

EXPOSURE DRAFT



EXPOSURE DRAFT

Competition and Consumer (Gas Market Code) Regulations 2023

I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 2023

David Hurley
Governor-General

By His Excellency's Command

Chris Bowen **DRAFT ONLY—NOT FOR SIGNATURE**
Minister for Climate Change and Energy
for the Treasurer

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Part 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Gas Market Code) Regulations 2023*.

2 Commencement

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

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

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

4 Definitions

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

- (a) agreement (see section 53B of the Act);
- (b) Australia (see subsection 53E(2) of the Act);
- (c) expression of interest (see section 53B of the Act);
- (d) gas (see section 53B of the Act);
- (e) gas exchange (see section 53B of the Act);
- (f) offer (see section 53B of the Act).

- (1) In this instrument:

Act means the *Competition and Consumer Act 2010*.

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

affiliate of a regulated gas producer: see subsection 6(2).

annual turnover has the same meaning as in the *Corporations Act 2001*.

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Climate Change and Energy Department means the Department administered by the Climate Change and Energy Minister.

Climate Change and Energy Minister means the Minister administering the *Australian Energy Market Act 2004*.

conditional Ministerial exemption means a conditional Ministerial exemption under subsection 49(1).

covered supplier: see subsection 6(1).

gas day means the period of 24 hours starting at 6 am Australian Eastern Standard Time.

gas EOI: a ***gas EOI*** is an expression of interest for the purpose of ascertaining whether a person is interested in acquiring regulated gas.

Note: Gas EOI is short for gas expression of interest.

gas EOI open period: if a person issues a gas EOI, the ***gas EOI open period*** is the period that:

- (a) starts on the day the person issues the gas EOI; and
- (b) ends on the day specified in the gas EOI.

Note: The day specified in the gas EOI must be at least 20 business days after the day on which the gas EOI is issued (see subsection 10(3)).

gas EOI response period: if a person (the ***supplier***) issues a gas EOI, the ***gas EOI response period*** is the period that:

- (a) starts on the day after the end of the gas EOI open period; and
- (b) ends:
 - (i) 25 business days later; or
 - (ii) if there are more than 24 other persons, each of which gives the supplier, in the gas EOI open period, a notice in writing stating that the other person has an interest in further negotiations in relation to the gas EOI—35 business days later.

gas final offer: a gas final offer is an offer to supply regulated gas that:

- (a) is in a form that is capable of being accepted; and
- (b) if accepted, gives rise to a binding agreement to supply regulated gas.

gas final offer open period: if a person (the ***supplier***) issues a gas final offer, the ***gas final offer open period*** is the period that:

- (a) starts on the day after the supplier issues the gas final offer; and
- (b) ends on the latest of the following:
 - (i) the day specified in a document accompanying the gas final offer;
 - (ii) if the supplier and the person to whom the gas final offer is issued agree in writing on a later day—that later day.

Note: The day specified in the document accompanying the gas final offer must be at least 15 business days after the day on which the gas final offer is issued (see subsection 20(3)).

gas initial offer: an offer of basic terms forming the basis of negotiations for the purposes of entering into a binding agreement to supply regulated gas is a ***gas***

initial offer if acceptance of the offer does not result in the entering into of such an agreement (but may lead to negotiations for the purposes of entering into such an agreement).

gas initial offer open period: if a person (the *supplier*) issues a gas initial offer, the gas initial offer open period is the period that:

- (a) starts on the day after the supplier issues the gas initial offer; and
- (b) ends on the latest of the following:
 - (i) the day specified in the gas initial offer;
 - (ii) if the gas initial offer is varied or reissued—the day specified in the varied or reissued gas initial offer;
 - (iii) if the supplier and the person to whom the gas initial offer is issued agree in writing on a later day—that later day.

Note: The day specified in the gas initial offer must be at least 15 business days after the day on which the gas initial offer is issued (see subsection 16(3)).

gas initial offer response period: if a person (the *supplier*) issues a gas initial offer to another person, and the other person gives the supplier a notice in writing stating that the other person has an interest in receiving a gas final offer in relation to the gas initial offer, the **gas initial offer response period** is the period that:

- (a) starts on the day after the other person gives the notice; and
- (b) ends on the latest of the following:
 - (i) 30 business days after the day mentioned in paragraph (a);
 - (ii) if the supplier and the other person agree in writing on a later day—that later day.

gas trading exchange means a gas trading exchange established by AEMO under subsection 91BRK(1) of the National Gas Law.

gas trading exchange agreement has the same meaning as in the National Gas Law.

Industry Minister means the Minister who:

- (a) administers the *Industry Research and Development Act 1986*; and
- (b) is responsible for industry policy.

National Energy Retail Law means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* (SA), as in force from time to time.

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

price cap Order means the *Competition and Consumer (Gas Market Emergency Price) Order 2022*.

reasonable price: see section 27.

regulated gas means gas that:

- (a) is in a gaseous state at standard temperature and pressure; and

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

Note: Regulated gas is a gas commodity, and may be gas in a liquid state (see section 53B of the Act).

regulated gas producer: see section 5.

Resources Department means the Department administered by the Resources Minister.

Resources Minister means the Minister who:

- (a) administers the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and
- (b) is responsible for resources policy.

uncontracted regulated gas: regulated gas is **uncontracted regulated gas** at a time if, at that time, there is no agreement to supply the regulated gas.

- (2) To avoid doubt, an expression used in this instrument has the same meaning as in Part IVBB of the Act.

5 Definition of *regulated gas producer*

- (1) A person is a **regulated gas producer** if the person carries on a business of producing regulated gas.
- (2) For the purposes of subsection (1), disregard paragraph (c) of the definition of **regulated gas** in subsection 4(1) (requirement for gas to be suitable for consumption).

6 Definitions of *covered supplier* and *affiliate*

- (1) A person is a **covered supplier** if:
 - (a) the person is a regulated gas producer; or
 - (b) the person:
 - (i) is an affiliate of a regulated gas producer; and
 - (ii) has 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.
- (2) A person is an **affiliate** of a regulated gas producer if any of the following conditions are satisfied:
 - (a) the person and the regulated gas producer are related to each other (as determined in accordance with section 4A of the Act);
 - (b) the person and the regulated gas producer are related entities (within the meaning of the *Corporations Act 2001*);

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- (c) there is a joint venture in which the person and the regulated gas producer are participants;
- (d) there is:
 - (i) a joint venture in which the person and a third person are participants; and
 - (ii) another joint venture in which the regulated gas producer and the third person are participants;
- (e) there is:
 - (i) a joint venture in which the person and a third person are participants; and
 - (ii) another joint venture in which the regulated gas producer and a related entity (within the meaning of the *Corporations Act 2001*) of the third person are participants;
- (f) there is:
 - (i) a joint venture in which the regulated gas producer and a third person are participants; and
 - (ii) another joint venture in which the person and a related entity (within the meaning of the *Corporations Act 2001*) of the third person are participants.

