



6 December 2023

Our Reference: APLNG - COR - 1042681

Via email

To: Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

For the attention of:
Ms Melisande Waterford
General Manager
Gas Markets Branch
E-mail: gas.inquiry@accc.gov.au

CONSULTATION ON PROPOSED DETERMINATIONS FOR THE GAS MARKET CODE

Australia Pacific LNG (**APLNG**) refers to the proposed determinations issued by the ACCC on 15 November 2023 in regard to suppliers' record keeping, publishing and reporting obligations under the Competition and Consumer (Gas Market Code) Regulations 2023 (**Code**).

APLNG is a covered supplier under the Code and is required to comply with the provisions of the Code with respect to which the ACCC intends to make a determination and has significant interest in the outcome that this public consultation could have on its ongoing business. Attached to this letter is an **Appendix** which sets out in detail APLNG's detailed responses with respect to all but one of the proposed determinations.

In addition to the detailed information set out in the Attachment, APLNG views that the proposed determination under section 34 which would require covered suppliers to **twice annually** publish the volume of uncontracted regulated gas that is likely to be available to the supplier **in each quarter** over the relevant 24-month period would have a significantly material impact on APLNG and warrants discussing separately in this letter. If the requirement is determined as proposed, APLNG views that it could give rise to circumstances in which:

- the information presented on APLNG's website could mislead the east coast gas market as to the volume of available and marketable uncontracted gas that APLNG had available in any quarter (see items 1 – 5 of the Further Context section below); and
- could result in damage to APLNG's competitive position as an exporter of LNG (see item 6 of the Further Context section below).

Recommendations

We appreciate that the circumstances of different wholesale gas producers that supply the east coast domestic gas market will differ, and that there will always be challenges for the ACCC when making a 'one size fits all' determination on matters such as those contemplated during this public consultation.

The determination should be designed to equip domestic customers with up-to-date information which supports access to and contracting for their future gas needs. APLNG believes this objective is already achieved through the structure that is already imposed by s.34 of the Code with respect to the first year of the Current Reporting Period. APLNG would therefore encourage the ACCC to reconsider its proposed determination under s.34 of the Code as follows:

- A revised determination could instead require APLNG to publish an update of its **aggregate 24-month uncontracted regulated gas position once a year**, noting that APLNG will continue to accompany the information published with appropriate caveats as to the marketability of that gas during the reporting period. If that is insufficient, APLNG would request that it should only be required to publish its uncontracted regulated gas position for two consecutive 12-month blocks within that 24-month reporting period, as opposed to 8 consecutive quarterly blocks, to reduce the acuteness of inaccuracies and over/understatements of volumes that would otherwise arise with respect to a particular period.
- There are pros and cons to the **time of year** that APLNG publishes that information, in basic terms the earlier in a year that APLNG reports that information the more accurate the information will be on APLNG's gas demand position for the balance of the calendar year, however publishing the information in October after APLNG's WP&B is approved (normally June) will result in that information being more accurate on APLNG's gas supply position. On balance, APLNG has a slight preference for reporting the information as soon as practicable after 1 October as opposed to as soon as practicable after 1 April on the basis that, in either case, APLNG will be making estimates of its gas demand position (as a component of the formula that derives the aggregate uncontracted regulated gas mass-balance computation) for a significant portion of the relevant reporting period in either case. That information will then also be more consistent with the information that APLNG submits on its annual s.95ZK Gas Inquiry response (10-year outlook) to the ACCC and to AEMO for the Gas Statement of Opportunities, both of which occur around that time based on historic reporting conventions.

Further Context to APLNG's Recommendations

APLNG wishes to bring the following information and context to the ACCC's attention when considering the merits of APLNG's submission and the proposed determination:

1. **The aggregate volume of uncontracted regulated gas that APLNG presently reports for the 24-month period commencing 11 September 2023 and expiring 10 September 2025 ("Current Reporting Period") is an estimate only.**

As set out in APLNG's website, in particular Annexure A to the table that APLNG maintains pursuant to section 34 (10)(B) of the Code, the volume of uncontracted regulated gas that the supplier has published in this statement that is likely to be available to it in the Current Reporting Period is an estimate only based on available data at the time of publishing and its current understanding of the prevailing market conditions and rapidly evolving gas regulatory environment.

