for Australians, APPEA recommends:

- **The mandatory Code should be based on a good faith reflection of the key principles and approaches agreed as part of the voluntary Code.** The voluntary Code is the outcome of two years of extensive consultation between gas buyers and sellers, the Government and the ACCC, and addresses all key principles and inclusions of the proposed mandatory Code.
- **Gas prices should be determined by the market, not set by the government.** The market is best placed to efficiently connect gas producers and users based on mutually acceptable prices and conditions, while providing the signal necessary to drive new supply and give confidence to investors. Regulated gas prices, including the proposed “*reasonable pricing*” approach based on estimated costs of production, will result in an uncertain, inefficient and distorted gas market with reduced competition and investment. This will ultimately leave Australian households and manufacturers worse off and increase the risk of future supply shortfalls.
- **The arbitration process must maintain the right for buyers and sellers to decide how they do business.** Engaging in the market should not carry the risk of being bound *ex ante* to the outcomes of an unconstrained and uncertain future arbitration process – a process that promotes bad faith negotiations and which can dictate when, where and how much gas is supplied, and at what price.

APPEA and its members remain committed to working with government to find an effective, workable, and sustainable way forward that ensures sufficient supply and puts downward pressure on prices.

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BACKGROUND AND CONTEXT

The Australian oil and gas industry is working to ensure the secure, reliable and affordable supply of natural gas for Australian households and businesses against a background of a global energy crisis and domestic market upheaval. The Russian invasion of Ukraine has compounded the underlying trend of price increases in the energy market. Energy and gas prices were increasing before the invasion of Ukraine, both at home and abroad, due to underinvestment in new gas supply, combined with increasing demand volatility.

Australia’s reliance on natural gas for secure and dispatchable power is increasing with the transition away from coal-fired power generation and growing shares of renewables. This was evident during the 2022 winter, where a combination of coal outages, limited renewable capacity and cold weather, saw demand for natural gas increase by 55% relative to the same time in 2021. The ability of industry to ramp up supply to meet this demand is key to keeping the lights on in the east coast of Australia.

New gas supply is the key to putting sustained downward pressure on prices. In its January 2023 Gas Inquiry Interim Report, the Australian Competition & Consumer Commission (ACCC) anticipates gas shortfalls from 2027 that “would place continued upward pressure on prices in the domestic gas market, as well as pressure on the electricity market”. The ACCC concludes that “avoiding long-term supply shortfalls will require development of new supply”.

Government intervention in the market – including the recent Gas Market Emergency Price Order and the proposed Mandatory Code of Conduct – is exacerbating, not easing, this situation. These interventions are creating enormous uncertainty in the market and are already negatively impacting investment in supply. Investors across the economy are watching these developments with great concern. Capital is mobile and if Australia loses its reputation as a safe, dependable investment destination, it will have significant repercussions across the economy and on the cost of living for all

Australians. This is especially the case given the investment we need to grow the economy and maintain secure affordable energy supply, while we transition to net zero.

To provide greater supply certainty to the market and improve transparency, the industry put in place a voluntary Code of Conduct in September 2022. The voluntary Code of Conduct was agreed following two years of close consultation with gas customers, the Government and the ACCC. The September 2022 Code of Conduct:

- Provides minimum standards of business conduct for gas suppliers in their interactions with gas customers in order to build and sustain trust and cooperation between gas suppliers and gas customers
- Increases transparency and certainty for gas customers in the negotiation of Gas Supply Agreements (GSAs) to minimise disputes arising from a lack of certainty in respect of the terms being negotiated between gas suppliers and gas customers
- Provides an effective, fair and equitable dispute resolution process for gas customers to raise complaints about the compliance of gas suppliers with the Code and to have those complaints investigated and resolved.
- Promotes and supports good faith in commercial dealings, including agreeing prices, between gas suppliers and gas customers in the negotiation of GSAs.

In October 2022, the government announced its intention to implement a mandatory Code just weeks after endorsing the industry Code . In December 2022, the government enacted into law a major intervention in the gas market in the form of a twelve-month price cap on wholesale gas contracts entered into after the 22 December 2022 for gas supplied before 31 December 2023. In parallel, the government made the decision to replace the collaborative September 2022 Code with a new mandatory Code of Conduct that doubles down on government intervention in the market in the form of an ongoing “*reasonable pricing*” provision and an unworkable, binding arbitration process. Implementation of the September 2022 Code was halted before it had been given the opportunity to work.

The government’s proposed mandatory Code of Conduct will severely impact future investments in and the ability of the market to deliver reliable, affordable energy for all Australians. The proposed mandatory Code of Conduct with a “*reasonable pricing*” provision and binding arbitration process will result in ongoing market uncertainty and entrenched market distortions, reduced competition, and reduced investment in new gas supply – the opposite of what the ACCC say is needed. In turn, these interventions will increase the risk of supply shortfalls in the domestic market and place upward pressure on domestic gas prices.

The stakes are high in realising the industry’s economic, social and energy security benefits. The decisions the Australian government makes on the proposed mandatory Code will play an important role in ensuring the significant and lasting contribution of the industry to Australia’s energy security and economic success (Annex 1).

This submission follows the two APPEA submissions made on 13 and 15 December and focuses on the options for a mandatory gas industry Code of Conduct raised in the Consultation Paper.

In addition to the APPEA submission, a number of APPEA members have made individual submissions on the Consultation Paper. This response should be read in conjunction with submissions from individual APPEA members.

COMMENTS AND RECOMMENDATIONS

1. The mandatory Code of Conduct should be based on a good faith reflection of the key principles and approaches agreed as part of the voluntary Code of Conduct

The Consultation Paper identifies several key principles and inclusions as part of the rationale for establishing the proposed mandatory Code, stating that the Code would contain:

- *obligations on both producers and purchasers to act in good faith;*
- *requirements for gas producers to publish or otherwise make offers broadly available to the domestic market;*
- *requirements for gas producers to disclose certain information when issuing expressions of interest (EOIs) or making offers to enter into a gas contract, such as the factors considered in determining the price;*
- *obligations around the timing for issuing EOIs [Expressions of Interest] and making offers (for example, specifying minimum periods for EOIs and offers to remain open);*
- *minimum standards for some terms and conditions of gas supply contracts;*
- *a reasonable pricing provision.*

The Consultation Paper also indicates that the proposed mandatory Code will include “*a formal process for the resolution of pre-contractual disputes, ranging from mediation to binding arbitration. Arbitration will generally be available on all terms of gas supply contract negotiations*”.

The September 2022 Code effectively addresses all key principles and inclusions of the proposed mandatory Code without creating new regulatory uncertainty. It also benefits from significant negotiation and input from gas suppliers and customers. Annex 2 highlights the issues to be included in the proposed mandatory Code and a description of how and where they are addressed in the September 2022 Code. When the September 2022 Code implementation was suspended following the government announcement, companies representing over 80 per cent of gas supply in the east coast gas market were signatories to the Code, with further companies indicating their intention to become signatories. These companies had prepared operating procedures for the September 2022 Code compliance and in many cases had already commenced operating in a manner consistent with the Code.

Any deviation from the voluntary Code should be well justified and extensively consulted with gas buyers and sellers before being applied. The voluntary Code was the basis of two years of extensive discussion, consultation and negotiation between gas buyers and sellers, the government and the ACCC. Any changes in approach, including around the setting of prices or how arbitration is conducted, will require an equivalent level of consultation and negotiation to ensure it is fit for purpose and will not result in unintended consequences for the market.

2. Gas prices should be determined by the market, not set by the government

The proposed “*reasonable pricing*” provision does not reflect the risks, uncertainties and cyclical nature of the oil and gas industry. It will have significant negative impacts on investment and on the functioning of the gas market. Globally, extensive experience has shown that regulatory price interventions in functioning, competitive markets cause market disruption and create investment uncertainty and in-turn reductions in supply. The recent government Gas Market Emergency Price Order provides a case-study, where a poorly conceived, rushed intervention continues to create uncertainty – damaging the functioning of the market and having the opposite effect to what was

intended. Analysis by ACIL Allen¹ suggests that the investment uncertainty associated with these interventions could increase gas prices in the long-term by as much as 40%, over and above where they would have been without government intervention.

Regulating prices in competitive markets is at odds with the principles of an open, market-based economy. A commitment to an open, market-based economy is a commitment to allowing the market to determine price and deliver effective signals for new investment. In contrast, the proposal by the government to exert control over the gas market through the implementation of a “reasonable pricing” regulation of prices, set at the discretion of the regulator, stands in stark contrast to these principles.

Placing government discretion and regulatory decision making at the centre of gas market operations creates significant ongoing uncertainties. The proposed “reasonable pricing” provision locks in a central role for the government in the functioning of the gas market – including determining the “reasonable pricing” framework and ruling on what is a “reasonable” rate of return on capital. The Consultation Paper suggests that regulatory intervention would occur upfront when a proposed framework is established and includes determining what can be considered as part of the cost of production. The cost of production would need to consider the full life-cycle of costs incurred by a producer including exploration costs, rig costs, inflation, interest, foreign exchange costs, labour costs, regulatory compliance costs including Safeguard Mechanism compliance, decommissioning as well as commercial costs, flexibility, etc. Accurately estimating these costs is extremely difficult, if not impossible, noting some gas fields can be in development for over 15 years (and incurring substantial costs) before commencing production. In practice, such an approach is simply not workable. The uncertainty it creates for project developers and investors in securing an adequate return on investment will result in a chilling of investment into new supply.

The government’s willingness to intervene in the market points to the very real possibility of further interventions and ad-hoc rule changes – potentially revisiting how “reasonable prices” are calculated or what is considered a “reasonable” rate of return. This is already evident in this process. In 2020, the ACCC considered a domestic price based on LNG netback prices to be reasonable, stating “*The ACCC’s LNG netback price series represents the prices east coast LNG producers could expect to receive for exporting their uncontracted gas to Asia under current market circumstances. For domestic gas buyers, these are the prices they can expect to pay when LNG producers have spare capacity and are in a position to sell their uncontracted gas either to the Australian market or overseas.*”² Only two years later, the government is looking to take a fundamentally different approach to determining what is a reasonable domestic price. It is impossible to predict how the government may determine reasonable prices in two years from now, let alone across the 20-30 year investment horizon of a new gas development. The ongoing threat of regulatory intervention in the market, overlaid with future changes in government and government policies creates significant ongoing uncertainties and undermines investor confidence.

Increased market distortions and ongoing uncertainty will ultimately reduce supply and impact the market’s ability to deliver reliable, affordable energy for all Australians. Investment is required by industry on an ongoing basis to maintain constant levels of gas supply to meet demand. To increase gas supply to meet expected increases in gas demand and address the ACCC’s forecast shortfalls requires further investment still. Government implementation of a “reasonable pricing” provision in the proposed mandatory Code of Conduct will create market uncertainty and deter investment – the opposite of the secure, stable investment environment required to stimulate investment.

¹ ACIL Allen 2022 *Impact of price caps in the east coast gas market* Final Report

² <https://www.accc.gov.au/media-release/extended-lng-netback-price-series-will-improve-price-transparency>

The immediate adverse impacts of regulatory intervention are already evident, with companies pausing development and investment plans following the December 2022 reforms. These plans involved investing billions of dollars into the Australian economy, bringing more gas in the domestic market and creating hundreds of jobs in regional communities. These investments have been put on hold until the details and implications of the interventions are made clear and the economics of the proposed projects can be reassessed. This is already evident with Senex making the decision, immediately following the December announcements, to put on hold the \$1 billion Altas project expansion in Queensland, with the CEO of Senex stating that *“While Senex supports measures to provide relief to Australian households and businesses from rising energy prices, this legislation goes much further and now challenges the commercial rationale for investing in future gas supply projects because the company can now be required to accept an arbitrary return determined by others, and after the investment is made.”*³

3. The arbitration process must maintain the right for buyers and sellers to decide how they do business.

A binding arbitration process will make extensive, expensive, and time-consuming mediation and arbitration a feature of all east coast GSAs. Having a binding arbitration process risks creating an incentive for market participants to enter into negotiations in bad faith if they believe the arbitration process may lead to an improved outcome for themselves. The September 2022 Code contains extensive dispute resolution provisions, which were the subject of significant consultation and negotiation with gas customers when the Code was developed. These provisions however do not result in the regulatory uncertainty that will be brought about by arbitrated prices.

An arbitration process must preserve the right for the buyer or the seller to be free to not to enter into a contract for supply or purchase of gas. Both buyers and sellers should retain the right to not be bound by the outcomes of arbitration. That is, if either party is unsatisfied with the arbitrated outcome, they should be free to not enter into a contract for supply or purchase of gas. In contrast, the proposed binding arbitration process suggests that as soon as an offer or a bid is placed in the market, it may set in train a process outside of the control of an individual market participant that can result in a gas producer, or customer, being bound ex ante to the outcomes of an unconstrained and uncertain future arbitration process that can dictate when, where and how much gas it is contracted, and at what price. This process which may bind a seller to an uneconomically low price or a buyer to an uneconomically high price is unworkable and creates massive levels of uncertainty in the market. Sellers, and buyers, cannot make billion-dollar decisions when the economics of their investment may be derailed by the outcome of a future arbitration process that is outside their control.