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Part 2—Application

7 General application

Application to gas EOIs, gas initial offers and gas final offers issued, and agreements made, after commencement

- (1) Subject to this section, this instrument applies in relation to:
 - (a) a gas EOI issued on or after the commencement of this instrument; and
 - (b) a gas initial offer issued on or after the commencement of this instrument; and
 - (c) a gas final offer issued on or after the commencement of this instrument; and
 - (d) an agreement to supply regulated gas that is made on or after the commencement of this instrument.
- (2) Despite subsection (1), this instrument does not apply in relation to a gas initial offer made on or after the commencement of this instrument if the gas initial offer relates to a gas EOI issued before the commencement of this instrument.
- (3) Despite subsection (1), this instrument does not apply in relation to a gas final offer made on or after the commencement of this instrument if any of the following conditions are satisfied:
 - (a) the gas final offer relates to a gas EOI issued before the commencement of this instrument;
 - (b) the gas final offer relates to a gas initial offer issued before the commencement of this instrument.
- (4) Despite subsection (1), this instrument (apart from the provisions covered by subsection (5)) does not apply in relation to an agreement made on or after the commencement of this instrument to supply regulated gas if any of the following conditions are satisfied:
 - (a) the agreement relates to a gas EOI issued before the commencement of this instrument;
 - (b) the agreement relates to a gas initial offer issued before the commencement of this instrument;
 - (c) the agreement relates to a gas final offer issued before the commencement of this instrument.
- (5) For the purposes of subsection (4), this subsection covers the following provisions:
 - (a) Division 2 of Part 4;
 - (b) section 31;
 - (c) paragraph 33(2)(i);
 - (d) any other provision in this instrument, to the extent that it relates to the provisions mentioned in paragraphs (a), (b) and (c).

Application of good faith provisions

- (6) Despite subsections (1), (2), (3) and (4), section 30 (good faith—dealing in relation to negotiations) applies in relation to negotiations entered into on or after the commencement of this instrument.
- (7) Despite subsection (6), section 30 (good faith—dealing in relation to negotiations) does not apply in relation to negotiations entered into on or after the commencement of this instrument if any of the following conditions are satisfied:
 - (a) the negotiations relate to a gas EOI issued before the commencement of this instrument;
 - (b) the negotiations relate to a gas initial offer issued before the commencement of this instrument;
 - (c) the negotiations relate to a gas final offer issued before the commencement of this instrument.

Application in relation to agreements to which the price cap Order applies

- (8) Despite the preceding subsections of this section, this instrument does not apply in relation to any of the following:
 - (a) an agreement to supply regulated gas:
 - (i) to which Part 3 of the price cap Order applies (or, if the price cap Order has been repealed, to which that Part applied immediately before that repeal); and
 - (ii) that was entered into in the price cap period mentioned in the price cap Order;
 - (b) a gas EOI that relates to such an agreement;
 - (c) a gas initial offer that relates to such an agreement;
 - (d) a gas final offer that relates to such an agreement;
 - (e) negotiations mentioned in section 30 that relate to such an agreement.
- (9) Subsection (10) applies if:
 - (a) the price cap Order has been repealed; and
 - (b) immediately before that repeal, subsection 8(2) of the price cap Order was not prevented from applying in relation to an agreement mentioned in paragraph (8)(a) of this section because of the operation of Division 2 of Part 3 of the price cap Order.
- (10) Despite subsections (1), (4) and (8), section 25 applies in relation to the agreement on and after that repeal.

8 General application—variations to agreements

- (1) This section applies if:
 - (a) a person is a covered supplier; and
 - (b) the person enters into an agreement for the supply of regulated gas; and
 - (c) the agreement is entered into before the commencement of this instrument; and

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- (d) after the commencement of this instrument, the person enters into a variation of the agreement; and
 - (e) the variation includes a provision that determines the price of regulated gas to be supplied under the agreement.
- (2) For the purposes of section 7, as it has effect in respect of the provisions covered by subsection (3), treat the agreement, to the extent that it is varied under the variation, as being an agreement entered into at the time the variation is entered into.
- (3) This subsection covers the following provisions:
- (a) Division 2 of Part 4;
 - (b) section 31;
 - (c) paragraph 33(2)(i);
 - (d) any other provision in this instrument, to the extent that it relates to the provisions mentioned in paragraphs (a), (b) and (c).

9 Geographical application

- (1) For the purposes of subsection 53N(2) of the Act, Parts 3, 4, 5, 6, 7 and 8 of this instrument apply in relation to all parts of Australia other than any part of Australia in relation to which the requirement in subsection (2) of this section is met.
- (2) For the purposes of subsection (1), the requirement in this subsection is met in relation to a part of Australia if:
- (a) there is a market for regulated gas in the part of Australia, and regulated gas is acquired and supplied in that market by means of a physical network of interconnected gas pipelines; and
 - (b) there is another market for regulated gas in another part of Australia, in respect of which all of the following conditions are satisfied:
 - (i) regulated gas is acquired and supplied in that market by means of a physical network of interconnected gas pipelines;
 - (ii) that physical network crosses a border or borders between States, or between a State and a Territory; and
 - (c) there is a physical separation between the network mentioned in paragraph (a) and the network mentioned in paragraph (b).

Part 3—Negotiations

Division 1—Gas EOIs

10 Gas EOI must comply with certain requirements

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier issues a gas EOI; and
 - (c) the gas EOI does not specify the matters mentioned in subsection (2).

Civil penalty:

 - (a) for a body corporate—6,000 penalty units; and
 - (b) for a person other than a body corporate—1,200 penalty units.
- (2) For the purposes of paragraph (1)(c), the matters are as follows:
 - (a) the annual quantity of regulated gas intended to be supplied in accordance with the gas EOI;
 - (b) the period over which the regulated gas is intended to be supplied in accordance with the gas EOI (including the date the supply will commence and will cease);
 - (c) the delivery points of the regulated gas intended to be supplied in accordance with the gas EOI;
 - (d) the last day of the gas EOI open period (see subsection (3));
 - (e) if the gas EOI contemplates that there will be conditions precedent, relating to the supply of regulated gas, to an agreement under which regulated gas will be supplied in accordance with the gas EOI—those conditions precedent;
 - (f) subject to subsection (4), if the supplier has determined, at or before the time the supplier issued the gas EOI, the gas fields, tenements or storage facilities from which the regulated gas intended to be supplied in accordance with the gas EOI will be recovered:
 - (i) the name of those gas fields, tenements or storage facilities; and
 - (ii) the names of each body corporate that is a related body corporate of the supplier and has an ownership interest in those gas fields, tenements or storage facilities.
- (3) The last day of the gas EOI open period specified in accordance with paragraph (2)(d) must be at least 20 business days after the day on which the supplier issues the gas EOI.
- (4) Paragraph (2)(f) does not apply if:
 - (a) the supplier recovers regulated gas from a portfolio of gas fields, tenements or storage facilities; and
 - (b) at the time the supplier issues the gas EOI, the supplier has not yet determined the gas fields, tenements or storage facilities from which the

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Part 3 Negotiations
Division 1 Gas EOIs

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regulated gas intended to be supplied in accordance with the gas EOI will be recovered.

11 Gas EOI must be published

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas EOI; and
- (c) the supplier fails to publish the gas EOI on its website:
 - (i) at the same time that it issues the gas EOI; and
 - (ii) in a legible, prominent and unambiguous way.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

12 Gas EOI must be remain open throughout gas EOI open period

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas EOI; and
- (c) the gas EOI does not remain open throughout the gas EOI open period.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

13 Gas EOI—supplier must notify potential buyer whether or not successful

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas EOI; and
- (c) another person (the *potential buyer*) gives the supplier, within the gas EOI open period, a notice in writing stating that the potential buyer has an interest in further negotiations in relation to the gas EOI; and
- (d) the supplier fails to give, within the gas EOI response period, a notice in writing to the potential buyer stating that the potential buyer is “successful” or “not successful” in relation to the gas EOI.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

14 Gas EOI—if notice of interest, supplier must issue offer

(1) A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas EOI; and

- (c) the supplier gives another person (the *potential buyer*), within the gas EOI response period, a notice stating that the other person is “successful” in relation to the gas EOI; and
- (d) the supplier fails to give the potential buyer, within the gas EOI response period:
 - (i) unless subparagraph (ii) applies—a gas initial offer in relation to the gas EOI; or
 - (ii) if the potential buyer gives the supplier notice in writing for the purposes of this subparagraph—a gas final offer in relation to the gas EOI.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
 - (b) for a person other than a body corporate—1,200 penalty units.
- (2) Subsection (1) does not apply if the supplier does not receive any response during the gas EOI open period from the potential buyer (other than a notice of a kind mentioned in paragraph 13(c)).