Such estimated volume is not a guarantee of future performance and involves certain risks, uncertainties and other factors beyond the supplier's control. Furthermore, the Current Reporting Period required by the Code does not align with APLNG's domestic or international marketing plan periods. Accordingly, APLNG has applied averaging and apportionment methodologies to estimate the published volume. Therefore, actual outcomes and results may differ materially from what is published as the estimated volume.

The actual volumes of uncontracted regulated gas that are ultimately available for the Reporting Period (which could be higher or lower than the published volume) will be dependent on a myriad of factors, including further regulatory or policy changes impacting APLNG's production and supply decisions, market conditions impacting domestic and international spot demands, reservoir performance, unplanned outages (or changes to the timing of planned outages) and the demand requirements under APLNG's existing domestic GSAs and long term LNG SPAs.

Further, APLNG is a wholesale producer of coal seam gas which is developed and produced entirely within the state of Queensland. The APLNG Board of Directors has discretion to approve the development of uncontracted regulated gas during the Reporting Period, and that discretion is subject to a myriad of factors including the then current regulatory regime and the level of investment certainty that regime provides.

Where the APLNG Board of Directors approves development of uncontracted regulated gas, APLNG first offers that uncontracted regulated gas (excluding gas that APLNG consumes as part of its operations) to domestic customers in accordance with applicable contractual and legal requirements and, if volumes of that uncontracted regulated gas are not contracted to the domestic market, subsequently markets those volumes as liquefied natural gas to international customers.

Material changes may arise during the Current Reporting Period from matters including production and supply decisions, updated reservoir performance assessments, unplanned outages (or changes to the timing of planned outages), changes to forecast demand requirements under APLNG's existing domestic GSAs and long-term LNG SPAs, and the execution of binding agreements with domestic or international customers for the supply of previously uncontracted regulated gas for supply during the Current Reporting Period.

2. The aggregate volume of uncontracted regulated gas that APLNG presently reports for the Current Reporting Period does not reflect uncontracted gas that is available to APLNG to market to the domestic market on a firm basis.

The volume of uncontracted regulated gas that APLNG publishes on its website reflects a mass balance calculation of:

- APLNG's forecast operated production, non-operated production and contracted purchases; less
- APLNG's forecast demand to service its existing gas sales agreements with domestic customers and its long-term LNG SPAs with international customers.

In many instances this mass-balance volume of uncontracted regulated gas is not capable of being marketed by APLNG ahead of time to the domestic market on a firm basis. By way of example:

- On the supply side, based on historic performance, APLNG makes certain assumptions as to volumes of gas that APLNG may not have available to it due to the likelihood that some unplanned downtime events will occur during that period. That volume of gas is not capable of being marketed ahead of time to the domestic market on a firm basis, however it is included within the aggregate volume of uncontracted regulated gas that APLNG publishes on its website in accordance with s.34 of the Code.
- On the demand side, in December each year APLNG agrees an annual delivery programme (ADP) with its SPA customers for the subsequent calendar year. Until that ADP is agreed the demand associated with APLNG's long-term LNG SPAs for the subsequent calendar year is an estimate only and could be subject to material change. For example, when APLNG published its 24-month uncontracted regulated gas position on its website on 11 September 2023 for the Current Reporting Period, the demand associated with APLNG's long-term LNG SPAs was an estimate only for the period commencing 1 January 2024 and expiring 10 September 2025. This estimating can create compounded uncertainties in APLNG's published volume i.e., if the LNG demand under those long-term SPAs is higher than APLNG's estimate at the time information is published, then the demand associated with that higher contractual delivery requirement will include additional uncontracted regulated gas that is consumed when converting that gas to LNG.