Further, any arbitration process must contemplate the pre-existence of gas supply commitments and the interdependent nature of these agreements with new contracts. Many legacy supply arrangements that are operational today include material penalties for non-performance (i.e., delivering less than contractually committed).

4. Proposed interventions disproportionately impact smaller gas producers, risking reduced competition in the market.

The proposed interventions are expected to impact smaller producers disproportionately, in-turn further distorting the market and reducing competition. Smaller producers have less flexibility in their operations and can be more vulnerable to interventions that impact investment, limit their

³ <https://www.senexenergy.com.au/federal-government-gas-intervention-puts-1-billion-atlas-expansion-in-queensland-at-risk/>

negotiating power, and impose significant risks on operation. In most instances, smaller companies do not have the ability to smooth investment and returns across a large portfolio of projects and between domestic and export markets. Further, smaller producers already have reduced market power compared to large producers and large gas buyers. Therefore, shifting this balance further toward buyers disproportionately impacts small producers. For example, should a negotiation be taken into a binding arbitration process – which could be a lengthy and expensive process – small producers may not have the resources needed to adequately engage in such a process.

5. A Code of Conduct needs to be flexible and responsive to the requirements and circumstances of market participants.

The mandatory Code should not apply to contracts that supply or intend to supply less than 0.5 PJ of gas within a 12 month period, or with a term of less than 12 months. Small volume, short-duration contracts are necessary to provide flexibility to both buyers and suppliers and a rapid response to changes in market circumstances. If the mandatory Code were to apply to all contracts irrespective of size or duration, it would reduce the flexibility of the market and disproportionately impact smaller buyers and sellers, in-turn reducing competition.

The mandatory Code should include the potential for exemption, based on the specific requirements and circumstances and with mutual agreement of market participants. The flexibility and practicality of mandatory Code would be enhanced if buyers and sellers could, by mutual agreement, apply for an exemption to some or all of the provisions on the mandatory Code. The option to apply for an exemption by mutual agreement, provides flexibility in the terms and conditions and other gas supply arrangements to fit with the specific circumstances facing both buyers and sellers. This includes foundational supply agreements that can be critical to underpin final investment decisions for new supply.

The mandatory Code should not apply to existing agreements which must instead be governed by the agreed contractual terms and conditions. Allowing the mandatory Code to apply to existing contracts, including as part of a contract variation process, creates further ongoing uncertainty in the market and undermines the sanctity of the contracts.

6. Comments/responses to questions posed in the Consultation Paper

APPEA offers the following comments/responses to the questions posed in the Consultation Paper.

Are the obligations outlined in the voluntary Code (summarised at Appendix C of the Consultation Paper), if made mandatory, adequate to address bargaining power imbalances between gas suppliers and purchasers in the negotiation of gas supply contracts?

The September 2022 Code considers and incorporates each of the issues raised in the Consultation Paper and adequately addresses concerns of bargaining power imbalances between gas suppliers and purchasers in the negotiation of gas supply contracts. The September 2022 Code, endorsed by the Australian Government as part of the Heads of Agreement, includes provisions to build and sustain trust and cooperation between gas suppliers and gas customers, increase transparency and certainty for gas customers in the negotiation of Gas Supply Agreements (GSAs), provide an effective, fair and equitable dispute resolution process, and to promote good faith in commercial dealings between gas suppliers and gas customers in the negotiation of GSAs. In doing so, it addresses potential bargaining power imbalances between gas suppliers and purchasers. It achieves the benefits of the proposed mandatory Code with none of the risks, costs and uncertainties.

How could the binding arbitration process be designed to ensure resolution in an efficient and cost-effective manner, particularly with regard to reasonable pricing?

A binding arbitration process is unnecessary and risks entrenching distortions to the operation of the east coast domestic gas market and making extensive, expensive and time-consuming mediation and arbitration a feature of all east coast GSAs. The September 2022 Code contains extensive dispute resolution provisions, from clauses 48-82. These clauses were the subject of significant consultation and negotiation with gas customers when the Code was developed.

The provisions outline the appointment process and functions of a Code Arbiter to manage disputes relating to the Code, including the investigation, determination and reporting of complaints made by gas customers. Consistent with the proposal in the Consultation Paper, the September 2022 Code provides that once a GSA is agreed, any disputes will be governed by the dispute resolution provisions within the relevant Agreement.

On what grounds should a party to a gas supply agreement negotiation be permitted to refer a dispute to a binding arbitration process? Should mediation be a pre-condition to accessing arbitration?

See the answer to the previous question.

On what basis should an arbitrator be able to make a determination on price?

- ***What factors should be considered for the reasonable pricing provision?***
- ***What type of guidance on reasonable pricing should be provided to support negotiations, and if necessary, arbitration?***

The September 2022 Code and the Heads of Agreement outline the factors to be considered when determining a reasonable price under a GSA. These factors are outlined through the pricing principles contained in Clauses 41-46. Similar provisions are set out in clause 3 of the Heads of Agreement (the two were designed to be consistent and complementary). An arbitrator should not determine gas prices given the regulatory uncertainty this causes, which will lead to a chilling of investment, reduced gas supply and higher prices.

What design features will ensure the reasonable pricing provision provides a sufficiently clear basis for producers and buyers to negotiate a price?

See the answer to the previous question.

What model of arbitration should be used to resolve disputes about reasonable pricing?

The September 2022 Code contains extensive dispute resolution provisions, from clauses 48-82. These clauses were the subject of significant consultation and negotiation with Gas Customers when the Code was developed. This model is appropriate in the circumstances and given the risks described above.

Does the proposed model appropriately mitigate the risks associated with market intervention?

The mandatory Code of Conduct model proposed in the Consultation Paper, with the inclusion of the “reasonable pricing” provision and binding arbitration, will exacerbate rather than appropriately mitigate the risks associated with market intervention.

As noted above, the appropriate way forward, and the one that provides the best option available to mitigate these risks, is to ensure the mandatory Code is based on a good faith reflection of the key principles and approaches developed as part of the voluntary Code, endorsed by the Australian Government as part of the Heads of Agreement. The September 2022 Code is the result of nearly two years of analysis, development, consultation and negotiation and incorporates the issues raised in the Consultation Paper.

Yours sincerely



**Samantha McCulloch
Chief Executive**

ANNEX 1: THE AUSTRALIAN UPSTREAM OIL AND GAS INDUSTRY

The Australian oil and gas industry has invested well over \$400 billion in the Australian economy undertaking exploration and developing natural gas production, transport, liquefaction and export facilities over the last decade. A further \$27 billion commitment has been made in the past 18 months.

This investment will deliver returns for Australia for decades to come, through increased gas supply for Australian customers, export revenue, jobs, and in payments to governments in royalties and taxes – nearly \$65 billion⁴ in payments have been made to government over the last decade.

LNG is now Australia's second largest export commodity after iron ore, with export revenue of more than \$70 billion in 2021-22, expected to rise to over \$90 billion in 2022-23.⁵ As well as providing a significant return to the Australian economy, this LNG export industry is also a key enabler of domestic gas supply.

The oil and gas industry supports 80,000 jobs directly and indirectly in Australia and hundreds of thousands more in manufacturing.

Investment in new gas supply for the east coast market is critical to the ongoing functioning of a stable, reliable electricity market and affordable domestic gas supply while the broader energy market transitions through the closure of coal-fired power generators, the construction and grid connection of new renewable projects and the implementation of storage or peaking capacity to firm renewables.⁶

The industry is pivotal to reaching net zero, supporting the transition away from coal, providing the firm dispatchable energy required to unlock our renewable energy potential, and powering Australian industries across the economy. The industry is also central to delivering step-change technologies including carbon capture, utilisation and storage (CCUS) and low-carbon hydrogen.

⁴ See [Media Release: Oil and gas industry helps bankroll public services despite pandemic challenge | APPEA](#) and [Historical-Summary-2019-20.pdf \(apnea.com.au\)](#) for more information. Over and above this, Australia's LNG exporters are set to almost triple their financial contribution to the public this financial year, forecasted to pay an extra \$9 billion to federal and state governments. New preliminary forecasts released in October 2022 revealed the gas export sector is estimated to pay around \$13 billion during 2022-23 – up from \$4.8 billion forecast for last financial year (see [Media Release: LNG exporters forecast to pay extra \\$9 billion to governments as tax and royalty collections almost triple | APPEA](#) for more information).

⁵ See [Office of the Chief Economist - Resources and Energy Quarterly - September 2022 \(industry.gov.au\)](#) for more information.

⁶ For example, the Australian Energy Market Operator's (AEMO) recent *2022 Integrated System Plan* (available at [AEMO | 2022 Integrated System Plan \(ISP\)](#)) confirmed the long and enduring value of natural gas partnering with renewables with the report finding (page 57): *"Peaking gas-fired generators will play a crucial role as significant coal-fired generation retires, as an on-demand fuel source during extended periods of low VRE output, and to provide power system services for grid security and stability and High renewable output and high demand – gas is needed to meet the demand peaks just after sunset, and to keep going through the night to cover wind variability."* See [Media Release: 'Crucial' role for gas powering electricity grid for decades: AEMO report | APPEA](#) for more information.

ANNEX 2: ISSUES TO BE INCLUDED IN THE PROPOSED MANDATORY CODE AND HOW THEY ARE ADDRESSED IN THE SEPTEMBER 2022 CODE

Issues to be included in the proposed mandatory Code	Treatment in the September 2022 Code
Obligations on both producers and purchasers to act in good faith	<p>A unilateral requirement for gas suppliers to act in good faith is contained in clauses 15-18 of the September 2022 Code.</p> <p>A mutual good faith obligation was included in a draft version of the Code provided to gas customer groups in March 2021 but rejected in writing by gas customers in correspondence sent to APPEA on 18 June 2021.</p>
Requirements for gas producers to publish or otherwise make offers broadly available to the domestic market	<p>The information required to be included in offers made to the domestic market are outlined in clauses 19-20 and 29.</p> <p>Signatories were developing processes to make such information broadly available⁷ when the Australian Government made its 25 October 2022 announcements.⁸ A central point for these offers was to be included in the Code website (which was under development when the Australian Government's announcements were made).</p>
Requirements for gas producers to disclose certain information when issuing expressions of interest (EOIs) or making offers to enter into a gas contract, such as the factors considered in determining the price;	<p>Clauses 19-20 set obligations for signatories that an EOI must include, in writing, an extensive body of information including <i>the quantity of the gas intended to be supplied; the term (time period) over which the gas is intended to be supplied; the proposed delivery point(s) of the gas; any other key terms and conditions intended to apply to the supply or purchase of the gas that may affect the price of the gas supplied (including take or pay obligations provisions); the EOI Period; the EOI Response Period; a statement that the EOI will not be withdrawn or terminated by the Gas Supplier until the expiration of the EOI; the circumstances (if any) in which an EOI may be withdrawn or terminated by the Gas Supplier; and any conditions precedent to the proposed Gas Supply Agreement intended to be entered for the supply or purchase of the gas.</i></p> <p>Clause 29 obliges that a gas supplier must not make an offer to a gas customer for the supply of gas unless the offer a similar set of information is provided in writing.</p> <p>The Code sets out reasonable pricing provisions through the pricing principles contained in clauses 41-46. Similar provisions are set out in Clause 3 of the Heads of Agreement.</p>
Obligations around the timing for issuing EOIs and making offers (for example, specifying minimum periods for EOIs and offers to remain open);	<p>Amongst the extensive range of information required under clauses 19-20 and 29, is information about the "EOI Period" and "EOI Response Period" and the "Offer Period".</p> <p>Clause 3 of the Code sets out definitions for key terms used in the Code, including EOI Period, EOI Response Period and EOI Period. Each of the</p>

⁷ Under clause 5 of the Heads of Agreement, signatories agreed with the Australian Government that they "... will publish on their websites information that provides domestic customers with visibility on uncontracted gas volumes and allow domestic customers to approach LNG Exporters to purchase these volumes." As an example, see [Domestic Gas Offers – Australia Pacific LNG \(aplng.com.au\)](http://aplng.com.au). Similar processes were under development when work on Code implementation was suspended following the Australian Government's 25 October 2022 announcements.

⁸ See [Improving energy security, reliability and affordability | Ministers for the Department of Industry, Science and Resources](#) for more information.