15 Gas EOI—exception for material change of supplier’s circumstances, etc.

Sections 12 and 13 and section 14 do not apply if:

- (a) any of the following conditions are satisfied:
 - (i) there has been a material change in the supplier’s circumstances resulting in the inability of the supplier to supply regulated gas in accordance with the gas EOI;
 - (ii) there has been a material change in the supplier’s financial circumstances or business structure, and the change will affect the ability of the supplier to supply regulated gas in accordance with the gas EOI; and
- (b) the supplier publishes a notice on its website before the end of the gas EOI response period stating that:
 - (i) those conditions are satisfied; and
 - (ii) the supplier withdraws the gas EOI; and
- (c) in the case of the section 13 and section 14, if the potential buyer gave the supplier, within the gas EOI open period, a notice in writing stating that the potential buyer has an interest in further negotiations in relation to the gas EOI—the supplier gives a notice in writing to the potential buyer before the end of the gas EOI response period stating that:
 - (i) those conditions are satisfied; and
 - (ii) the supplier withdraws the gas EOI.

Division 2—Gas initial offers

16 Gas initial offer must comply with certain requirements

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and

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Part 3 Negotiations

Division 2 Gas initial offers

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- (b) the supplier issues a gas initial offer to another person; and
- (c) the gas initial offer does not specify the matters mentioned in subsection (2).

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

- (2) For the purposes of paragraph (1)(c), the matters are as follows:
 - (a) the annual quantity of regulated gas intended to be supplied in accordance with the gas initial offer;
 - (b) the intended degree of flexibility in determining that quantity (including take or pay conditions and conditions relating to load factor (such as conditions that determine variations in load factor over the course of a year));
 - (c) the period over which the regulated gas is intended to be supplied in accordance with the gas initial offer (including the date the supply will commence and will cease);
 - (d) the delivery points of the regulated gas intended to be supplied in accordance with the gas initial offer;
 - (e) the price or price structure intended to apply to the supply of the regulated gas in accordance with the gas initial offer (including the effect of any intended take or pay provisions and any intended price escalation mechanisms);
 - (f) the last day of the gas initial offer open period (see subsection (3));
 - (g) if the gas initial offer contemplates that there will be conditions precedent, relating to the supply of regulated gas, to an agreement under which regulated gas will be supplied in accordance with the gas initial offer—those conditions precedent;
 - (h) whether the gas initial offer includes an offer to provide transportation services (including services in respect of transportation from delivery points mentioned in paragraph (d)) or storage services;
 - (i) if the gas initial offer includes an offer to provide services mentioned in paragraph (h)—the price or price structure intended to apply to the provision of those services in accordance with the gas initial offer (including the effect of any intended price escalation mechanisms).
- (3) The last day of the gas initial offer open period specified in accordance with paragraph (2)(f) must be at least 15 business days after the day on which the supplier issues the gas initial offer.

17 Gas initial offer must not be withdrawn or terminated before end of gas initial offer open period or gas initial offer response period

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas initial offer to another person (the *potential buyer*) (whether or not in relation to a gas EOI); and
- (c) the supplier withdraws or terminates the gas initial offer before the end of:

- (i) unless subparagraph (ii) applies—the gas initial offer open period.
- (ii) if there is a gas initial offer response period—the gas initial offer response period.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

18 Gas initial offer—if notice of interest, supplier must issue gas final offer

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas initial offer to another person (the *potential buyer*) (whether or not in relation to a gas EOI); and
- (c) the potential buyer gives the supplier, within the gas initial offer open period, a notice in writing stating that the potential buyer has an interest in receiving a gas final offer in relation to the gas initial offer; and
- (d) the supplier fails, within the gas initial offer response period, to issue the potential buyer a gas final offer in relation to the gas initial offer.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

19 Gas initial offer—exceptions for material change of supplier’s circumstances, agreement to terminate or withdraw, etc.

Sections 17 and 18 do not apply if:

- (a) there has been a material change in the supplier’s circumstances resulting in the inability of the supplier to supply regulated gas in accordance with the gas initial offer, and the supplier has made reasonable efforts to make that supply possible; or
- (b) all of the following apply:
 - (i) there has been a material change in the supplier’s financial circumstances or business structure;
 - (ii) the change will affect the ability of the supplier to supply regulated gas in accordance with the gas initial offer;
 - (iii) the supplier has made reasonable efforts to make that supply possible;or
- (c) the supplier and the potential buyer agreed to the withdrawal or termination; or
- (d) the potential buyer gave the supplier written notice, before the end of the gas initial offer open period, that the potential buyer withdraws from the negotiation process.

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Part 3 Negotiations

Division 3 Gas final offers

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Division 3—Gas final offers

20 Gas final offer must comply with certain requirements

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier issues a gas final offer to another person (the *potential buyer*); and
 - (c) any of the following applies:
 - (i) the gas final offer does not specify the matters mentioned in subsection (2);
 - (ii) the gas final offer is not accompanied by a notice in writing by the supplier that meets the requirements in subsection (3).

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
 - (b) for a person other than a body corporate—1,200 penalty units.
- (2) For the purposes of subparagraph (1)(c)(i), the matters are as follows:
 - (a) the annual quantity of regulated gas intended to be supplied in accordance with the gas final offer;
 - (b) the intended degree of flexibility in determining that quantity (including take or pay conditions and conditions relating to load factor (such as conditions that determine variations in load factor over the course of a year));
 - (c) the period over which the regulated gas is intended to be supplied in accordance with the gas final offer (including the date the supply will commence and will cease);
 - (d) the delivery points of the regulated gas intended to be supplied in accordance with the gas final offer;
 - (e) the price or price structure intended to apply to the supply of the regulated gas in accordance with the gas final offer (including the effect of any intended take or pay provisions and any intended price escalation mechanisms);
 - (f) the payment terms for the supply of regulated gas in accordance with the gas final offer;
 - (g) if the gas final offer includes an offer to provide transportation services (including services in respect of transportation from delivery points mentioned in paragraph (d)) or storage services—the price or price structure intended to apply to the provision of those services in accordance with the gas final offer (including the effect of any intended price escalation mechanisms);
 - (h) the circumstances (if any) in which the supplier or the potential buyer may vary the terms of an agreement under which regulated gas will be supplied in accordance with the gas final offer;
 - (i) a protocol for the supplier and the potential buyer to notify each other, within a reasonable time, of any major interruptions to any of the following that become known to them:

- (i) the supplier's ability to supply regulated gas in accordance with the gas final offer;
 - (ii) the potential buyer's ability to accept regulated gas in accordance with the gas final offer;
 - (j) the consequences (if any) if the quantity of regulated gas intended to be supplied in accordance with the gas final offer is not delivered by the supplier or is not accepted by the potential buyer;
 - (k) the circumstances in which the supplier or the potential buyer may terminate an agreement under which regulated gas will be supplied in accordance with the gas final offer;
 - (l) the consequences of a breach of an agreement under which regulated gas will be supplied in accordance with the gas final offer;
 - (m) procedures for resolving disputes arising under an agreement under which regulated gas will be supplied in accordance with the gas final offer.
- (3) For the purposes of subparagraph (1)(c)(ii), the requirements are as follows:
- (a) the notice sets out the last day of the gas final offer open period; and
 - (b) that last day is no earlier than 15 business days after the supplier issues the gas final offer.