As indicated above, there are many equivalent assumptions on production and supply decisions and ongoing reservoir performance assessment that need to be considered by APLNG when considering how much of the mass-balance uncontracted regulated gas that is

technically available can actually be marketed to the domestic market on a firm basis. As such, any information that APLNG is required to publish in relation to its uncontracted regulated gas position for any period will, save for a material change in circumstances, be overstated relative to the volume of gas that APLNG can responsibly offer to the domestic market. As set out below, the impact of this natural overstatement that APLNG is required to make in order to comply with the Code, when compounded with the inherent inaccuracies in forecasting supply and demand that APLNG cannot avoid, becomes much more acute when applied to specific quarterly periods.

3. Requiring APLNG to publish an updated 24-month forecast twice yearly on 1 April and 1 October will add significant additional publishing burden on APLNG without improving the information that is available to the domestic market on available and marketable uncontracted gas relative to APLNG's current publishing practices with respect to uncontracted regulated gas.

Taking the example of the information that APLNG would publish as soon as practicable after 1 April 2024 with respect to the period 1 April 2024 through 31 March 2026:

- the information concerning APLNG's forecast supply will be derived from a work programme and budget (WP&B) that APLNG approved for financial year 2024 in June 2023, and should (subject to material change in circumstances following June 2023) be reasonably accurate through to 30 June 2024, be less accurate through to 30 June 2025, and be an estimate only through to 31 March 2026; and
- the information concerning APLNG's forecast demand will take account of APLNG's agreed ADP for calendar year 2024 and should (subject to material change in circumstances following December 2023) be reasonably accurate through to 31 December 2024, and be an estimate only through to 31 March 2026.

Taking the example of the information that APLNG would publish as soon as practicable after 1 October 2024 with respect to the period 1 October 2024 through 30 September 2026:

- the information concerning APLNG's forecast supply will be derived from a work programme and budget (WP&B) that APLNG approved for financial year 2025 in June 2024, and should (subject to material change in circumstances following June 2023) be reasonably accurate through to 30 June 2025, be less accurate through to 30 June 2026, and be an estimate only through to 30 September 2026; and
- the information concerning APLNG's forecast demand will still only take account of APLNG's agreed ADP for calendar year 2024 and should (subject to material change in circumstances following December 2023) be reasonably accurate through to 31 December 2024, and will still be an estimate only through to 30 September 2026.

With respect to the Current Reporting Period commencing 11 September 2023, APLNG has maintained the information on its website, including:

- periodic updates to APLNG's forecast aggregate volume of uncontracted regulated gas that it has available to it for the balance of the Current Reporting Period at the time of the update, e.g. to reduce the balance to reflect the volume of regulated gas (previously reported as uncontracted) that has since been contracted with domestic international customers, and to account for changes over time in APLNG's then-current reservoir performance assessments; and
- APLNG's plans for EOIs.

In its most recent update, shortly prior to this submission, APLNG published information relating to an EOI for the Q2-Q4 2024 supply period that have been issued directly to both existing and potentially interested customers, and generally on its website for the benefit of the entire domestic market (see section 5 below).

Requiring APLNG to publish a complete refresh of its position twice yearly results in APLNG relying on forecasts for supply and demand that were approved at different times, creating a natural tension (depending on the time of year that APLNG publishes the information) between using forecasts for components which are based on more aged but approved data at the front end of the period, and using forecasts for components which are based on estimates at the back end of the period, and significantly increasing the administrative and compliance burden on APLNG without (in APLNG's view) tangible benefit for domestic gas users.

4. Requiring APLNG to publish information within that 24-month period on a quarterly basis will further compound the potential inaccuracies that already exist with respect to the volume that APLNG publishes in aggregate for the 24-month period and will likely mislead the domestic market as to the volume of available and marketable uncontracted gas that APLNG had available in any particular quarter.

As noted above, in order to meet the requirements relating to publishing information on its aggregate uncontracted gas position for a 24-month period pursuant to s.34 of the Code, APLNG applies averaging and apportionment methodologies to estimate the published volume. Therefore, when we look back on the eventual outcome for the Current Reporting Period on 10 September 2025, the actual outcomes and results will likely differ substantially from what was published as the estimated volume on 11 September 2023. This reflects the inherent complexity and uncertainty of CSG development and production relative to conventional gas, which is more forecastable on a relative basis.