	<p>definitions set out in Clause 3 sets out specific business day requirements for each term.</p> <p>Over and above this, the Code places obligations on gas suppliers in considering and responding to EOIs and offers. These are set out in clauses 21-27.</p> <p>Further, Clause 28 provides that the Parties may, at any time, opt out of any of the requirements relating to EOIs under clauses 19, 20, 26 and 27 by <u>mutual written agreement</u>.</p>
Minimum standards for some terms and conditions of gas supply contracts;	Clauses 37-40 of the Code set out a comprehensive list of “Minimum Standards relating to Gas Supply Agreements”
A reasonable pricing provision	<p>The Code sets out reasonable pricing provisions through the pricing principles contained in clauses 41-46 with similar provisions are set out in Clause 3 of the Heads of Agreement.</p> <p>Specifically, the clauses set out the factors that a gas supplier must consider when determining the price of gas in an offer, including obligations requiring gas suppliers to disclose what factors were considered in determining the price of an offer.</p> <p>In doing so, the pricing principles in the Code, together with the pricing obligations and the Heads of Agreement set out an agreed framework for what constitutes a reasonable price.</p>
A formal process for the resolution of pre-contractual disputes, ranging from mediation to binding arbitration	<p>The Code as drafted already contains extensive dispute resolution provisions, which form a substantive part of the Code from clauses 48-82. These clauses were the subject of significant consultation and negotiation with Gas Customers when the Code was developed.</p> <p>The provisions outline the appointment process and functions of a Code Arbiter to manage disputes relating to the Code, including the investigation, determination and reporting of complaints made by gas customers.</p> <p>The process to appoint a Code Arbiter (such as a retired Justice of the High Court of Australia, supported by a prominent firm of legal advisers) was underway when the Government’s announcements were made on 25 October 2022.</p> <p>Consistent with the proposal in the Consultation Paper, the Code as drafted provides that once a GSA is agreed, any disputes will be governed by the dispute resolution provisions within the relevant Agreement.</p>

s 22

From: s 47F @appea.com.au >
Sent: Tuesday, 13 December 2022 7:58 PM
To: Gas Market Consultation
Subject: EXPOSURE DRAFT – COMPETITION AND CONSUMER AMENDMENT (GAS MARKET) BILL 2022: COMMENTS FROM THE AUSTRALIAN PETROLEUM PRODUCTION & EXPLORATION ASSOCIATION (APPEA)
Attachments: L - Treasury re Exposure Draft - Competition and Consumer Amendment (Gas Market) Bill 2022 131222.pdf
Importance: High
Follow Up Flag: Follow up
Flag Status: Completed

Please find following APPEA's comments on the Exposure Draft – *Competition and Consumer Amendment (Gas Market) Bill 2022* (the Bill) released late on 9 December 2022.

APPEA recommends the Bill be withdrawn and genuine consultation be undertaken with relevant stakeholders. This would enable time to appropriately consider the implications of the proposed approach and to establish a better way forward – to work with industry to bring on more supply, particularly on the east coast, as the genuine and sustainable way to ensure competitive prices, and to seek genuine market reform to improve the operation and the depth and liquidity of the Australian gas market.

It is evident from our engagement with the Treasury and other agencies that there are many issues and unintended consequences of this Bill that are yet to be fully considered. APPEA and its members would welcome the opportunity to meet with you at any stage to discuss our significant concerns with the Bill, to engage constructively in genuine consultation to appropriately consider the implications of the proposed approach and a better way forward.

Regards

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APPEA offices will close for the Christmas/New Year break on Friday 23 December 2022 and reopen on Tuesday 3 January 2023

This message and any attachments may contain privileged and confidential information intended only for the use of the addressee named above. If you are not the intended recipient of this message you are hereby notified that any use, dissemination, distribution or reproduction of this message is prohibited. If you have received this message in error please notify APPEA Limited immediately via email at appea@appea.com.au.

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13 December 2022

Gas Market Consultation
Labour Market, Environment, Industry and Infrastructure Division
Treasury
Langton Cres
PARKES ACT 2600

(via email to: gasmarketconsultation@treasury.gov.au)

RE: EXPOSURE DRAFT – COMPETITION AND CONSUMER AMENDMENT (GAS MARKET) BILL 2022

Please find following APPEA's comments on the Exposure Draft – *Competition and Consumer Amendment (Gas Market) Bill 2022* (the Bill) released late on 9 December 2022.

APPEA recommends the Bill be withdrawn and genuine consultation be undertaken with relevant stakeholders. This would enable time to appropriately consider the implications of the proposed approach and to establish a better way forward – to work with industry to bring on more supply, particularly on the east coast, as the genuine and sustainable way to ensure competitive prices, and to seek genuine market reform to improve the operation and the depth and liquidity of the Australian gas market.

APPEA's recommendation is based on the following major concerns:

1. The Bill **establishes unprecedented and unconstrained Government powers to command and control the gas market.**
2. The Bill **does not address the underlying causes of higher gas prices** – including a lack of new supply and volatility in demand for gas for power generation.
3. The Bill **damages investor confidence** in the Australian gas supply, the energy sector and economy more broadly.
4. The Bill **does not address the underlying causes of price increases** in the energy market.
5. The Bill **overrides existing mechanisms** that have not being given a chance to work.
6. The Bill **has been prepared in haste without any serious or meaningful consultation**, breaching all concepts of good governance and sound decision making.

APPEA and its members would welcome the opportunity to engage constructively in genuine consultation to appropriately consider the implications of the proposed approach.

Further detail on the concerns of APPEA and its members are provided below.

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APPEA CONCERNS WITH THE BILL

The industry's key concern with the Bill (noting additional concerns are likely to emerge over time) is its provision of unfettered power for the Government to regulate the gas market through codes of conduct (Code) and emergency price orders (price caps) in undefined circumstances.

In particular, it is the powers under Section 53V to compel gas producers to supply certain volumes at a specified price and to set rates of return on private capital that are of most concern. **If passed, the Bill provides the Government with power to overturn the entire basis for investments made across the industry.**

1. The Bill establishes unprecedented and unconstrained Government powers to command and control the gas market.

Section 53V of the Bill gives ongoing powers to Government amounting to the effective nationalisation of the industry with gas producers able to be compelled to produce and sell gas on terms wholly dictated by the Government (including volume and price). This command-and-control approach is fundamentally in opposition to the principles of a modern market economy. Despite suggestions that interventions are temporary, the Bill enshrines an ongoing role for Government in the allocation of gas in the market.

The powers it confers to Ministers and officials serves to undo two decades of gas market reform. It also undermines the operation of the broader energy market at a time when the market is already under pressure and when regulatory policy certainty and stability is crucial.

Section 53V of the Bill should be removed as a priority.

2. The Bill does not address the underlying causes of higher gas prices – including a lack of new supply and volatility in demand for gas for power generation.

Price caps will remove the signal to the market to invest in increased gas supply – supply necessary to address the current constraints in the market. In contrast, price caps will increase demand for gas and decrease gas supply, resulting in an ultimate increase in energy prices to households and businesses in the medium- to long-term. Impacts will extend beyond the gas market, including to the electricity market, with the price signal for new electricity supply from renewable generation, also being muted.

3. The Bill damages investor confidence in the Australian gas supply, the energy sector and economy more broadly.

The far reaching interventions that retrospectively impact hundreds of billions of dollars of investment in the Australian economy will undermine investor confidence. This erosion of investor confidence is not limited to the gas industry, but instead will impact investment throughout the Australian economy¹.

Threats to intervene in the energy market have already had a chilling effect on investment. The Bill solidifies that threat and will put at risk the very investment in exploration and production that is required to bring more gas into the market. It also sends a very troubling signal to investors in Australia – not just the gas industry – about an increasingly unstable and uncertain investment regime in Australia. The approach taken in the Bill undermines over three decades of

¹ [Attachment 1](#) provides an overview of the Australian oil and gas industry.

microeconomic reform to create an open competitive economy in Australia, much of which has been championed by the Treasury itself².

4. The Bill overrides existing mechanisms that have not been given a chance to work.

The industry has been working constructively with the Government for a number of months, concluding a renegotiation of extension of the Heads of Agreement between the Australian Government and east coast LNG exporters on 29 September 2022, and the development by industry of a Code of Conduct for gas supply agreement negotiations with customers³.

The Government has not given these existing mechanisms, negotiated in good faith, a chance to work. Less than 71 days after these commitments were made and mutually agreed with Government – commitments that were already showing signs of working – the Government has proposed to introduce significantly more heavy-handed interventions, that cut across the existing mechanisms.

5. The Bill has been prepared in haste without any serious or meaningful consultation, breaching all concepts of good governance and sound decision making.

The time allowed to consider the extraordinary, far-reaching and retrospective intervention in the Australian gas market proposed by the Bill is inadequate, contravening the Government's own guidance on *Best Practice Consultation Guidance Note* which provides that:

- Policymakers should “consult in a genuine and timely way with affected businesses, community organisations and individuals, as well as other policy makers to avoid creating cumulative or overlapping regulatory burdens.” and
- “Timeframes for consultation should be realistic to allow stakeholders enough time to provide a considered response”.

To provide for two business days to respond to the package breaches good governance around legislative and regulatory development, undermines any basis for sound and considered policy decision-making and dismisses genuine and constructive consultation with stakeholders, including those directly impacted by the provisions contained in the Bill.

SPECIFIC COMMENTS ON THE PROVISIONS

Unlimited ability to regulate gas supply agreements under Code

- Section 53S of the Bill provides that the Code may regulate agreements in respect of gas supply and acquisition. The matters that may be regulated are open and not exhaustive.
- Section 53T of the Bill provides that the Code may regulate terms of agreements themselves including how such a term is expressed. This level of intervention is unprecedented where the parties to the agreement will be large, sophisticated parties.
- Section 53V of the Bill provides that the Code can include rules about requiring a gas market participant to supply gas at specified volumes, times, locations and on specified terms. This provision undoes the legislative and regulatory basis underpinning investments across the industry and represents the effective nationalisation of the gas industry.

² [Attachment 2](#) provides an overview of the existing regulatory framework for the Australian gas market.

³ Known as the *Voluntary Code of Conduct for the Negotiation and Development of Gas Supply Agreements Between Gas Suppliers and Gas Customers in Australia*. See [Media release: Code of Conduct finalised | APPEA](#). The Code is publicly available at [heads of agreement the australian east coast domestic gas supply commitment.pdf \(industry.gov.au\)](#).

Unlimited ability to regulate conduct under Code

- Section 53Q of the Bill gives the Government very wide powers to regulate the gas market under a Code – including rules for all interactions for all gas market participants in dealing with each other including the period of time within which to respond to other gas market participants.
- Section 53R of the Bill provides that the Code may regulate negotiations, expressions of interest, offers, counteroffers and bids in respect of gas supply and acquisition. The matters that may be regulated for each of these areas are open and not exhaustive.

Unlimited ability to regulate pricing under Code

- Section 53T(2) of the Bill provides that the Code may include “rules about the price at which a person offers to supply or acquire gas” including rules for setting prices, maximum and minimum prices, that prices be reasonable, the factors that must be considered to determining whether price is reasonable.

The price cap is not temporary – no preclusion to future price caps after 12-month expiry and permanent reasonable pricing mechanism in Code

- Section 53M of the Bill provides that any price cap will expire after 12 months but there is nothing precluding the Government prescribing further future price caps (at any level) to apply for an additional period of time after that expiry. This considerable and long-term uncertainty will result in increased risks to investment and supply.
- Section 53T of the Bill provides for a permanent reasonable pricing mechanism in the Code that is based on costs plus the Government’s view of a reasonable rate of return. This ignores the mobility of capital (to where the highest rate of return can be gained) and the cyclical nature of the industry.

Extensive powers to implement multiple dispute resolution processes

- Section 53W of the Bill provides that the Code may provide for a range of dispute resolution processes for any complaints under the Code, disputes in negotiations and pricing disputes. The Code may require gas market participants to implement dispute resolution provisions in agreements and specify internal and external processes.
- These processes (and the implementation of the price cap) will effectively lead to gas customers “gaming” the regulatory process to obtain arbitrated and inefficient prices with \$12/GJ as a ceiling or benchmark regardless of the passing of time and changing dynamics. The uncertainty of arbitrated pricing will create a strong long-term disincentive for investment in gas production and supply in Australia. The Code may also provide complaint mechanisms to Minister and the ACCC and have processes for mediation and binding arbitration. The Code can determine everything about how these processes will operate.

Objects are not achieved by the provisions of the Bill

- Section 53 of the Bill provides that the object of the reforms is to “enhance the welfare of Australians through the regulation of the Australian gas market, including through limitations on increases in gas prices”.
- However, the Bill only regulates one part of the gas supply market, being wholesale gas prices and conduct of gas producers with gas customers.
- It is not clear how a price cap for 12 months on wholesale gas will directly result in lower energy bills for Australian consumers and no information or analysis has been provided to demonstrate how this approach will “enhance the welfare of Australians”.