21 Gas final offer must not be withdrawn or terminated before end of gas final offer open period

- (1) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
 - (b) the supplier issues a gas final offer to another person (the *potential buyer*) (whether or not in relation to a gas EOI or gas initial offer); and
 - (c) the supplier withdraws or terminates the gas final offer before the end of the gas final offer open period.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
 - (b) for a person other than a body corporate—1,200 penalty units.
- (2) Subsection (1) does not apply if:
- (a) there has been a material change in the supplier's circumstances resulting in the inability of the supplier to supply regulated gas in accordance with the gas final offer, and the supplier has made reasonable efforts to make that supply possible; or
 - (b) all of the following apply:
 - (i) there has been a material change in the supplier's financial circumstances or business structure;
 - (ii) the change will affect the ability of the supplier to supply regulated gas in accordance with the gas final offer;
 - (iii) the supplier has made reasonable efforts to make that supply possible; or
 - (c) the supplier and the potential buyer agreed to the withdrawal or termination; or

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- (d) the potential buyer gave the supplier written notice, before the end of the gas final offer open period, that the potential buyer withdraws from the negotiation process.

Part 4—Agreements for supply of regulated gas

Division 1—Procedural rules

22 Agreement for supply of regulated gas—failure to issue gas final offer

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier enters into an agreement for the supply of regulated gas; and
- (c) under the agreement, the supplier is to supply regulated gas to another person (the *buyer*); and
- (d) the supplier did not issue a gas final offer, in relation to the agreement, to the buyer before entering into the agreement.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

23 Agreement for supply of regulated gas must comply with certain requirements

(1) A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier enters into an agreement for the supply of regulated gas; and
- (c) under the agreement, the supplier is to supply regulated gas to another person (the *buyer*); and
- (d) the agreement does not specify the matters mentioned in subsection (2).

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

(2) For the purposes of paragraph (1)(c), the matters are as follows:

- (a) the annual quantity of regulated gas to be supplied in accordance with the agreement;
- (b) the degree of flexibility in determining that quantity (including take or pay conditions and conditions relating to load factor (such as conditions that determine variations in load factor over the course of a year));
- (c) the period over which the regulated gas is to be supplied in accordance with the agreement (including the date the supply will commence and will cease);
- (d) the delivery points of the regulated gas to be supplied in accordance with the agreement;
- (e) the price or price structure to apply to the supply of the regulated gas in accordance with the agreement (including the effect of any intended take or pay provisions and any intended price escalation mechanisms);

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Part 4 Agreements for supply of regulated gas

Division 1 Procedural rules

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- (f) the payment terms for the supply of regulated gas in accordance with the agreement;
- (g) if the agreement includes terms to provide transportation services (including services in respect of transportation from delivery points mentioned in paragraph (d)) or storage services—the price or price structure to apply to the provision of those services in accordance with the agreement (including the effect of any price escalation mechanisms);
- (h) the circumstances (if any) in which the supplier or the buyer may vary the terms of the agreement;
- (i) a protocol for the supplier and the buyer to notify each other, within a reasonable time, of any major interruptions that become known to them to:
 - (i) the supplier's ability to supply regulated gas in accordance with the agreement; or
 - (ii) the buyer's ability to accept regulated gas in accordance with the agreement;
- (j) the consequences (if any) if the quantity of regulated gas to be supplied in accordance with the agreement is not delivered by the supplier or is not accepted by the buyer;
- (k) the circumstances in which the supplier or the buyer may terminate the agreement;
- (l) the consequences of a breach of the agreement;
- (m) procedures for resolving disputes arising under the agreement.

Division 2—Price rules

24 Agreement for supply of regulated gas—entering into agreement where price could exceed reasonable price

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier enters into an agreement for the supply of regulated gas; and
 - (c) under the agreement, the supplier is to supply regulated gas to another person; and
 - (d) the price payable under the agreement, for regulated gas to be supplied by the supplier, could exceed a reasonable price.
- (2) Subsection (1) is a civil penalty provision.
- (3) Subsection (1) applies only if entering into the agreement mentioned in paragraph (1)(b) is gas market conduct described in subsection 53ZZA(1) of the Act.

25 Agreement for supply of regulated gas—price for supplied gas exceeds reasonable price

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier entered into an agreement for the supply of regulated gas; and
 - (c) the supplier supplies regulated gas under the agreement; and
 - (d) the price payable under the agreement, for that regulated gas, exceeds a reasonable price.
- (2) Subsection (1) is a civil penalty provision.
- (3) Subsection (1) applies only if the supply mentioned in paragraph (1)(c) is gas market conduct described in subsection 53ZZA(1) of the Act.

26 Offer on gas trading exchange for supply of regulated gas—price under offer exceeds reasonable price

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier makes an offer on a gas trading exchange for the supply of regulated gas; and
 - (c) the price under the offer, for that gas, exceeds a reasonable price.
- (2) Subsection (1) is a civil penalty provision.
- (3) Subsection (1) applies only if making the offer mentioned in paragraph (1)(b) is gas market conduct described in subsection 53ZZA(1) of the Act.

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Part 4 Agreements for supply of regulated gas

Division 2 Price rules

Section 27

27 Reasonable price

- (1) For the purposes of this Division:
 - (a) the price mentioned in subsection (2) is taken to be a reasonable price for regulated gas; and
 - (b) a price for regulated gas that exceeds the price mentioned in subsection (2) is taken to exceed a reasonable price for regulated gas.
- (2) The price is:
 - (a) unless paragraph (b) applies—\$12 per gigajoule; or
 - (b) if the Commission makes a determination under subsection (3)—the price for regulated gas specified in the determination.
- (3) The Commission may, by legislative instrument, make a determination specifying a price for regulated gas that the Commission considers is a reasonable price for regulated gas.
- (4) Before making a determination under subsection (3), the Commission must consult with the public about the reasons why the Commission considers a price specified by the Commission to be a reasonable price for regulated gas.
- (5) In making a determination under subsection (3), the Commission must take into account comments made in consultations under subsection (4).
- (6) In making a determination under subsection (3), the Commission may take into account any of the following matters:
 - (a) the extent to which the determination would promote the following:
 - (i) a workably competitive market for regulated gas in the parts of Australia to which this Part applies (see section 9);
 - (ii) the affordability and availability of regulated gas in those parts of Australia;
 - (iii) the sufficiency or adequacy of investment in, and production of, regulated gas to meet demand in those parts of Australia;
 - (b) the effect or expected effect of other related decisions or government policies;
 - (c) any other matter the Commission considers relevant.
- (7) The Commission cannot make a determination under subsection (3) within the period of 2 years starting after the commencement of this instrument, unless:
 - (a) the Commission considers that there has been a substantial change in market conditions for regulated gas; or
 - (b) the Climate Change and Energy Minister notifies the Commission in writing that it may do so.
- (8) If the Commission makes a determination under subsection (3) on a day, it cannot make a further determination under subsection (3) within the period of 2 years starting after that day, unless:
 - (a) the Commission considers that there has been a substantial change in market conditions for regulated gas; or

- (b) the Climate Change and Energy Minister notifies the Commission in writing that it may do so.