As with any forecasting exercise, when averaging and apportionment methodologies are applied for a longer period of time there is a lower probability that the application of those methodologies will ultimately have a material impact upon the end result, albeit as set out above the end result is still unlikely to meet the original assumption. When those averaging and apportionment methodologies are applied to 8 shorter periods (quarters) within that longer period, there is a significantly higher probability that the value ascribed to one or more of those quarters will be materially different to the actual outcome.

By way of illustration:

- As set out above, forecasts of gas demand made as soon as practicable after 1 October 2024 will require that APLNG make estimates of long-term SPA demand from 1 January 2025 through to 30 September 2026 that are not supported by any ADP, impacting on the accuracy of APLNG's estimates for 7 of the 8 quarters that it will publish at that time. The variation of estimate to actuals across a calendar year for a company with APLNG's volumes could change by a material volume, and the distribution of those variations could in practice fall disproportionately into one or two future quarters during the reporting period versus what might be assumed to be a rateable spread across those 7 quarters.
- On the supply side, to give a single illustrative example, forecasts of gas supply made as soon as practicable after 1 April 2024 and based on a WP&B approved in June 2023 might assume planned maintenance on APLNG's upstream facilities during a specific quarter in 2025. For a myriad of reasons (LNG plant maintenance timing changes, weather impact, contractor availability etc), the timing of that planned maintenance could be accelerated or deferred, in which case the entire impact of that planned maintenance could then impact on a different quarter or could straddle two quarters. That would not impact APLNG's aggregate volume of uncontracted gas forecast for the reporting period, but could completely change the supply that is available during particular quarter(s) of the reporting period.

As such, moving to a regime in which APLNG publishes its forecast uncontracted regulated gas position on a quarterly basis is, in APLNG's view, likely to give rise to confusion in the domestic gas market as to why APLNG's domestic gas marketing activities do not correspond with the information that it is required to publish on its website.

5. EOIs issued for particular period and reported on APLNG's website in accordance with the requirements of the Code represent a better mechanism by which APLNG can communicate with the domestic market as to the volume of marketable uncontracted

gas that APLNG has available to offer to the domestic market for a particular quarter or a more extended period.

For the reasons outlined above, the volume of uncontracted regulated gas that APLNG is obliged to publish on its website for a 24-month reporting period is not reflective of the volume of uncontracted and marketable gas that APLNG is able to offer to the domestic market.

APLNG is presently subject to the Heads of Agreement and, under that voluntary agreement, has committed to offer uncontracted gas to the domestic market before marketing that gas to the international market. One of the marketing mechanisms that APLNG uses to meet that commitment is to periodically publish EOIs on its website, the period and volume for which reflect an up-to-date assessment by APLNG of the volume of gas that it could supply to the domestic market, should there be demand for that gas under the terms of the EOI.

As can be seen on APLNG's website, since the revised HOA was agreed by APLNG in September 2022, APLNG has raised EOI requests with domestic customers for Q1 2023 (published 19 October 2022), Q2-Q4 2023 (published 8 November 2022) and Q2-Q4 2024 (published 1 December 2023). Those requests provide more accurate information on the volume of marketable uncontracted gas that APLNG has available during those periods, noting that APLNG may not always be able to provide rateable supply to domestic customers during those periods due to its existing domestic contract and long-term LNG SPA demand profiles, together with the terms at that time that APLNG is willing to contract for that gas. As such this mechanism provides far more accurate and complete information to the domestic gas market on the volume of uncontracted gas that a customer could seek for supply than could be distilled from reporting a mass balance uncontracted regulated gas position for a future quarter that APLNG has no certainty over and is thus not seeking to market at that time.

APLNG therefore views that the proposed determination risks creating acute disconnects between the volume of uncontracted gas that is available to APLNG to market to the domestic market for a particular supply quarter, and the volume of uncontracted regulated gas that APLNG publishes on its website to comply with the Code.

APLNG always remains open to and is engaged in ongoing exploratory discussions with its customers on potential gas supply arrangements that extend beyond the periods of any published EOI. However, in APLNG's experience as a major supplier into the domestic market, it is much more likely that those exploratory discussions will be prejudiced (or at the very least unnecessarily complicated, for both parties) through the publishing by APLNG of quarterly uncontracted regulated gas information that, while compliant with the Code in a strict sense, is not in any sense reflective of reality in terms of APLNG's ability to enter into firm commitments for supply during those quarters published.