- On the contrary, the price cap and proposed reasonable pricing provisions under any code of conduct will create uncertainty, undermine investment and ultimately result in higher energy bills for the Australian public in the medium- to long-term.

Catch-all and non-exhaustive definitions

- Section 53C of the Bill defines “*gas market conduct*” extremely broadly to include any negotiation or conduct in or outside Australia for the potential supply or acquisition of gas. The definition is not exhaustive.
- Section 53CD of the Bill defines “*gas market participant*” extremely broadly to include any person who engages, or is capable of engaging, in gas market conduct including related bodies and joint venture participants.
- There is no threshold or scope in relation to the reforms. This means smaller gas producers dealing with larger gas customers are also caught by these provisions. The consequence may be that smaller producers are driven out of the market resulting in less volume of supply in the market in the long-term and less competition in the market.

Significant penalties for breaches

- Section 53ZJ of the Bill provides that the price caps or codes can include penalties and infringement notices for breaches of their provisions. The magnitude of these penalties is unprecedented and sit well above the level recommended by Criminal Law Guide. Other remedies are also available including public warning notices and orders to redress loss or damage suffered by non-parties.

Application to existing contracts

- Schedule 1, Part 1, Item 3 of the Bill provides that for the purposes of Part IVBB of the *Competition and Consumer Act 10 2010*, as inserted by this Part, it does not matter whether an agreement was entered into before, on or after the commencement of this item. This could mean the Bill provides for contracts to be reopened without limitation and creates significant regulatory risk for the whole industry. All parts of the supply chain (producers, retailers and customers) rely on the certainty of contractual agreements to manage risk, guarantee cashflow and underpin financing arrangements.
- By providing for reopening of existing contracts, the Bill risks major disruption to the operations of gas market participants as well as gas customers.

It is evident from our engagement with the Treasury that there are many issues and unintended consequences of this Bill that are yet to be fully considered. APPEA and its members would welcome the opportunity to meet with you at any stage to discuss our significant concerns with the Bill, to engage constructively in genuine consultation to appropriately consider the implications of the proposed approach and a better way forward.

Yours sincerely



Samantha McCulloch
Chief Executive

THE AUSTRALIAN OIL AND GAS INDUSTRY

The Australian oil and gas industry has invested well over \$400 billion in the Australian economy undertaking exploration and developing natural gas production, transport, liquefaction and export facilities over the last decade. A further \$27 billion commitment has been made in the past 18 months.

This investment will deliver returns for Australia for decades to come, through increased gas supply for Australian customers, export revenue, jobs, nearly \$65 billion⁴ in payments to governments in royalties and taxes over the last decade.

Liquefied natural gas (LNG) is now Australia's second largest export commodity after iron ore, with export revenue of more than \$70 billion in 2021-22, expected to rise to over \$90 billion in 2022-23⁵. The oil and gas industry supports 80,000 jobs directly and indirectly in Australia and hundreds of thousands more in manufacturing.

Investment in new gas supply for the east coast market is critical to the ongoing functioning of a stable, reliable electricity market and affordable domestic gas supply while the broader energy market transitions through the closure of coal-fired power generators, the construction and grid connection of new renewable projects and the implementation of storage or peaking capacity to firm renewables⁶.

The Bill places this investment and any future investment, as well as the industry's broader economic and energy market contribution, at risk.

⁴ See [Media Release: Oil and gas industry helps bankroll public services despite pandemic challenge | APPEA](#) and [Historical-Summary-2019-20.pdf \(appea.com.au\)](#) for more information. Over and above this, Australia's LNG exporters are set to almost triple their financial contribution to the public this financial year, forecasted to pay an extra \$9 billion to federal and state governments. New preliminary forecasts released in October 2022 revealed the gas export sector is estimated to pay around \$13 billion during 2022-23 – up from \$4.8 billion forecast for last financial year (see [Media Release: LNG exporters forecast to pay extra \\$9 billion to governments as tax and royalty collections almost triple | APPEA](#) for more information).

⁵ See [Office of the Chief Economist - Resources and Energy Quarterly - September 2022 \(industry.gov.au\)](#) for more information.

⁶ For example, the Australian Energy Market Operator's (AEMO) recent *2022 Integrated System Plan* (available at [AEMO | 2022 Integrated System Plan \(ISP\)](#)) confirmed the long and enduring value of natural gas partnering with renewables with the report finding (page 57): "Peaking gas-fired generators will play a crucial role as significant coal-fired generation retires, as an on-demand fuel source during extended periods of low VRE output, and to provide power system services for grid security and stability and High renewable output and high demand – gas is needed to meet the demand peaks just after sunset, and to keep going through the night to cover wind variability." See [Media Release: 'Crucial' role for gas powering electricity grid for decades: AEMO report | APPEA](#) for more information.

THE INDUSTRY ALREADY OPERATES UNDER AN EXTENSIVE POLICY, LEGISLATIVE AND REGULATORY FRAMEWORK

The Australian oil and gas industry already operates under an extensive policy, legislative and regulatory framework both through Commonwealth and States and the Northern Territory. Together, these arrangements regulate all aspects of the industry's operation, from initial acreage release and exploration, through production and development and site closure and decommissioning arrangements.

In relation to the east coast gas market, the market has been through nearly 15 years of continuous development and reform. An extensive legislative and regulatory framework already shapes the gas market and includes a range of new arrangements that have been put in place over the last five years, including a number this year and that have only just (or have not yet) commenced, including:

1. The Australian Domestic Gas Security Mechanism (ADGSM)⁷, introduced as a short-term measure to expire in 2020 before being extended to 2023 and again to 2030. The ADGSM is now being revised, with the development of the revised ADGSM proposed to take place at the same time as consultation of aspects of this gas market intervention package.
2. The Heads of Agreement (HoA) between the Australian Government and east coast LNG exporters, first agreed in 2017 and renegotiated in 2018, 2020 and again in September 2022. The basis for the agreement of the HoA, which now runs until 2026, is fundamentally altered by the provisions in this Bill.
3. The Gas Supply Guarantee⁸ in place since 2017, which was triggered for the first time on 1 June 2022 and following action by the industry, determined by AEMO on 2 June 2022 to have been resolved successfully, and was triggered again on 19 July 2022, and has also resulted in a positive response by the industry.
4. The development by industry of a Code of Conduct⁹ for gas supply agreement negotiations with customers. The Code, which the Bill overturns after only being in place since 29 September 2022, was agreed after extensive consultation over two years between the industry and gas customers, with the Government and the ACCC updated on a regular basis during its development.
5. The proposed regulatory amendments to extend AEMO's functions and powers¹⁰ through the *National Gas (South Australia) Amendment (East Coast Gas System) Bill 2022*¹¹ agreed by Energy Ministers in August and October 2022 and now proceeding through the South Australian Parliament ahead of implementation. The powers provided to AEMO through that Bill significantly overlap, duplicate and conflict with the powers conferred to other parts of Government through this Bill.
6. The ACCC *Gas Market Inquiry 2017-2025*¹², originally set to run from 2017 to 2020 but extended in 2020 to run to 2025 and recently extended again to 2030.

⁷ See [Securing Australian domestic gas supply | Department of Industry, Science and Resources](#) for more information. Details of the proposed revision and extension of the ADGSM can be found at [Improving energy security, reliability and affordability | Ministers for the Department of Industry, Science and Resources](#).

⁸ See [AEMO | Gas Supply Guarantee](#) for more information. The GSG was reviewed in 2021 and extended out to 31 March 2023.

⁹ Known as the *Voluntary Code of Conduct for the Negotiation and Development of Gas Supply Agreements Between Gas Suppliers and Gas Customers in Australia*. See [Media release: Code of Conduct finalised | APPEA](#). The Code is publicly available at [heads of agreement the australian east coast domestic gas supply commitment.pdf \(industry.gov.au\)](#).

¹⁰ See [Proposed regulatory amendments to extend AEMO's functions and powers to manage east coast gas supply adequacy | energy.gov.au](#) for more information.

¹¹ See [National Gas \(South Australia\) \(East Coast Gas System\) Amendment Bill 2022 \(legislation.sa.gov.au\)](#) for a copy of the Bill.

¹² [Gas inquiry 2017-2025 | ACCC](#) and [Review of upstream competition and the timeliness of supply | ACCC](#).

7. The 2021 ACCC review of LNG netback pricing¹³.
8. Extensive new gas market transparency and information provision measures¹⁴, through the *National Gas (South Australia) (Market Transparency) Amendment Act 2022* and the *National Gas (South Australia) (Market Transparency) Amendment Regulations 2022*, which commence progressively over 2022 and into 2023.
9. Company reporting on a range of supply factors to the ACCC and to inform AEMO's daily spot and short-term trading markets¹⁵.
10. The Gas Bulletin Board¹⁶.
11. *Gas Statement of Opportunities*¹⁷ reports.
12. The Gas Supply Hubs¹⁸, Short-Term Trading Markets¹⁹ and the Victorian Declared Wholesale Gas Market²⁰.

The powers conferred on the Minister and officials through the Bill, noted in paragraph 1.9 of the Explanatory Materials as “an overarching framework to enable the Government to regulate the gas market” overturn or undermine many of the outcomes achieved, or sought to be achieved through these reforms. The insertion by the Bill of Part IVBB into the *Competition and Consumer Act 2010* sets the development of the gas market, the east coast gas market in particular, back at least 20 years.

¹³ [LNG netback price series review | ACCC](#).

¹⁴ [Regulatory amendments to increase transparency in the gas market | energy.gov.au](#).

¹⁵ [AEMO | Short Term Trading Market \(STTM\)](#), [AEMO | Gas Supply Hub \(GSH\)](#) and [AEMO | Declared Wholesale Gas Market \(DWGM\)](#).

¹⁶ See [AEMO | Gas Bulletin Board \(GBB\)](#).

¹⁷ See [AEMO | Gas Statement of Opportunities](#).

¹⁸ See [AEMO | Gas Supply Hub \(GSH\)](#) for more information.

¹⁹ See [AEMO | Short Term Trading Market \(STTM\)](#) for more information.

²⁰ See [AEMO | Declared Wholesale Gas Market \(DWGM\)](#) for more information.

s 22

Subject: FW: APPEA-Mandatory Code Joint Taskforce discussion [SEC=OFFICIAL]
Location: Microsoft Teams Meeting; Canberra Meeting Room

Start: Mon 27/02/2023 11:00 AM
End: Mon 27/02/2023 12:00 PM
Show Time As: Tentative

Recurrence: (none)

Organizer: s 47F

-----Original Appointment-----

From: s 47F <@appea.com.au>
Sent: Thursday, 23 February 2023 10:22 AM
To: s 47F ; Gas Mandatory Code; s 22
Cc: s 47F
Subject: FW: APPEA-Mandatory Code Joint Taskforce discussion [SEC=OFFICIAL]
When: Monday, 27 February 2023 11:00 AM-12:00 PM (UTC+10:00) Canberra, Melbourne, Sydney.
Where: Microsoft Teams Meeting; Canberra Meeting Room

OFFICIAL

-----Original Appointment-----

From: s 47F <@appea.com.au>
Sent: Wednesday, 22 February 2023 11:02 AM
To: s 47F ; s 22
Cc: s 47F
Subject: APPEA-Mandatory Code Joint Taskforce discussion
When: Monday, 27 February 2023 11:00 AM-12:00 PM (UTC+10:00) Canberra, Melbourne, Sydney.
Where: Microsoft Teams Meeting; Canberra Meeting Room

Hi s 22 and team,

As discussed, it would be great to catch up next week on the Mandatory Code. Please propose an alternative time if this doesn't work.

Regards,

s 47F

Microsoft Teams meeting

Join on your computer, mobile app or room device

[Click here to join the meeting](#)

s 47E(d)

[Download Teams](#) | [Join on the web](#)

[Learn More](#) | [Meeting options](#)

s 22

s 22

From: s 22

Sent: Wednesday, 18 January 2023 10:16 PM

To: s 47F @appea.com.au>

Cc: Jeremenko, Robert <Robert.Jeremenko@treasury.gov.au>; Reinhardt, Sam <Sam.Reinhardt@TREASURY.GOV.AU>

Subject: COMPETITION AND CONSUMER (GAS MARKET EMERGENCY PRICE) ORDER 2022: TREASURY RESPONSES TO APPEA QUESTIONS / ISSUES FOR CLARIFICATION [SEC=OFFICIAL]

OFFICIAL

Good evening s 47F

Please find attached the Treasury responses to the issues raised by APPEA on the Gas Market Emergency Price Order.

Kind regards,

s 22

s 22

Acting Assistant Secretary

Market Conduct Division

The Treasury | Level 7, 530 Collins St, Melbourne

Ph: +s 22 @treasury.gov.au

OFFICIAL

COMPETITION AND CONSUMER (GAS MARKET EMERGENCY PRICE) ORDER 2022: TREASURY RESPONSES TO APPEA QUESTIONS / ISSUES FOR CLARIFICATION

NOTE: The ‘answer/clarification’ provided below is intended to provide general information only on the policy intent of the Order. It is not legal advice and its contents should not be relied on when considering an entity’s particular circumstances. Before taking any action an entity should seek legal advice, as appropriate, as to how the new provisions apply to particular circumstances.