28 Deemed exemption for small suppliers supplying the domestic market

Subsections 24(1), 25(1) and 26(1) do not apply if:

- (a) the supplier mentioned in the subsection produced less than 100 petajoules of regulated gas in:
 - (i) unless subparagraph (ii) applies—the most recent financial year that ended on or before the commencement of this instrument; or
 - (ii) if the supplier first produced regulated gas at a time after that commencement—the first financial year that started on or after that time; and
- (b) the supplier has not entered into an agreement to supply regulated gas, on or after the commencement of this instrument, with a person who intended to export the regulated gas from Australia.

29 Deemed exemption for person covered by conditional Ministerial exemption

- (1) Subsection 24(1) does not apply if all of the following conditions are met:
 - (a) the supplier mentioned in that subsection is:
 - (i) specified in a conditional Ministerial exemption; or
 - (ii) an affiliate of a regulated gas producer, if the regulated gas producer and the affiliate are specified in a conditional Ministerial exemption;
 - (b) the conditional Ministerial exemption states that it applies in relation to subsection 24(1);
 - (c) the conditional Ministerial exemption is in force on the day on which the supplier enters into the agreement for the supply of regulated gas as mentioned in paragraph 24(1)(b);
 - (d) if subparagraph (a)(ii) of this subsection applies—the agreement provides that the supplier will acquire the regulated gas to be supplied under the agreement from the regulated gas producer.
- (2) Subsection 25(1) does not apply if all of the following conditions are met:
 - (a) the supplier mentioned in that subsection is:
 - (i) specified in a conditional Ministerial exemption; or
 - (ii) an affiliate of a regulated gas producer, if the regulated gas producer and the affiliate are specified in a conditional Ministerial exemption;
 - (b) the conditional Ministerial exemption states that it applies in relation to subsection 25(1);
 - (c) the conditional Ministerial exemption is in force on the day on which the supplier supplies regulated gas under the agreement as mentioned in paragraph 25(1)(c);
 - (d) if subparagraph (a)(ii) of this subsection applies—the supplier acquired the regulated gas supplied under the agreement from the regulated gas producer.
- (3) Subsection 26(1) does not apply if all of the following conditions are met:

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- (a) the supplier mentioned in that subsection is:
 - (i) specified in a conditional Ministerial exemption; or
 - (ii) an affiliate of a regulated gas producer, if the regulated gas producer and the affiliate are specified in a conditional Ministerial exemption;
- (b) the conditional Ministerial exemption states that it applies in relation to subsection 26(1);
- (c) the conditional Ministerial exemption is in force on the day on which the supplier makes the offer on a gas trading exchange for the supply of regulated gas as mentioned in paragraph 26(1)(b).

Part 5—Good faith

30 Good faith—dealing in relation to negotiations

- (1) A person (the *party*) contravenes this paragraph if:
 - (a) the party participates in negotiations with another person (the *other party*) about a proposed supply of regulated gas by a covered supplier; and
 - (b) the covered supplier is the party or the other party; and
 - (c) the party fails to deal in good faith with the other party in relation to the negotiations.
- (2) Subsection (1) is a civil penalty provision.
- (3) Subsection (1) does not apply if the person is acting in the person's legitimate commercial interests.

31 Good faith—dealing in relation to agreement

- (1) A person (the *party*) contravenes this paragraph if:
 - (a) the agreement party enters into an agreement with another person (the *other party*) for the supply of regulated gas by a covered supplier; and
 - (b) the covered supplier is the party or the other party; and
 - (c) the party fails to deal in good faith with the other party in relation to the agreement.
- (2) To avoid doubt, for the purposes of subsection (1), dealing in relation to the agreement includes any of the following:
 - (a) exercising rights or performing obligations under the agreement;
 - (b) dealing with or resolving complaints or disputes arising under or in connection with the agreement;
 - (c) varying or terminating the agreement.
- (3) Subsection (1) is a civil penalty provision.
- (4) Subsection (1) does not apply if the person is acting in the person's legitimate commercial interests.

32 Good faith—matters to take into account

In determining whether a person deals in good faith with another person in relation to negotiations or an agreement, take the following matters into account:

- (a) the extent to which the person has acted honestly;
- (b) in the case of dealing in relation to an agreement—whether the person has tried to cooperate with the other party to achieve the purposes of the agreement;
- (c) the extent to which the person has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;

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- (d) the extent to which the person has acted in a way that constitutes retribution against the other party for past disputes with the other party (including disputes in mediation or arbitration);
- (e) the nature of the person's relationship with the other party (including the extent to which the person has conducted the relationship without duress);
- (f) the extent to which the person's relationship with the other party has been conducted in recognition of the need for certainty regarding the risks and costs of supplying or acquiring regulated gas;
- (g) the extent to which the person has undermined, or denied the other party, a benefit of any agreement;
- (h) any other relevant matter.

Part 6—Record keeping, information and publication

33 Record keeping by supplier

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier fails to:
 - (i) make records, in writing, recording details mentioned in subsection (2); and
 - (ii) keep those records for the period mentioned in subsection (2) that is relevant to the records.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
 - (b) for a person other than a body corporate—600 penalty units.
- (2) For the purposes of paragraph (1)(b), the details (and the period relevant to the records) are as follows:
 - (a) each gas EOI issued by the supplier that proceeded to an agreement to supply regulated gas (for the period of 6 years starting after the agreement was entered into);
 - (b) each gas EOI issued by the supplier that has not proceeded to an agreement to supply regulated gas, regardless of whether the gas EOI was withdrawn or terminated, and regardless of whether it proceeded to a gas initial offer or a gas final offer (for the period of 6 years starting after the record was made);
 - (c) each gas initial offer issued by the supplier that proceeded to an agreement to supply regulated gas (for the period of 6 years starting after the agreement was entered into);
 - (d) each gas initial offer issued by the supplier that has not proceeded to an agreement to supply regulated gas, regardless of whether the gas initial offer was withdrawn or terminated, and regardless of whether it proceeded to a gas final offer (for the period of 6 years starting after the record was made);
 - (e) each gas final offer issued by the supplier that proceeded to an agreement to supply regulated gas (for the period of 6 years starting after the agreement was entered into);
 - (f) each gas final offer issued by the supplier that has not proceeded to an agreement to supply regulated gas, regardless of whether the gas final offer was withdrawn or terminated (for the period of 6 years starting after the record was made);
 - (g) all documents and information exchanged between the supplier and a person with whom the supplier has negotiated in respect of a gas EOI, gas initial offer or gas final offer mentioned in paragraphs (a) to (f), including:
 - (i) each version of such a gas initial offer or gas final offer; and

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- (ii) if such a gas EOI, gas initial offer or gas final offer did not proceed to an agreement to supply regulated gas—documents and information containing reasons as to why it did not proceed to such an agreement; (for the period of 6 years starting after the supplier started to hold the document or information);
- (h) any other documents or information that the supplier creates, obtains or holds and that relates to the supply, price or marketing of regulated gas (for the period of 6 years starting after the supplier created, obtained or first held the document or information);
- (i) each agreement to supply regulated gas entered into by the supplier (for the period of 6 years starting after the agreement was entered into);
- (j) the name of each person who gave the supplier a notice in writing, in each calendar year ending after the commencement of this instrument, stating an interest in further negotiations in relation to a gas EOI issued by the supplier (for the period of 6 years starting after the end of the calendar year);
- (k) the number of gas EOIs, gas initial offers and gas final offers that the supplier issued, and the number of agreements to supply regulated gas that the supplier entered into, in each calendar year ending after the commencement of this instrument (for the period of 6 years starting after the end of the calendar year);
- (l) the name of each person to whom the supplier issued a gas initial offer or gas final offer mentioned in paragraph (k), or with whom the supplier entered into an agreement mentioned in that paragraph (for the period of 6 years starting after the end of the calendar year mentioned in that paragraph).