6. **Requiring APLNG to publish information within that 24-month period on a quarterly basis will result in information that was previously not available in the public domain becoming available to APLNG's international customers, which could result in damage to APLNG's competitive position as an exporter of LNG.**

For reasons of commercial confidentiality, we are unable to elaborate on this assertion in a public submission. We would however be happy to meet with representatives of the ACCC to further discuss our concerns in this context should that be helpful and appropriate.

Further to our response to item 6 above, given our position in the east coast domestic gas market and also as an LNG exporter, we consider that the proposed determinations could have a more material impact on APLNG than for many of our competitors in the domestic market, and on that basis we would welcome the opportunity to discuss the points that we have made in this cover letter in addition to the more detailed points raised in the Appendix at the ACCC's convenience.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Manda Goodwin', with a long horizontal flourish extending to the right.

Manda Goodwin
General Manager – Commercial
Australia Pacific LNG

APPENDIX

ACCC proposed determinations: record keeping, reporting and publishing obligations Detailed Feedback from Australia Pacific LNG (APLNG) Commentary and Further APLNG Recommendations

Reference (if applicable)	Topic	APLNG Submission
Proposed determinations Page 3 of the consultation paper	Information collecting burden and certainty on information and timing	<p>APLNG appreciates the ACCC's efforts to minimise the information collecting burden and avoid duplication between the section 95ZK notices issued under the <i>Competition and Consumer Act 2010</i> (Cth) (the Act) and the record keeping obligations under the Code. This is a welcome first step in streamlining the various reporting obligations that suppliers are required to comply with.</p> <p>While the ACCC has indicated that it intends to issue section 53ZT notices twice a year under the Act, we require greater certainty around the specific timing of these notices and how the transition from the section 95ZK notices will be managed. Providing certainty around the timing will allow suppliers to identify and implement the most efficient approach to storing information and managing the information collecting process, and to allocate limited resources appropriately.</p> <p>In terms of the transition, there needs to be a clear delineation between the reporting periods covered by the final section 95ZK notice issued (insofar as it relates to the details to be kept under section 33 of the Code) and the Section 33 workbook. We do not believe suppliers should be in a situation where they are contemporaneously maintaining information in both a section 95ZK notice workbook and a Section 33 workbook, as this increases the information collecting burden and leads to an inefficient use of resources. The ACCC should also avoid the situation where suppliers are required to retrospectively populate the Section 33 workbook with information already submitted to the ACCC under a section 95ZK notice. APLNG suggests the inclusion of a transition period in the legislative instrument to manage these issues.</p>

Reference (if applicable)	Topic	APLNG Submission
		<p>It will also be important to align the reporting periods, wherever possible, between existing and new reporting requirements such as those under the Heads of Agreement and any conditional Ministerial exemption.</p> <p>Finally, we understand the ACCC intends for the Section 33 workbook to remain static between notices to provide ongoing certainty on the information that will be collected. APLNG generally supports this approach. However, some flexibility may be required as suppliers and the ACCC transition to the Section 33 workbook and start using the new gas data portal. In addition, APLNG considers that the legislative instrument and the Section 33 workbook should be reviewed once the ACCC's Gas Inquiry function ceases, to remove information that is not required by the ACCC to effectively perform its compliance and enforcement role under the Code (e.g. information about the delivery region, the basin name and the Australian Market Supply Requirement). Any changes to the legislative instrument and Section 33 workbook should be subject to consultation.</p>
Page 14 of the consultation paper	Section 33 records kept in a form approved by the ACCC	<p>The ACCC proposes that the details required to be kept under section 33 be recorded in the format of the Section 33 workbook that is found on the ACCC website as part of the consultation as package.</p> <p>There is no guidance in the Code or the proposed legislative instrument as to the periodicity of updating the Section 33 workbook.</p> <p>APLNG recommends that suppliers continue to maintain the information required to populate the workbook in their current systems / processes and update the Section 33 workbook only when required to provide to the ACCC for s53ZT notices, i.e. twice a year under the Act. Otherwise suppliers will be required to maintain multiple sets of records, which is labour intensive, costly and carries additional risk of data misalignment / error.</p>
Page 15 of the consultation paper / s12 of the proposed legislative instrument	Publication of information about available gas etc. on 1 April and 1 October each year	Refer to APLNG's cover letter.