The ACCC has separately published guidance on its enforcement approach to the Order – please refer to that document as the primary source of information on relevant matters.

Please see the responses to your questions regarding the coverage and operation of the *Competition and Consumer (Gas Market Emergency Price) Order 2022* (the Order) below.

QUESTION / ISSUE FOR CLARIFICATION	ANSWER / CLARIFICATION
<p>1. Division 1, Parts 8 and 9 of the Order define the persons subject to the gas price cap. They also provide that variations to gas supply agreements (GSAs) agreed before the commencement of the price cap which will mean the price cap applies retrospectively to those agreements.</p> <p>This means the gas price cap has extremely broad coverage, extending well beyond the gas industry itself to capture affiliates of any business that has joint venture with a producer. This includes gas customers who are amongst the purported beneficiaries of the cap. For example, in Queensland both Incitec Pivot¹ and the Queensland Government owned CleanCo² are joint venture participants with gas producers. This means any business that has a joint venture (or an associate which has a joint venture) with either Incitec Pivot or CleanCo would also be covered by the arrangements.</p> <p>Is this interpretation of the coverage of the Order correct?</p>	<p>Concern re retrospective application (contracted gas)</p> <p>The price cap applies to agreements entered into during the price cap period, for gas supplied (or to be supplied) during the price cap period.</p> <p>The price cap does not apply to agreements in force prior to commencement of the price cap period unless, during the price cap period, the price is determined through a variation to the agreement (see section 10), or in the case of master supply agreements entered into before the start of the price cap period, through a subordinate contract or transaction notice (where the master supply agreement or other contract did not determine the price) (see section 13 of the Order).</p> <p>For further details see ACCC guidance (including paragraph 2.3 and example 3).</p> <p>Application to affiliates of regulated gas producers and retailers</p> <p>The scope of affiliates does not extend beyond the gas industry. As set forth in section 9(2) of the Order, an affiliate of a regulated gas producer is only subject to the price cap if they have entered into an agreement for supply of gas from their affiliated producer or an affiliate of that producer.</p> <p>There are also general exceptions to the coverage of the price cap for certain persons,</p>

¹ See [Surat Basin - Central Petroleum](#).

² See [OUR PORTFOLIO - CleanCo Queensland](#).

QUESTION / ISSUE FOR CLARIFICATION	ANSWER / CLARIFICATION
	<p>including in section 16 of the Order, which would apply to affiliates that are retailers.</p> <p>Affiliates may also apply for an individual exemption under Division 3 of Part 3 of the Order.</p>
<p>2. How are new developments associated with existing fields treated? The intent of Order appears to be that it not apply to new and potentially higher cost supply entering the market during the 2023 year, but to capture existing gas production re-contracted. The Order appears to attempt to do this using the concept of a <u>field</u>. For a number of reasons, this approach is problematic.</p> <p>For example, the Order’s application as drafted would not allow the price cap to exclude different pools of petroleum within the same field that may have a higher development cost than previously developed pools due to factors including cost inflation, field complexity and higher external price environment. How are projects of this nature, which are set to bring new gas supply into the east coast domestic market, to be treated under the cap?</p>	<p>The concept of a field referred to in this question was used in the exposure draft of the Order, but does not feature in the Order as it was enacted.</p> <p>Pursuant to section 7 of the Order, regulated gas is covered by the Order if it is recovered from an area or block for which a relevant licence or lease is in place authorising recovery or production immediately before commencement of the Order authorising the recovery or production of the gas.</p> <p>The Explanatory Statement clarifies that this was intended to ensure that the price cap applies to gas recovered from developed fields (see Explanatory Statement, section 7 and the ACCC’s guidance at 2.4).</p>
<p>3. How does this Order interact with Heads of Agreement?</p>	<p>The Heads of Agreement is a commitment to offer uncontracted gas to the domestic market before it is exported as a spot cargo.</p> <p>The Order may apply to the signatories to the Heads of Agreement in relation to these domestic gas offers and agreements.</p> <p>Note also that the Order does not apply to LNG or LNG exports – section 4 of the Order provides that regulated gas excludes liquified natural gas, and section 11 of the Order contains an exception for exports of regulated gas in a liquid state.</p>
<p>4. If a buyer places a bid on a GSH above \$12/GJ, then no producers can participate in that market (even those looking to sell at \$12/GJ) because if an offer is made (even at \$12/GJ) it will be matched with the higher bid (and result in an agreement greater than \$12/GJ, which would be in breach of the Order and risk the significant penalties set out in Section 53ZJ of the Bill). This risks disruption to the operation of the hub itself.</p>	<p>Transactions on a gas trading exchange that are not pre-matched trades or broker pre-matched trades (that is, ‘online trades’ that are anonymous and automatically bid matched) are only subject to the prohibition on <u>offers</u> exceeding the price cap.</p> <p>For these transactions, a seller must offer a price below the price cap. However, if a buyer offers to buy above the price cap, and the</p>

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	<p>seller reaches an agreement above the price cap due to automatic bid matching, then the seller is not in breach of the Order (as there is no prohibition on agreements and supply above the price cap in relation to the anonymised transactions in this scenario).</p> <p>See subsection 8(3) and section 15 of the Order and ACCC guidance (including paragraph 2.6 and example 7).</p> <p>The prohibition on exceeding the price cap on agreements (s 8(1)) and supply under agreements (s 8(2)) <u>does apply</u> to pre-matched trades and broker pre-matched trades ('offline trades') on the gas trading exchange. This is appropriate as the buyer and seller negotiate these transactions and only bring them to the gas trading exchange to be settled.</p> <p>See the ACCC's guidance at 2.6-2.10 and example 7.</p>
<p>5. The Consultation Paper notes on page 6 the proposed \$12/GJ price cap has been set by the ACCC based on its judgement that</p> <p style="text-align: center;"><i>... a price cap of \$12 per gigajoule is a reasonable price allowing for the key costs of domestic supply, including a reasonable return on capital for gas sourced from currently operational fields.</i></p> <p>Part 4 of the order defines "regulated gas" to which the price cap applies. Together, these provisions mean it is unclear what is and what is not included in the price cap. For example, is transportation included (if not then, it will be impossible for gas purchased in Queensland at \$12/GJ to be transported to southern markets without incurring a loss associated with marginal transportation)? Are other terms and conditions that are often attached to GSAs (whether supply is or is not interruptible, whether the agreement features take or pay clauses, whether the agreement features minimum delivered quantity clauses, whether the agreement features price review clauses, and so on), and are often bespoke in nature, and are reflected in the agreed price, included or excluded from the cap?</p>	<p>The prohibitions on offers and agreements for regulated gas exceeding the price cap are set forth in section 8 of the Order.</p> <p>The ACCC guidance addresses various situations in which price is linked to other variables, including transport costs (see example 4 in the ACCC guidance and sections 3.5-3.6.).</p> <p>For explanations of how the price cap interacts with other terms or conditions that may relate to price, see ACCC guidance, examples 1, 2, 5 and 6.</p> <p>See question 9 for further detail on transport costs.</p>

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<p>How does the \$12/GJ cap interact with other terms and conditions in the GSA which affect price? Does the \$12/GJ amount cover all of those circumstances?</p>	
<p>6. The differential impact distorts longstanding market signals, for example, under the Order there would be no winter contracting premium for 2023. This premium, a longstanding feature of the market, provides incentives for appropriate forward planning (production / maintenance, transport, storage). These signals are especially important to fill the Iona gas storage facility pre-winter which is critical for southern winter peak supply – this risks an actual southern shortfall in winter.</p>	<p>The Order does not preclude there being different prices at different points in the year, under the cap. In considering particular arrangements, please refer to the ACCC’s guidance, including example 2 (differential pricing to account for seasonal peaks in demand), example 5 (take or pay arrangements) and example 6 (other types of volume flexibility).</p> <p>Further, the price cap does not apply in relation to the DWGM, STTMs and short-term trades on the gas trading exchange, which will allow short term prices to fluctuate in times of high demand (see sections 14 and 15 of the Order).</p> <p>We also note that there are currently strong flows into the Iona gas storage facility while spot prices are low.</p> <p>Regulators will closely monitor market impacts. APPEA should keep regulators and the Government informed of any evidence of unintended market impacts.</p> <p>The price cap will be reviewed in mid-2023, to ensure it is having the intended effect, and to consider whether adjustments are needed.</p>
<p>7. Lack of winter contracting price premium/locational differentials and source of change of value of transport (becoming now a means to connect capped and uncapped markets not to transport gas), means it may be the case that transport is not used to meet supply/demand and result in actual shortfalls in some markets (particularly in southern markets, as the Order distorts signals to acquire and use transportation critical to changing gas pipeline flow directions for southern winter peak). For example, to provide gas to a gas-fired power generation, gas may need to be transported to the STTMs/DWGM from the producer and then back out again to the actual power station. Put simply, producers will need to organise two extra legs of transportation plus to associated</p>	<p>Please refer to the answer to question 6.</p>

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<p>transactions, rather than just undertaking a direct transaction with the customer. This adds cost and logistical challenges to meeting what may be urgent gas requirements.</p>	
<p>8. The Order seeks to regulate only a part of the energy market and does not apply to sales by non-producers (which may include customers who have gas in excess of requirements and gas market traders). This further distorts the operation of the energy market by opening opportunities for rent extraction by entities that either buy \$12/GJ gas from a producer and sell it to a customer at a higher price, and/or have transport positions to move it into higher priced STTMs/DWGM. How would the Order apply to someone who is both a producer and a trader?</p>	<p>The price cap applies to regulated gas producers and their relevant affiliates and does not apply to gas sold at the wholesale level by other market participants like retailers, which have different cost structures.</p> <p>The ACCC and AER will be closely monitoring the behaviour of all participants in the wholesale contract market.</p> <p>The price cap will also be reviewed in mid-2023, to ensure it is having the intended effect, and to consider whether any adjustments are needed.</p>
<p>9. The gas delivered under these GSAs can also feature different delivery points (well head, entry into a pipeline, and so on) that do not appear to be considered by the definitions in the Order.</p>	<p>The price of \$12/GJ does not include transportation costs or fees that are genuinely separate to the price of supplying regulated gas. Please also see ACCC guidance (e.g. example 4) on the application of the price cap to transport costs and whether such costs are to be considered separately to the price payable for gas.</p>
<p>10. What happens if a buyer wishes to buy for more than \$12 to obtain certainty of supply and compete for volume?</p>	<p>The price cap applies to all agreements for supply of regulated gas in accordance with the prohibitions in subsection 8(1) and 8(2) of the Order.</p> <p>A buyer will only be able to pay more than \$12/GJ on trades that are exempt from the cap such as trades on the DWGM and STTMs and short-term trades on a gas trading exchange. Please see ACCC's guidance for more details on relevant exceptions.</p>
<p>11. Meeting a bid to purchase gas above the price cap is exempt from the prohibitions under sections 8(1) and 8(2)? If meeting a bid on exchange under 15(1) or broker/pre-matched exchange trade bid under 15(4)? Prohibition on initial offer exceeding the price cap still stands.</p> <p>Offers or agreement for short-term supply, gas to be fully supplied by the end of the third gas day after the trade date, are exempt from price cap prohibitions under sections</p>	<p>Bids and pre-matched trades See response to question 4.</p> <p>Short-term supply Yes, offers and agreements made on a gas trading exchange for supply wholly within 3 gas days are exempt from the price cap (see section 15 of the Order). This recognises that short term supply agreements are intended to meet immediate demand and may appropriately be priced above the price cap as the costs of supply at short notice are likely</p>