34 Supplier to publish information relating to available gas, etc.

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) as soon as practicable after each 1 January and 1 July covered by subsection (2), the supplier fails to maintain on its website a statement that:
 - (i) sets out the information covered by subsection (3) in relation to the 12 month period starting on that 1 January and 1 July; and
 - (ii) sets out that information in a legible, prominent and unambiguous way.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
 - (b) for a person other than a body corporate—600 penalty units.
- (2) For the purposes of paragraph (1)(b), this subsection covers a 1 January or 1 July that occurs after the later of:
 - (a) 31 December 2023; and
 - (b) the date that supplier became a covered supplier.
 - (3) For the purposes of subparagraph (1)(b)(i), this subsection covers the following information in relation to a 12 month period:

- (a) details of each gas EOI that the supplier intends to issue in that 12 month period, including:
 - (i) the volume of regulated gas proposed to be supplied in accordance with the gas EOI; and
 - (ii) the period over which that regulated gas is proposed to be supplied in accordance with the gas EOI;
- (b) the volume of uncontracted regulated gas that is likely to be available to the supplier in that 12 month period;
- (c) the volume of that uncontracted regulated gas:
 - (i) that the supplier intends to be the subject of a gas EOI, a gas initial offer or a gas final offer in that 12 month period; or
 - (ii) to be supplied under an agreement into which the supplier intends to enter in that 12 month period;
- (d) if the supplier knows the gas fields, tenements or storage facilities from which that uncontracted regulated gas will be recovered—those gas fields, tenements or storage facilities.

35 Supplier to report information to Commission—information relating to available gas, etc.

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) as soon as practicable after each 1 January and 1 July covered by subsection (2), the supplier fails to give the Commission a notice in writing setting out the information covered by subsection (3) in relation to the 12 month period starting on that 1 January and 1 July.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
 - (b) for a person other than a body corporate—600 penalty units.
- (2) For the purposes of paragraph (1)(b), this subsection covers a 1 January or 1 July that occurs after the later of:
 - (a) 31 December 2023; and
 - (b) the date that supplier became a covered supplier.
 - (3) For the purposes of paragraph (1)(b), this subsection covers the following information in relation to a 12 month period:
 - (a) the information covered by subsection 34(3) in relation to that 12 month period;
 - (b) whether the supplier intends to, in that 12 month period, do either or both of the following:
 - (i) issue a gas EOI, gas initial offer or gas final offer in respect of regulated gas that is uncontracted regulated gas on the 1 January or 1 July at the start of that 12 month period;
 - (ii) supply regulated gas that is uncontracted regulated gas on the 1 January or 1 July at the start of that 12 month period.

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36 Supplier to report information to Commission—gas EOIs

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas EOI; and
- (c) the supplier fails to give the Commission a notice in writing setting out the date on which the supplier issued the gas EOI, as soon as practicable after issuing the gas EOI.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

37 Supplier to report information to Commission—gas initial offers and gas final offers

(1) A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas initial offer or a gas final offer; and
- (c) the supplier fails to give the Commission a notice in writing setting out the information covered by subsection (2), as soon as practicable after issuing the gas initial offer or gas final offer.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

(2) This subsection covers the following information:

- (a) the date on which the supplier issued the gas initial offer or a gas final offer;
- (b) the price or price structure intended to apply to the acquisition or supply of the regulated gas in accordance with the gas initial offer or gas final offer (including the effect of any intended take or pay provisions and any intended price escalation mechanisms).

38 Supplier to report information to Commission—agreements to supply regulated gas

(1) A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier enters into an agreement to supply regulated gas; and
- (c) the supplier fails to give the Commission a notice in writing setting out the information covered by subsection (2), as soon as practicable after entering into the agreement.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

- (2) This subsection covers the following information:
 - (a) the date on which the supplier entered into the agreement;
 - (b) the price or price structure to apply to the acquisition or supply of the regulated gas in accordance with agreement (including the effect of any take or pay provisions and any price escalation mechanisms).

39 Supplier to report information to Commission—conditional Ministerial exemptions

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier is specified in a conditional Ministerial exemption; and
 - (c) the conditional Ministerial exemption states that it is subject to conditions; and
 - (d) the supplier fails to give the Commission a notice in writing setting out the information covered by subsection (2) in relation to a period covered by subsection (3), as soon as practicable after the end of the period.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
 - (b) for a person other than a body corporate—600 penalty units.
- (2) This subsection covers information in relation to a period if the information demonstrates that the supplier complied with the conditions mentioned in paragraph (1)(c) throughout the period.
 - (3) For the purposes of this section, this subsection covers the following periods:
 - (a) the period of 3 months beginning on the day the conditional Ministerial exemption was granted;
 - (b) if the conditional Ministerial exemption was in force at a time in a subsequent period of 3 months that:
 - (i) started immediately after the end of the period mentioned in paragraph (a); or
 - (ii) started immediately after the end of the period mentioned in subparagraph (i), or the end of a period covered by a previous operation of this subparagraph;that subsequent period of 3 months.

40 Supplier to report information to Commission—small suppliers

- (1) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier produced less than 100 petajoules of regulated gas in:
 - (i) unless subparagraph (ii) applies—the most recent financial year that ended on or before the commencement of this instrument; or
 - (ii) if the supplier first produced regulated gas at a time after that commencement—the first financial year that started on or after that time; and

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- (c) the supplier fails to give the Commission a notice in writing setting out the information covered by subsection (2):
 - (i) if subparagraph (b)(i) applies—before 23 December 2023;
 - (ii) if subparagraph (b)(ii) applies—as soon as practicable after the financial year mentioned in that subparagraph.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

- (2) This subsection covers the following information:
 - (a) if subparagraph (1)(b)(i) applies—information demonstrating that the supplier produced less than 100 petajoules of regulated gas in the financial year mentioned in that subparagraph;
 - (b) if subparagraph (1)(b)(ii) applies—information demonstrating that the supplier produced less than 100 petajoules of regulated gas in the financial year mentioned in that subparagraph.
- (3) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier produced less than 100 petajoules of regulated gas in:
 - (i) unless subparagraph (ii) applies—the most recent financial year that ended on or before the commencement of this instrument; or
 - (ii) if the supplier first produced regulated gas at a time after that commencement—the first financial year that started on or after that time; and
 - (c) at a time:
 - (i) the supplier forms an intention to enter into an agreement to supply regulated gas to another person (the *potential buyer*) as soon as practicable; and
 - (ii) the potential buyer has an intention to export that regulated gas from Australia; and
 - (d) the supplier fails to give the Commission a notice in writing setting out the following information, as soon as practicable after the supplier forms the intention mentioned in subparagraph (c)(i):
 - (i) a description of the intention mentioned in subparagraph (c)(i);
 - (ii) a description of the intention mentioned in subparagraph (c)(ii).