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<p>8(1), 8(2) and 8(3) provided the agreement is an exchange trade 15(2), or exchange offer 15(4)? Prohibition on offers or agreements for supply exceeding the price cap still stands for supply starting from the start of gas day +4 up until the end of the end of the emergency price order period.</p> <p>Retailers are exempt from the price cap for reselling of gas under section 16 provided not more than 50% of their gas related turnover is from wholesale market sales of their own production activities? However, a producer would not be entitled to the same exemption if they became new entrant retailer? Every other market participant can seek to over-contract medium term supply from producers under the price cap and then seek to resell at an uncapped price under this exemption from the cap? Is this the intent?</p>	<p>to be higher.</p> <p>Offers and agreements for supply which are not entirely within 3 days will be subject to the price cap, unless another exception or exemption applies.</p> <p>For further detail see the ACCC guidance, including paragraph 2.9.</p> <p>Retailers If an entity becomes a new entrant retailer, they may be able to apply to the ACCC for an individual exemption (see Part 3 of Division 3 of the Order). One of the factors that the ACCC will consider is any material change in the entity's circumstances since commencement of the Order.</p> <p>Re-selling excess supply The price cap applies to regulated gas producers and their relevant affiliates and does not apply to gas sold at the wholesale level by other market participants like retailers, which have different cost structures.</p> <p>The ACCC and AER will be closely monitoring the behaviour of all participants in the wholesale contract market.</p> <p>The price cap will also be reviewed in mid-2023, to ensure it is having the intended effect, and to consider whether any adjustments are needed.</p>
<p>12. The exceptions will likely drive more volume and liquidity to the AEMO exchanges which could/should arguably lead to greater transparency. However, has there been consideration to increased participant liquidity risks as a result of AEMO's current (incredibly inefficient) prudential requirements?</p>	<p>AEMO's prudential guidance material for gas exchanges is based on requirements set by the National Gas Rules to ensure that market participants provide and maintain appropriate securities.</p>
<p>13. It is understood that it is the intention for the price cap to apply to any affiliates of a gas producer if there is an agreement between the producer and the affiliate to supply gas. We assume that this only applies if there is a current obligation for the producer to supply under a contract during the price cap period and not where there might have been contracts in the past?</p>	<p>An affiliate of a regulated gas producer is subject to the price cap where (i) they satisfy any of the conditions set forth in subsection 9(2) of the Order (that make them an "affiliate" for purposes of the Order), and (ii) they have entered into an agreement for the supply of gas to the person by the regulated gas producer or another affiliate of the regulated gas producer (see section 9(1)(b) of the Order).</p>

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14. What is the process for applying for exemptions and how quickly can these be granted? What happens in the meantime given the Order came into effect on 23 December 2022?	<p>The Minister’s powers with respect to exemptions have been delegated to the ACCC.</p> <p>See here for further information about gas price cap exemptions, including how to apply.</p>
15. Does the order only apply to uncontracted gas, that is does not apply to mass market gas retailers who are already hedged for calendar year 2023?	Please refer to response under question 1.
16. A Government-owned generator has written to gas trading counterparts today, asking them to re-price trades down to \$12/GJ that were entered into in 2021 and 2022, that apply to gas supply deliverable in 2023 – is this the intent of the instrument?	Please refer to response under question 1.
17. Can renewable natural gas (or other gases such as, hydrogen, biomethane, synthetic methane, blends of these gases ³) be sold by a producer above \$12/GJ?	<p>The Order only applies to ‘regulated gas’ (defined in section 4 of the Order). Regulated gas is limited to gas that consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane.</p> <p>This being so, as a general matter, non-naturally occurring gases, and naturally-occurring gases which are not principally constituted by methane, are not subject to the price cap. Parties should, however, obtain legal advice on the application of the price cap to specific circumstances.</p>
18. Can an affiliate sell Climate Active accredited gas above \$12/GJ?	Parties should seek legal advice on the application of the price cap to specific circumstances. As a general matter, if Climate Active accredited gas is regulated gas as defined under section 4 of the Order, the price cap may apply.

³ See for example, [Extending the national gas regulatory framework to hydrogen blends and renewable gases | energy.gov.au](#), for an overview of the recent extension of the national gas regulatory framework to hydrogen blends and renewable gases.

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<p>19. The treatment of storage in the order is far from clear. Does this relate to the procurement of storage services? If so, then why no exception for trade in the provision of other gas-related infrastructure (pipeline transportation, compression etc)? Should this instead be read that the price cap does not apply to the sale of stored gas? If not, what does it mean?</p>	<p>Storage exemption Section 12 of the Order states that the price cap does not apply if the agreement is for the storage of regulated gas.</p> <p>Pipeline transport and compression costs – please refer to the response under question 5.</p>
<p>20. How does the order apply to trade of 2023 derivatives (futures) such as ASX Vic quarterly and calendar futures (contracts for difference)? Specifically, can a producer lodge an ‘ask’ (offer) for >\$12/GJ?</p>	<p>Trade of derivatives Parties should seek legal advice on the application of the price cap in specific circumstances. However, the price cap generally only applies to regulated gas supplied or to be supplied during the price cap period (see subsections 8(1) and (2) of the Order).</p> <p>Offers Parties should seek legal advice on the application of the price cap in specific circumstances. Generally, the price cap only applies to an offer if the offer is made through a gas trading exchange and it is not an offer relating to a pre-matched trade, broker pre-matched trade, or an offer for short term supply (see subsection 8(3) and subsections 15(3) and (4) of the Order).</p> <p>The definition of a gas trading exchange relates to exchanges established by AEMO under the National Gas Law (see section 4 of the Order).</p>

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From: s 47F [redacted]@appea.com.au>

Sent: Thursday, 15 December 2022 6:42 PM

To: Gas Market Consultation <GasMarketConsultation@TREASURY.GOV.AU>

Subject: Please find attached APPEA's comments on the Exposure Draft – Competition and Consumer (Gas Market Emergency Price) Order 2022

Importance: High

Please find attached APPEA's comments on the *Exposure Draft – Competition and Consumer (Gas Market Emergency Price) Order 2022* (the Order) and the price cap section of the *Options to ensure the domestic wholesale gas market delivers for Australians* Consultation Paper (the Consultation Paper) both released late on 9 December 2022.

APPEA recommends the Order be withdrawn and genuine consultation be undertaken with relevant stakeholders. This would enable the Government the time to appropriately consider the implications of the proposed approach and to establish a better way forward – to work with industry to bring on more supply, particularly on the east coast, as the genuine and sustainable way to ensure competitive prices, and to seek genuine market reform to improve the operation and the depth and liquidity of the Australian gas market.

APPEA and its members would welcome the opportunity to meet with you at any stage to discuss our concerns with the Order, to engage constructively in genuine consultation to appropriately consider the implications of the proposed approach and a better way forward.

Regards

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APPEA offices will close for the Christmas/New Year break on Friday 23 December 2022 and reopen on Tuesday 3 January 2023

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15 December 2022

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RE: **EXPOSURE DRAFT – COMPETITION AND CONSUMER (GAS MARKET EMERGENCY PRICE) ORDER 2022**

Please find following APPEA's comments on the *Exposure Draft – Competition and Consumer (Gas Market Emergency Price) Order 2022* (the Order) and the price cap section of the *Options to ensure the domestic wholesale gas market delivers for Australians* Consultation Paper (the Consultation Paper) both released late on 9 December 2022.

APPEA recommends the Order be withdrawn and genuine consultation be undertaken with relevant stakeholders. This would enable the Government the time to appropriately consider the implications of the proposed approach and to establish a better way forward – to work with industry to bring on more supply, particularly on the east coast, as the genuine and sustainable way to ensure competitive prices, and to seek genuine market reform to improve the operation and the depth and liquidity of the Australian gas market.

APPEA's recommendation is based on the following major concerns:

1. The price cap implemented through the Order represents an **unprecedented intervention in the operation of east coast gas market and through it the broader energy market** that risks significant distortions and disruption across the entire market and less investment and supply of gas over the long-term.
2. The Order **does not address the underlying causes of higher gas prices** – including a lack of new supply and volatility in demand for gas for power generation.
3. The Order **damages investor confidence** in the Australian gas supply, the energy sector and economy more broadly.
4. The Order **has been prepared in haste without any serious or meaningful consultation**, breaching all concepts of good governance and sound decision making. Genuine consultation leading to a **better understanding of the east coast gas market** can avoid or lessen the problems outlined below.

Further detail on the concerns of APPEA and its members are provided below.

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APPEA'S CONCERNS WITH THE ORDER

The industry's key concern with the Order (noting additional concerns are likely to emerge over time) is the significant distortions it will introduce into the east coast gas market and the longer term investment and supply risk an intervention of this kind will have.

This is particularly the case when the ongoing provision of unfettered power for the Government to regulate the gas market through codes of conduct (Code) and emergency price orders (price caps) in undefined circumstances contained in the *Competition and Consumer Amendment (Gas Market) Bill 2022* (the Bill)¹, mean price-based interventions endure beyond the expiration of the Order.

The Consultation Paper on page 6 notes:

The key design objectives of the emergency price cap are that it should:

- *Be in place no longer than necessary, and be no broader than necessary, to ensure domestic industry remains viable, and to ensure households and businesses have access to affordable energy.*
- *Ensure domestic prices are reasonable and reflect the costs of supply to the domestic market during the period, allowing for a reasonable return on capital.*
- *Minimise and mitigate any distortions to wholesale gas markets and related markets, including electricity generation, and retail gas and electricity markets.*
- *Preserve incentives and certainty for investors.*

As is considered further below, none of the objectives are likely to be achieved. In fact, the opposite is likely to be the case.

1. Pricing capping endures

While the Order as presented has a 12-month expiry date, the Bill establishes a permanent pricing mechanism that leads to an effective price cap being implemented for an undetermined and unspecified period. That reasonable pricing mechanism, which will be a focus for APPEA's February submission, creates significant long-term uncertainty and will result in increased risks to investment and supply. For example, the proposal to provide for a mechanism that is based on costs plus the Government's view of a reasonable rate of return ignores the mobility of capital (to where the highest rate of return can be gained) and that investments in gas exploration and production face high-risk profiles, are capital-intensive in nature with significant up-front costs and receive cyclical income streams.

2. The coverage of the gas price cap is extremely broad

Division 1, Parts 8 and 9 of the Order define the persons subject to the gas price cap. They also provide that variations to gas supply agreements (GSAs) agreed before the commencement of the price cap which will mean the price cap applies retrospectively to those agreements.

This means the gas price cap has extremely broad coverage, extending well beyond the gas industry itself to capture affiliates of any business that has joint venture with a producer. This includes gas customers who are amongst the purported beneficiaries of the cap. For example, in Queensland

¹ Subsequently introduced into Parliament on 15 December 2022 as the *Treasury Laws Amendment (Energy Price Relief Plan) Bill 2022*.

both Icitec Pivot² and the Queensland Government owned CleanCo³ are joint venture participants with gas producers. This means any business that has a joint venture (or an associate which has a joint venture) with either Icitec Pivot or CleanCo would also be covered by the arrangements.

3. The price cap will not result in households and businesses having access to affordable energy for any sustained period

One of the objectives of the price cap set out on page 6 of the Consultation Paper is to “... ensure households and businesses have access to affordable energy”.

However, it is not clear the Order will achieve this outcome. It seeks to regulate only a part of the energy market and no information or analysis has been provided (on price outcomes, investment across the energy market and the economy more broadly or any modelling of likely economic outcomes) to demonstrate how this approach will achieve this objective. Of particular concern, there is no analysis in the package of materials released on 9 December 2022 of the net impact of a price cap on new or potential new investments in gas supply.

In addition, default market offers for retail electricity prices have already been set for 2022-23⁴, meaning any impacts on retail power prices will not emerge until the second half of 2023 at the earliest.

What is clear is that the price cap and proposed reasonable pricing provisions under any code of conduct will create uncertainty, and risk undermining investment and ultimately result in higher energy bills for the Australian public in the medium- to long-term.

4. The Order does not address the underlying causes of higher gas prices – including a lack of new supply and volatility in demand for gas for power generation.

Price caps remove the signal to the market to invest in increased gas supply – supply necessary to address the current constraints in the market. In contrast, price caps can increase demand for gas and decrease incentives for gas supply, and can result in an increase in energy prices to households and businesses in the medium- to long-term. Impacts in that case would extend beyond the gas market, including to the electricity market, with the price signal for new electricity supply from renewable generation, also being muted.

5. The price cap does not preserve incentives or certainty for investors. It also fails to mitigate the risks associated with market intervention.

The price cap Order (particularly when viewed in conjunction with the Bill that can be used to maintain an effective price cap indefinitely) risks damaging investor confidence in Australian gas supply, the energy sector and economy more broadly.

The far-reaching interventions that retrospectively impact hundreds of billions of dollars of investment in the Australian economy will undermine investor confidence. This erosion of investor confidence is not limited to the gas industry, but could impact investment throughout the Australian economy.

² See [Surat Basin - Central Petroleum](#).

³ See [OUR PORTFOLIO - CleanCo Queensland](#).

⁴ See [Default market offer prices 2022-23 | Australian Energy Regulator \(aer.gov.au\)](#) for more information.

It is notable, and should be concerning, that in the wake of the announced Plan, investors already have publicly questioned the viability of planned investments, and their ongoing commitment to Australia as an investment destination.

6. The scope and coverage of the Order will introduce significant distortions into wholesale gas markets and related markets, including electricity generation, and retail gas and electricity markets.

The Order will introduce a range of significant distortions across the gas market and therefore across the broader energy market. This means the impact of the price cap will be felt in different ways across the gas market and across the broader energy market. Each of these impacts are distortionary and disruptive and taken together (particularly in conjunction with the Bill) risk significant disruption to the entire east coast energy market.

Significant wholesale gas market distortions

The Order's differential application of the Order (as set out Division 1⁵), means that the operation of the market across the east coast will be disrupted and distorted. The following is unlikely to be a comprehensive list, with other challenges likely to emerge over time as the operation and administration of the Order becomes clearer and the enduring impact of the proposed codes and orders enabled by the Bill emerge:

- The Order may distort activity away from GSAs and the GSHs in favour of selling into the uncapped STTMs ("last-minute markets", which trade one day ahead at most) and the DWGM which then forces uncontracted customers onto spot STTMs/DWGM, as there are fewer contract sellers.
- The Order encourages uncapped participants to over-contract in excess of their actual requirements at the capped \$12/GJ for future resale at uncapped prices in a STTM/DWGM market.
- If a buyer places a bid on a GSH above \$12/GJ, then no producers can participate in that market (even those looking to sell at \$12/GJ) because if an offer is made (even at \$12/GJ) it will be matched with the higher bid (and result in an agreement greater than \$12/GJ, which would be in breach of the Order and risk the significant penalties set out in Section 53ZJ of the Bill). **This risks disruption to the operation of the hub itself.**
- At times, those inside STTMs will have access to more gas supply than those outside the markets (as suppliers would be more willing to offer into uncapped markets). This disadvantages those outside STTMs/DWGM (at very least they will need to organise transport from the nearest STTM/DWGM).
- The differential impact distorts longstanding market signals, for example, under the Order there would be no winter contracting premium for 2023. This premium, a longstanding feature of the market, provides incentives for appropriate forward planning (production/maintenance, transport, storage). These signals are especially important to fill

⁵ The Consultation Paper notes on page 13 the Order is applicable "... to east coast market wholesale contracts with producers, directly negotiated between the parties, or reached following a trade through the Gas Supply Hub", but is not applicable to other markets such as the "... Victorian Declared Wholesale Gas Market or the Short Term Trading Markets in Brisbane, Sydney and Adelaide". The Order is also not applicable to "... to gas supplied from undeveloped fields" but will be regulated by the price cap if "the gas is to be supplied from developed fields, and meets the market coverage criteria". The Order will also be applicable to "sales to sales by non-producers".

the Iona gas storage facility pre-winter which is critical for southern winter peak supply – this risks an actual **southern shortfall in winter**.

- Lack of winter contracting price premium/locational differentials and source of change of value of transport (becoming now a means to connect capped and uncapped markets not to transport gas), means it may be the case that transport is not used to meet supply/demand and result in actual **shortfalls in some markets (particularly in southern markets**, as the Order distorts signals to acquire and use transportation critical to changing gas pipeline flow directions for southern winter peak). For example, to provide gas to a gas-fired power generation, gas may need to be transported to the STTMs/DWGM from the producer and then back out again to the actual power station. Put simply, producers will need to organise two extra legs of transportation plus to associated transactions, rather than just undertaking a direct transaction with the customer. This adds cost and logistical challenges to meeting what may be urgent gas requirements.
- The Order seeks to regulate only a part of the energy market and does not apply to sales by non-producers (which may include customers who have gas in excess of requirements and gas market traders). This further distorts the operation of the energy market by opening opportunities for rent extraction by entities that either buy \$12/GJ gas from a producer and sell it to a customer at a higher price, and/or have transport positions to move it into higher priced STTMs/DWGM.
- The Consultation Paper notes on page 6 the proposed \$12/GJ price cap has been set by the ACCC based on its judgement that

... a price cap of \$12 per gigajoule is a reasonable price allowing for the key costs of domestic supply, including a reasonable return on capital for gas sourced from currently operational fields.
- Part 4 of the order defines “regulated gas” to which the price cap applies. Together, these provisions mean it is **unclear what is and what is not included in the price cap**. For example, is transportation included (if not then, it will be impossible for gas purchased in Queensland at \$12/GJ to be transported to southern markets without incurring a loss associated with marginal transportation)? Are other terms and conditions that are often attached to GSAs (whether supply is or is not interruptible, whether the agreement features take or pay clauses, whether the agreement features minimum delivered quantity clauses, whether the agreement features price review clauses, and so on), and are often bespoke in nature, and are reflected in the agreed price, included or excluded from the cap?
- The nature of the GSAs that have underpinned the development of the east coast gas market over decades can see a situation where the bespoke nature of the agreement means the agreed \$x/GJ price can reflect a different package of terms and conditions. It can also be the case that a similar set of terms and conditions can be reflected in different price outcomes.
- The gas delivered under these GSAs can also feature different delivery points (well head, entry into a pipeline, and so on) that do not appear to be considered by the definitions in the Order.
- A flat \$12/GJ price cap cannot accommodate the bespoke nature of these GSAs and risks **further disruption to contracting in the east gas market**.
- How are new developments associated with existing fields treated? The intent of Order appears to be that it not apply to new and potentially higher cost supply entering the market during the 2023 year, but to capture existing gas production re-contracted. The Order

appears to attempt to do this using the concept of a field. For a number of reasons, this approach is problematic.

- For example, the Order's application as drafted would not allow the price cap to exclude different pools of petroleum within the same field that may have a higher development cost than previously developed pools due to factors including cost inflation, field complexity and higher external price environment. How are projects of this nature, which are set to bring new gas supply into the east coast domestic market, to be treated under the cap?

Each of these examples serve to illustrate the **distortionary and disruptive implications that could flow from the price cap** and the danger of rushing the implementation of this scheme without adequate consultation. These are far-reaching interventions that retrospectively impact hundreds of billions of dollars of investment in the Australian economy that will undermine investor confidence. This erosion of investor confidence is not limited to the gas industry, but could impact investment throughout the Australian economy.

Significant distortions to the broader energy market, including the NEM

Each of the distortions to the gas market outlined above have flow-on effects to the broader and inter-connected energy market, and risk disrupting energy flows and investment decision-making across the entire market. **This means the proposed gas price cap is not just an issue for the gas market.**

For example, the Order risks distorting bidding behaviour in the broader energy market, including in the National Electricity Market (NEM), by distorting price signals throughout the market and between various fuels sources, where caps apply (in different ways) to some fuels and do not apply to others. It is challenging to see how this would not distort bidding behaviour (and the Bill will ensure these distortions persist well beyond the expiration of the Order). Providing distorted incentives for gas to fuel gas-fired power generation could risk significant gas supply challenges. It may also, depending on contract positions for 2023, provide windfall gains to market participants, further distorting the market.

The (different) price cap facing coal may provide distorted incentives for coal producers to export coal where possible. If, as was the case in winter 2022, gas is called on in a rapid and unexpected way to increase gas availability to fuel gas-fired power generation, **this will add to the challenges that will face the energy market in 2023.**

7. The Order (like the Bill) has been prepared in haste without any serious or meaningful consultation, breaching all concepts of good governance and sound decision making.

The time allowed to consider the intervention in the Australian gas market proposed by the Order is inadequate, contravening the Government's own guidance on *Best Practice Consultation Guidance Note*⁶. To provide for four business days (two of which have been consumed by a focus on the Bill) to respond to the Order breaches good governance around legislative and regulatory development, undermines any basis for sound and considered policy decision-making and dismisses genuine and constructive consultation with stakeholders, including those directly impacted by the provisions contained in the Order.

⁶ See [Best Practice Consultation Guidance Note \(pmc.gov.au\)](#). The Guidance Note says policymakers should "consult in a genuine and timely way with affected businesses, community organisations and individuals, as well as other policy makers to avoid creating cumulative or overlapping regulatory burdens" and "Timeframes for consultation should be realistic to allow stakeholders enough time to provide a considered response".



It is evident from our engagement with the Treasury and other government agencies that there are many issues and unintended consequences of this Order that are yet to be fully considered. APPEA and its members would welcome the opportunity to meet with you at any stage to discuss our concerns with the Order, to engage constructively in genuine consultation to appropriately consider the implications of the proposed approach and a better way forward.

Yours sincerely

A handwritten signature in black ink that reads "S McCulloch". The signature is written in a cursive, flowing style.

Samantha McCulloch
Chief Executive

s 22

From: s 47F [redacted]@appea.com.au>
Sent: Friday, 23 December 2022 7:47 AM
To: s 47F [redacted]@appea.com.au>
Subject: RE: Treasury-APPEA discussion on gas price cap order [SEC=UNOFFICIAL]

Please find an updated paper reflecting some additional questions/issues received overnight.

Speak at 11am AEDT this morning.

Regards

s 47F [redacted]
Deputy Chief Executive
m s 47F [redacted]
e s 47F [redacted]@appea.com.au

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APPEA offices will close on Friday 23 December 2022 and reopen on Tuesday 3 January 2023

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From: s 47F
Sent: Thursday, 22 December 2022 11:09 PM
To: s 47F <s 47F@appea.com.au>
Subject: RE: Treasury-APPEA discussion on gas price cap order [SEC=UNOFFICIAL]

As foreshadowed, ahead of our meeting tomorrow, please find attached a proposed agenda for the meeting and a series of questions / issues for clarification in relation to the Order. I expect others to be raised during the discussion and others to follow the meeting (which I expect will be the first of a series of engagements).

We will look forward to the discussion tomorrow morning.

Regards

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s 22

-----Original Appointment-----

From: Pearl, David <David.Pearl@TREASURY.GOV.AU>

Sent: Thursday, 22 December 2022 4:22 PM

To: Pearl, David; Wells, Erin; sarah.proudfoot@accg.gov.au; s 22 @industry.gov.au; s 47F ; s 22

Subject: Treasury-APPEA discussion on gas price cap order [SEC=UNOFFICIAL]

When: Friday, 23 December 2022 11:00 AM-12:00 PM (UTC+10:00) Canberra, Melbourne, Sydney.

Where: Microsoft Teams Meeting

Good afternoon

David Pearl, A/g First Assistant Secretary, Market Conduct Division, and Erin Wells, Assistant Secretary, Law Design invite you to a briefing for APPEA members on the price cap order that comes into effect Friday, 23 December 2022.

Please forward to members as required.

Regards

s 22 | Executive Officer
Market Conduct Division
Markets Group
P +s 22

treasury.gov.au

Langton Crescent, Parkes ACT 2600

[Twitter](#) | [LinkedIn](#) | [Facebook](#)

The Treasury acknowledges the traditional owners of country throughout Australia, and their continuing connection to land, water and community. We pay our respects to them and their cultures and to elders both past and present.



Microsoft Teams meeting

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s 47E(d)

s 47E(d)



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the voice of australia's oil and gas industry

**** AGENDA ****

APPEA, TREASURY, ACCC MEETING #1 COMPETITION AND CONSUMER (GAS MARKET EMERGENCY PRICE) ORDER 2022

23rd December 2022, commencing at 11.00am AEDT

**Microsoft Teams meeting
Join on your computer, mobile app or room device**

[Click here to join the meeting](#)

s 47E(d)

-
- 1. Introduction**
 - 2. Purpose of the Meeting**
 - 3. Overview of the *Competition and Consumer (Gas Market Emergency Price) Order 2022* as made**
 - 4. Overview of the exemption process under the Order**
 - 5. Questions / Issues for Clarification**
 - 6. Next steps and next meeting**

Note for Guidance: *Competition and Consumer Act 2010*

Meetings are to be conducted consistent with the requirements of the *Competition and Consumer Act 2010*. Members note the proceedings deal with normal Association business and policies affecting the industry, and strictly preclude discussion of any practices that may relate to the anti-competitive use of market power.

COMPETITION AND CONSUMER (GAS MARKET EMERGENCY PRICE) ORDER 2022: QUESTIONS / ISSUES FOR CLARIFICATION

QUESTION / ISSUE FOR CLARIFICATION	ANSWER / CLARIFICATION
<p>1. Division 1, Parts 8 and 9 of the Order define the persons subject to the gas price cap. They also provide that variations to gas supply agreements (GSAs) agreed before the commencement of the price cap which will mean the price cap applies retrospectively to those agreements.</p> <p>This means the gas price cap has extremely broad coverage, extending well beyond the gas industry itself to capture affiliates of any business that has joint venture with a producer. This includes gas customers who are amongst the purported beneficiaries of the cap. For example, in Queensland both Incitec Pivot¹ and the Queensland Government owned CleanCo² are joint venture participants with gas producers. This means any business that has a joint venture (or an associate which has a joint venture) with either Incitec Pivot or CleanCo would also be covered by the arrangements.</p> <p>Is this interpretation of the coverage of the Order correct?</p>	
<p>2. How are new developments associated with existing fields treated? The intent of Order appears to be that it not apply to new and potentially higher cost supply entering the market during the 2023 year, but to capture existing gas production re-contracted. The Order appears to attempt to do this using the concept of a <u>field</u>. For a number of reasons, this approach is problematic.</p> <p>For example, the Order's application as drafted would not allow the price cap to exclude different pools of petroleum within the same field that may have a higher development cost than previously developed pools due to factors including cost inflation, field complexity and higher external price environment. How are</p>	

¹ See [Surat Basin - Central Petroleum](#).