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

- (4) A person (the *supplier*) contravenes this subsection if:
 - (a) the supplier is a covered supplier; and
 - (b) the supplier produced less than 100 petajoules of regulated gas in:
 - (i) unless subparagraph (ii) applies—the most recent financial year that ended on or before the commencement of this instrument; or

- (ii) if the supplier first produced regulated gas at a time after that commencement—the first financial year that started on or after that time; and
- (c) at a time:
 - (i) the supplier enters into an agreement to supply regulated gas to another person (the *buyer*) as soon as practicable; and
 - (ii) the buyer has an intention to export that regulated gas from Australia; and
- (d) the supplier fails to give the Commission a notice in writing setting out the following information, as soon as practicable after the agreement is entered into:
 - (i) a description of the agreement mentioned in subparagraph (c)(i);
 - (ii) a description of the intention mentioned in subparagraph (c)(ii).

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

41 Commission may publish information relating to small supplier deemed exemption or conditional Ministerial exemption

- (1) The Commission must publish information covered by subsection (2) in relation to a supplier in a manner that the Commission considers appropriate, as soon as practicable after the Commission obtains the information.
- (2) This subsection covers the following information:
 - (a) if subsection 24(1), 25(1) or 26(1) does not apply in relation to the supplier because of section 28—the name of the supplier;
 - (b) if the supplier is specified in a conditional Ministerial exemption:
 - (i) the name of the supplier; and
 - (ii) the period during which the conditional Ministerial exemption is in force; and
 - (iii) conditions (if any) specified in the conditional Ministerial exemption;
 - (iv) if the conditional Ministerial exemption is varied—details regarding the variation;
 - (v) if the conditional Ministerial exemption is revoked—details regarding the revocation.
- (3) However, the Commission must not publish the information if doing so:
 - (a) would prejudice the commercial interests of the supplier in a substantial way; and
 - (b) is contrary to the public interest.

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Part 7 Exemptions, etc.

Division 1 Deemed exemptions

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Part 7—Exemptions, etc.

Division 1—Deemed exemptions

42 Deemed exemption for supply of regulated gas for less than 12 months

- (1) The civil penalty provisions in Division 1 of Part 3 do not apply if the gas EOI mentioned in the provision relates to a proposed supply of regulated gas for a period of less than 12 months.
- (2) The civil penalty provisions in Division 2 of Part 3 do not apply if the gas initial offer mentioned in the provision relates to a proposed supply of regulated gas for a period of less than 12 months.
- (3) The civil penalty provisions in Division 3 of Part 3 do not apply if the gas final offer mentioned in the provision relates to a proposed supply of regulated gas for a period of less than 12 months.
- (4) The civil penalty provisions in Division 1 of Part 4 do not apply if the agreement mentioned in the provision relates to a proposed supply of regulated gas for a period of less than 12 months.

43 Deemed exemption for export

- (1) The civil penalty provisions in Division 2 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas initial offer, do not apply if, at the time the gas initial offer is issued, the person to whom the gas initial offer is issued intends to export the regulated gas intended to be supplied in accordance with the gas initial offer, from Australia in a liquid state.
- (2) The civil penalty provisions in Division 3 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas final offer, do not apply if, at the time the gas final offer is issued, the person to whom the gas final offer is issued intends to export the regulated gas intended to be supplied in accordance with the gas final offer, from Australia in a liquid state.
- (3) The civil penalty provisions in Part 4, and the civil penalty provisions in Parts 5 and 6 (other than section 40) to the extent that they relate to an agreement to supply regulated gas do not apply if, at the time the agreement is entered into, the person to whom the regulated gas is to be supplied under the agreement intends to export the regulated gas from Australia in a liquid state.

44 Deemed exemption for subordinate contract or transaction notice not determining price

The civil penalty provisions in Part 4 do not apply if all of the following conditions are satisfied:

- (a) the agreement is a subordinate contract, or transaction notice, under a master gas supply agreement;

- (c) the price of the regulated gas to be supplied under the subordinate contract or transaction notice was determined under the master gas supply agreement or under another contract;
- (d) the subordinate contract or transaction notice does not include a provision determining that price.

45 Deemed exemption for gas exchange transactions

The civil penalty provisions in Part 4, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to an agreement to supply regulated gas do not apply if the agreement results directly from a transaction on a gas exchange that is:

- (a) a declared wholesale gas market (within the meaning of the National Gas Law); or
- (b) a short term trading market (within the meaning of the National Gas Law).

46 Deemed exemption for gas trading exchange transactions

- (1) Subsections 24(1) and 25(1) do not apply if all of the following conditions are met:
 - (a) the agreement results directly from a transaction on a gas trading exchange;
 - (b) the transaction is not any of the following:
 - (i) a Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
 - (ii) a Broker Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange).
- (2) Subsections 24(1) and 25(1) do not apply if all of the following conditions are met:
 - (a) the agreement results directly from a transaction on a gas trading exchange;
 - (b) the transaction is any of the following:
 - (i) a Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
 - (ii) a Broker Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
 - (c) under the agreement mentioned in paragraph (a), all of the regulated gas to be supplied under that agreement is to be so supplied no later than the end of the period that:
 - (i) starts at the time when that agreement is entered into; and
 - (ii) ends at the end of the third gas day starting after that time;
 - (d) all of the regulated gas to be supplied under that agreement is so supplied before the end of that period.
- (3) Subsection 26(1) does not apply if all of the following conditions are met:
 - (a) under the offer made on the gas trading exchange, all of the regulated gas to be supplied in accordance with the offer is to be so supplied no later than the end of the period that:
 - (i) starts at the time when the offer is made; and

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Section 47

- (ii) ends at the end of the third gas day starting after that time;
 - (b) all of the regulated gas to be supplied in accordance with the offer is so supplied before the end of that period.
- (4) Subsection 26(1) does not apply if the offer is for a transaction that is any of the following:
- (a) a Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
 - (b) a Broker Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange).

47 Deemed exemption for retailers

A civil penalty provision in Parts 3, 4, 5 and 6 does not apply at a time if all of the following conditions are met:

- (a) at the time, the person mentioned in that provision:
 - (i) held a retailer authorisation (within the meaning of the National Energy Retail Law as it applies in a State or a Territory); or
 - (ii) was a retailer (within the meaning of the *Electricity Industry Act 2000* (Vic.)); or
 - (iii) held a licence authorising the person to sell gas by retail under the *Gas Industry Act 2001* (Vic.);
- (b) no more than 50 per cent of the annual turnover of the person during the most recent financial year ending before the time, to the extent that it is attributable to business operations related to the production, supply and acquisition of gas, is attributable to a business of producing regulated gas carried on by the person.

Division 2—Conditional Ministerial exemptions

48 Application for conditional Ministerial exemption

- (1) The following may apply to the Climate Change and Energy Minister for a conditional Ministerial exemption:
 - (a) a regulated gas producer;
 - (b) an affiliate of a regulated gas producer.

Note: See section 29 for the effect of a conditional Ministerial exemption.

- (2) The application must:
 - (a) be in writing; and
 - (b) be in a form approved by the Climate Change and Energy Minister in writing.