² See [OUR PORTFOLIO - CleanCo Queensland](#).

QUESTION / ISSUE FOR CLARIFICATION	ANSWER / CLARIFICATION
<p>projects of this nature, which are set to bring new gas supply into the east coast domestic market, to be treated under the cap?</p>	
<p>3. How does this Order interact with Heads of Agreement?</p>	
<p>4. If a buyer places a bid on a GSH above \$12/GJ, then no producers can participate in that market (even those looking to sell at \$12/GJ) because if an offer is made (even at \$12/GJ) it will be matched with the higher bid (and result in an agreement greater than \$12/GJ, which would be in breach of the Order and risk the significant penalties set out in Section 53ZJ of the Bill). This risks disruption to the operation of the hub itself.</p>	
<p>5. The Consultation Paper notes on page 6 the proposed \$12/GJ price cap has been set by the ACCC based on its judgement that</p> <p style="text-align: center;"><i>... a price cap of \$12 per gigajoule is a reasonable price allowing for the key costs of domestic supply, including a reasonable return on capital for gas sourced from currently operational fields.</i></p> <p>Part 4 of the order defines “regulated gas” to which the price cap applies. Together, these provisions mean it is unclear what is and what is not included in the price cap. For example, is transportation included (if not then, it will be impossible for gas purchased in Queensland at \$12/GJ to be transported to southern markets without incurring a loss associated with marginal transportation)? Are other terms and conditions that are often attached to GSAs (whether supply is or is not interruptible, whether the agreement features take or pay clauses, whether the agreement features minimum delivered quantity clauses, whether the agreement features price review clauses, and so on), and are often bespoke in nature, and are reflected in the agreed price, included or excluded from the cap?</p>	

QUESTION / ISSUE FOR CLARIFICATION	ANSWER / CLARIFICATION
<p>How does the \$12/GJ cap interact with other terms and conditions in the GSA which affect price? Does the \$12/GJ amount cover all of those circumstances?</p>	
<p>6. The differential impact distorts longstanding market signals, for example, under the Order there would be no winter contracting premium for 2023. This premium, a longstanding feature of the market, provides incentives for appropriate forward planning (production / maintenance, transport, storage). These signals are especially important to fill the Iona gas storage facility pre-winter which is critical for southern winter peak supply – this risks an actual southern shortfall in winter.</p>	
<p>7. Lack of winter contracting price premium/locational differentials and source of change of value of transport (becoming now a means to connect capped and uncapped markets not to transport gas), means it may be the case that transport is not used to meet supply/demand and result in actual shortfalls in some markets (particularly in southern markets, as the Order distorts signals to acquire and use transportation critical to changing gas pipeline flow directions for southern winter peak). For example, to provide gas to a gas-fired power generation, gas may need to be transported to the STTMs/DWGM from the producer and then back out again to the actual power station. Put simply, producers will need to organise two extra legs of transportation plus to associated transactions, rather than just undertaking a direct transaction with the customer. This adds cost and logistical challenges to meeting what may be urgent gas requirements.</p>	
<p>8. The Order seeks to regulate only a part of the energy market and does not apply to sales by non-producers (which may include customers who have gas in excess of requirements and gas market traders). This further distorts the operation of the energy market by opening opportunities for rent extraction by entities that either buy \$12/GJ gas from a producer and sell it to a</p>	

QUESTION / ISSUE FOR CLARIFICATION	ANSWER / CLARIFICATION
<p>customer at a higher price, and/or have transport positions to move it into higher priced STTMs/DWGM. How would the Order apply to someone who is both a producer and a trader?</p>	
<p>9. The gas delivered under these GSAs can also feature different delivery points (well head, entry into a pipeline, and so on) that do not appear to be considered by the definitions in the Order.</p>	
<p>10. What happens if a buyer wishes to buy for more than \$12 to obtain certainty of supply and compete for volume?</p>	
<p>11. Meeting a bid to purchase gas above the price cap is exempt from the prohibitions under sections 8(1) and 8(2)? If meeting a bid on exchange under 15(1) or broker/pre-matched exchange trade bid under 15(4)? Prohibition on initial offer exceeding the price cap still stands.</p> <p>Offers or agreement for short-term supply, gas to be fully supplied by the end of the third gas day after the trade date, are exempt from price cap prohibitions under sections 8(1), 8(2) and 8(3) provided the agreement is an exchange trade 15(2), or exchange offer 15(4)? Prohibition on offers or agreements for supply exceeding the price cap still stands for supply starting from the start of gas day +4 up until the end of the end of the emergency price order period.</p> <p>Retailers are exempt from the price cap for reselling of gas under section 16 provided not more than 50% of their gas related turnover is from wholesale market sales of their own production activities? However, a producer would not be entitled to the same exemption if they became new entrant retailer? Every other market participant can seek to over-contract medium term supply from producers under the price cap and then seek to resell at an uncapped price under this exemption from the cap? Is this the intent?</p>	
<p>12. The exceptions will likely drive more volume and liquidity to the AEMO exchanges which could/should arguably</p>	

QUESTION / ISSUE FOR CLARIFICATION	ANSWER / CLARIFICATION
<p>lead to greater transparency. However, has there been consideration to increased participant liquidity risks as a result of AEMO's current (incredibly inefficient) prudential requirements?</p>	
<p>13. It is understood that it is the intention for the price cap to apply to any affiliates of a gas producer if there is an agreement between the producer and the affiliate to supply gas. We assume that this only applies if there is a current obligation for the producer to supply under a contract during the price cap period and not where there might have been contracts in the past?</p>	
<p>14. What is the process for applying for exemptions and how quickly can these be granted? What happens in the meantime given the Order came into effect on 23 December 2022?</p>	
<p>15. Does the order only apply to uncontracted gas, that is does not apply to mass market gas retailers who are already hedged for calendar year 2023?</p>	
<p>16. A Government-owned generator has written to gas trading counterparts today, asking them to re-price trades down to \$12/GJ that were entered into in 2021 and 2022, that apply to gas supply deliverable in 2023 – is this the intent of the instrument?</p>	
<p>17. Can renewable natural gas (or other gases such as, hydrogen, biomethane, synthetic methane, blends of these gases³) be sold by a producer above \$12/GJ?</p>	
<p>18. Can an affiliate sell Climate Active accredited gas above \$12/GJ?</p>	

³ See for example, [Extending the national gas regulatory framework to hydrogen blends and renewable gases | energy.gov.au](https://www.energy.gov.au/energy-regulation/energy-regulatory-framework/energy-regulatory-framework-to-hydrogen-blends-and-renewable-gases) for an overview of the recent extension of the national gas regulatory framework to hydrogen blends and renewable gases.

s 22

From: s 47F @appea.com.au >
Sent: Tuesday, 20 December 2022 11:18 AM
To: Jeremenko, Robert; 'Sarah.Proudfoot@accc.gov.au'
Cc: Gas Market Consultation; 'michelle.croker@industry.gov.au';
 'Jane.Urquhart@industry.gov.au'; Gaddes, Shane; simon.duggan@industry.gov.au
Subject: RE: COMPETITION AND CONSUMER (GAS MARKET EMERGENCY PRICE) ORDER
 2022: REQUEST FOR URGENT CLARIFICATION OF COMPLIANCE ARRANGEMENTS
Attachments: L - Treasury re compliance with gas price caps (Competition and Consumer (Gas
 Market Emergency Price) Order 2022), DMD, 201222.pdf
Importance: High

With the *Treasury Laws Amendment (Energy Price Relief Plan) Act 2022* (the Act) now in force and the *Competition and Consumer (Gas Market Emergency Price) Order 2022* (the Order) soon to commence, APPEA members are seeking urgent clarification of the administrative and compliance arrangements for the Order.

Please find attached correspondence from APPEA requesting an urgent meeting between APPEA members and Treasury and ACCC officials on **Thursday, 22 December 2022** to clarify the new administrative and compliance obligations before the holiday period. We anticipate further meetings will be necessary given the complexity of the issues involved.

We'll look forward to your response.

Regards

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APPEA offices will close on Friday 23 December 2022 and reopen on Tuesday 3 January 2023

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20 December 2022

Gas Market Consultation
Labour Market, Environment, Industry and Infrastructure Division
Treasury
Langton Cres
PARKES ACT 2600

(via email to: gasmarketconsultation@treasury.gov.au)

**RE: COMPETITION AND CONSUMER (GAS MARKET EMERGENCY PRICE) ORDER 2022:
REQUEST FOR URGENT CLARIFICATION OF COMPLIANCE ARRANGEMENTS**

With the *Treasury Laws Amendment (Energy Price Relief Plan) Act 2022* (the Act) now in force and the *Competition and Consumer (Gas Market Emergency Price) Order 2022* (the Order) soon to commence, APPEA members are seeking urgent clarification of the administrative and compliance arrangements for the Order.

The industry takes its compliance obligations seriously and is seeking to ensure ongoing, reliable supply of natural gas to our commercial and domestic customers. In order for that to occur, urgent clarification of the compliance arrangements to be applied under the Order is required. In particular, there are a number of outstanding questions and issues that we outlined in our 15 December 2022 submission on the Order (a copy of which is again attached for reference) and that have been raised by APPEA members. Clarification of these issues is needed to ensure the gas market can continue to operate effectively under what are now unprecedented market arrangements.

The industry stands ready to engage constructively and to comply with the obligations imposed by the Order. Having moved so rapidly to pass the Bill and impose the Order, it is now incumbent upon the Government to act just as rapidly to clarify the administration of the Order and all of the compliance obligations now facing market participants.

To move forward we request an urgent meeting between APPEA members and Treasury and ACCC officials on **Thursday 22 December 2022** to clarify the new administrative and compliance obligations before the holiday period. We anticipate further meetings will be necessary given the complexity of the issues involved.

Yours sincerely

A handwritten signature in black ink that reads "S McCulloch".

Samantha McCulloch
Chief Executive

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brisbane@appea.com.au

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Perth
perth@appea.com.au

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appea@appea.com.au

s 22

From: Pearl, David
Sent: Friday, 23 December 2022 1:13 PM
To: s 22
Cc: Jeremenko, Robert; Kelley, Roxanne; Wells, Erin; s 22
 s 22 @protected.dcceew.gov.au; s 22
Subject: Stakeholder Meetings [SEC=PROTECTED]

PROTECTED

s 22

Set out below is a high level read out from s 22 and APPEA sessions we had this morning. Erin and her team can jump in if I've got any of the details wrong. Anna Brakey and Sarah Proudfoot attended both sessions.

s 22

APPEA/Producers

Sixty three people were on the line and we worked through some of the 18 written questions APPEA sent us before the meeting (shared with s 47F)

- The ACCC foreshadowed this afternoon's exemption form release and their desire to engage with industry on enforcement. Guidance on the latter will be released as early as possible in Jan.
- Will joint venture partners of producers be captured? Answer: We referred to the affiliates test, which will apply to joint ventures, but also the retailer exclusions.
- Application to existing developments and particular pools in fields with higher costs? Answer: price cap refers to developments with production licences. Agreed there may be grey areas that need to be considered later.
- Questions on hub trades and possible issues faced by buyers who may be required to register with AEMO (and be subject to their prudential requirements) in order to trade with sellers. We took this on notice. (Michael: can you take this up with Erin's team).
- What services are included in the cap and excluded? Answer: We pointed to the ES clarifying that transport, storage and ancillary services are not included. Other terms and conditions, not mentioned in the ES, will have to be dealt with by the ACCC when issuing detailed guidance. APPEA's concern is to avoid contracts defaulting back to 'vanilla' terms that do not reflect buyer 'non- price' requirements for gas.
- Questions about the interaction of the price capped markets (including the hub on plus 3 day trades) and the spot markets. Will urgent winter supplies to power generators be risked? Answer: We reiterated the

rationale for exclusion of the hubs from the cap for system stability reasons. The ACCC acknowledged that regulators will have to keep a close eye on cross market interactions.

- IMPEX asked about NT's apparent inclusion in the cap. Answer: We outlined the rationale for the cap's geographical coverage and said ministers were aware of IMPEX's situation. The ACCC referred to the exemption process.
- Can the ACCC process exemption applications today? Answer: ACCC replied no, but will early in the New Year.

Next steps with APPEA/producers:

- APPEA and participants appreciated us holding this session, but want to continue dialogue on their list of questions we did not cover and also new ones in response to the final cap.
- APPEA are keen to engage with the ACCC early in the New Year on enforcement and the exemption process. Keen also to see DQ's plans for consultation on the Code including industry roundtables.

s 22

David

David Pearl
A/g First Assistant Secretary
Market Conduct Division
Markets Group, the Treasury

Ph: (02) 6263 4676 (w), s 22

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