49 Climate Change and Energy Minister and Resources Minister may jointly grant conditional Ministerial exemption

- (1) The Climate Change and Energy Minister and the Resources Minister, acting jointly, may, in writing, grant a conditional Ministerial exemption, in relation to a person or more than one person, from any or all of subsections 24(1), 25(1) and 26(1) if:
 - (a) the Climate Change and Energy Minister receives an application under section 48 from:
 - (i) that person; or
 - (ii) one of those persons; and
 - (b) the Climate Change and Energy Minister is satisfied that it is appropriate to grant the conditional Ministerial exemption; and
 - (c) the Resources Minister is satisfied that it is appropriate to grant the conditional Ministerial exemption.
- (2) If the conditional Ministerial exemption is granted in relation to more than one person:
 - (a) at least one of those persons must be a regulated gas producer; and
 - (b) all of the other persons must be affiliates of the regulated gas producer.
- (3) For the purposes of being satisfied that it is appropriate to grant the conditional Ministerial exemption, a Minister may take into account any of the following matters:
 - (a) the extent to which the conditional Ministerial exemption would promote:
 - (i) a workably competitive market for regulated gas in the parts of Australia to which this Part applies (see section 9);
 - (ii) the affordability and availability of regulated gas in those parts of Australia;
 - (iii) the sufficiency or adequacy of investment in, and production of, regulated gas to meet demand in those parts of Australia;

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- (b) the effect or expected effect of other related decisions or government policies;
 - (c) the impact on trade and exports of granting the conditional Ministerial exemption;
 - (d) any other matter the Minister considers relevant.
- (4) The Climate Change and Energy Minister and the Resources Minister must, acting jointly, consult with each of the following before granting a conditional Ministerial exemption:
- (a) the Minister administering the Act;
 - (b) the Industry Minister;
 - (c) the Commission.
- (5) However, a failure to comply with subsection (4) does not affect the validity of the conditional Ministerial exemption.
- (6) If a conditional Ministerial exemption is granted under subsection (1), the Climate Change and Energy Minister must give a copy of the conditional Ministerial exemption to the Commission as soon as practicable.

50 Contents of conditional Ministerial exemption

- (1) A conditional Ministerial exemption granted in relation to a person or more than one person must:
- (a) specify the person or persons; and
 - (b) state that it applies in relation to one or more of the following provisions:
 - (i) subsection 24(1);
 - (ii) subsection 25(1);
 - (iii) subsection 26(1); and
 - (c) state the period during which it is in force, which must:
 - (i) start on or after the day on which the decision to grant the conditional Ministerial exemption is made; and
 - (ii) end no earlier than 12 months after the day on which it starts; and
 - (d) state the conditions (if any) to which the conditional Ministerial exemption is subject (see subsection (2)).
- (2) A conditional Ministerial exemption may specify that it is subject to conditions if:
- (a) the Climate Change and Energy Minister is satisfied that the conditions are appropriate; and
 - (b) the Resources Minister is satisfied that the conditions are appropriate.
- (3) For the purposes of being satisfied that the conditions are appropriate, a Minister may have regard to the matters mentioned in subsection 49(2).
- (4) A person contravenes this subsection if:
- (a) the person is specified in a conditional Ministerial exemption; and
 - (b) the person engages in conduct at a time when the conditional Ministerial exemption is in force; and

(c) the conduct contravenes a condition specified in the conditional Ministerial exemption.

(5) Subsection (4) is a civil penalty provision.

51 Notice of decision

- (1) This section applies if the Climate Change and Energy Minister receives an application under section 48 from a person for a conditional Ministerial exemption, and either of the following apply:
 - (a) the Climate Change and Energy Minister and the Resources Minister, acting jointly, decide to grant the conditional Ministerial exemption;
 - (b) the Climate Change and Energy Minister and the Resources Minister have not decided to grant the conditional Ministerial exemption because either or both of the following apply:
 - (i) the Climate Change and Energy Minister is not satisfied that it is appropriate to grant the conditional Ministerial exemption;
 - (ii) the Resources Minister is not satisfied that it is appropriate to grant the conditional Ministerial exemption.
- (2) The Climate Change and Energy Minister must give the person a decision notice (see subsection (3)) as soon as practicable.
- (3) The decision notice must:
 - (a) be in writing; and
 - (b) if paragraph (1)(a) applies:
 - (i) include a copy of the conditional Ministerial exemption; and
 - (ii) state the reasons for the decision to grant the conditional Ministerial exemption; and
 - (c) if paragraph (1)(b) applies—state the reasons for:
 - (i) the Climate Change and Energy Minister being satisfied or not satisfied (as the case may be) that it is appropriate to grant the conditional Ministerial exemption; and
 - (ii) the Resources Minister being satisfied or not satisfied (as the case may be) that it is appropriate to grant the conditional Ministerial exemption.

52 Variation or revocation of conditional Ministerial exemption

- (1) The Climate Change and Energy Minister and the Resources Minister, acting jointly, may, in writing, vary or revoke a conditional Ministerial exemption granted in relation to a person or more than one person if:
 - (a) the Climate Change and Energy Minister is satisfied that it is appropriate to do so; and
 - (b) the Resources Minister is satisfied that it is appropriate to do so.
- (2) For the purposes of being satisfied that it is appropriate to do so, a Minister may have regard to the matters mentioned in subsection 49(2).

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Part 7 Exemptions, etc.

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- (3) The Climate Change and Energy Minister must give the person or persons notice of the variation or revocation as soon as practicable.
- (4) The notice must:
 - (a) be in writing; and
 - (b) include a copy of the variation or revocation; and
 - (c) state the reasons for the variation or revocation.

Part 8—Review

Division 1—Review

53 Review of this instrument

- (1) The Climate Change and Energy Minister and the Resources Minister, acting jointly, may cause a review of the operation of this instrument to be undertaken.
- (2) The Climate Change and Energy Minister and the Resources Minister must, acting jointly, consult with the following before causing the review to be undertaken:
 - (a) the Minister administering the Act;
 - (b) the Industry Minister.
- (3) However, a failure to comply with subsection (2) does not affect the validity of the review.
- (4) The person or persons undertaking the review may be any of the following:
 - (a) the Commission;
 - (b) any other person who the Climate Change and Energy Minister and the Resources Minister consider to be qualified to undertake the review.
- (5) The person or persons undertaking the review must:
 - (a) offer an opportunity for interested parties to make written submissions; and
 - (b) take those written submissions into account in undertaking the review.
- (6) The persons or persons undertaking the review must give the Climate Change and Energy Minister and the Resources Minister a written report of the review.
- (7) No later than 1 July 2025, the Climate Change and Energy Minister and the Resources Minister, acting jointly, must cause a review of the operation of this instrument to be undertaken under subsection (1).
- (8) To avoid doubt, subsection (7) does not prevent the Climate Change and Energy Minister or the Resources Minister from causing another review of the operation of this instrument to be undertaken at any time.

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Part 8 Review

Division 2 Delegation

Section 54

Division 2—Delegation

54 Delegation

- (1) The Climate Change and Energy Minister may, in writing, delegate all or any of the Climate Change and Energy Minister's powers or functions under Division 2 of Part 7 and Division 1 of Part 8 to:
 - (a) the Secretary of the Climate Change and Energy Department; or
 - (b) an SES employee, or an acting SES employee, in the Climate Change and Energy Department.
- (2) The Resources Minister may, in writing, delegate all or any of the Resources Minister's powers or functions under Division 2 of Part 7 and Division 1 of Part 8 to:
 - (a) the Secretary of the Resources Department; or
 - (b) an SES employee, or an acting SES employee, in the Resources Department.
- (3) In exercising a power or performing a function under a delegation under this section, the delegate must comply with any written directions of the Climate Change and Energy Minister or the Resources Minister (as the case may be).