Reference (if applicable)	Topic	APLNG Submission
Page 16 of the consultation paper / s13 of the proposed legislative instrument	Volumes of uncontracted gas disaggregated into financial year quarters	Refer to APLNG's cover letter.
Page 17 of the consultation paper / s14 of the proposed legislative instrument	Reporting information about available gas etc. to the ACCC	APLNG agrees that the timing of the reporting requirements under section 35(3) of the Code should align with the publishing requirements under section 34(3) of the Code. We support the ACCC's position not to issue a determination with respect to section 35(7) of the Code.
First page of instrument and footer	Typo	A closing bracket should be added to the end of '(Subsection 33(3), 34(3), 34(7) and 35(3)' on the title page of the proposed legislative instrument and in the footer.
s3 Authority	Typo	The reference to '35(7)' should be removed from section 3 of the proposed legislative instrument as the ACCC is not making a determination with respect to section 35(7) of the Code, as follows: 'This instrument is made under subsections 33(3), 34(3), 34(7); and 35(3) and 35(7) of the <i>Competition and Consumer (Gas Market Code) Regulations 2023</i> .'
s4 Definitions	Code expressions – uncontracted regulated gas	APLNG requests that the list of Code expressions be extended to include 'uncontracted regulated gas', given this expression is defined in the Code.
s4 Definitions and s10	Definition of buyer gas initial offer and practical application	APLNG suggests amendments to the definition of 'buyer gas initial offer' to better align it with the terminology used in the Code for a buyer gas final offer (i.e. use 'acquire' instead of 'be supplied with') and to recognise that regulated gas may not be supplied as it is contingent upon both parties subsequently entering into an agreement: ' buyer gas initial offer : an offer of basic terms forming the basis of negotiations for the purposes of entering into a binding agreement for the person making the offer to be supplied with acquire regulated gas is a buyer 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).'

Reference (if applicable)	Topic	APLNG Submission
		<p>Note: A buyer gas initial offer is an offer made by the person who will be supplied with is seeking to acquire regulated gas. A gas initial offer (within the meaning of the Code) is an offer made by a person who will be supplying regulated gas if an agreement is entered into.</p> <p>We note this definition is broad and, in a practical sense, it may not be possible for suppliers to record each of the details specified under sections 10(2) and 10(3) of the proposed legislative instrument because some of this information may not be provided by the potential buyer. The ACCC needs to be cognisant of this when establishing the gas data portal validation rules for the Section 33 workbook.</p>
s4 Definitions	Definition of pricing formula	<p>APLNG recommends including a reference to 'regulated gas' in the definition of 'pricing formula', to clarify that the pricing details relate to the price of regulated gas only (i.e. excludes transportation and/or storage services), as follows:</p> <p>'pricing formula means the calculation used to determine the price payable for regulated gas for a given period'.</p>
s6(1)(b)(iii)	Code expressions – gas master supply agreement	<p>APLNG suggests replacing 'master gas supply agreement' with 'gas master supply agreement' to ensure consistency with the expression used in the Code.</p>
s6(1)(f)	Typo	<p>APLNG believes there is a typo in section 6(1)(f) of the proposed legislative instrument, as this section partially duplicates a requirement under section 6(1)(b)(ii) for the supplier to specify if the agreement is a variation of a kind described in section 8(2) of the Code. The ACCC should amend this section as follows:</p> <p>'if the agreement is a variation of a kind described in section 8(2) of the Code, and whether the variation determines the price payable'.</p>
s6(1)(l)(ii) and s8(1)(k)(ii)	Typo	<p>The ACCC should correct the following typo in section 6(1)(l)(ii) of the proposed legislative instrument:</p> <p>'if no annual contract quantity is specified in the agreement—the quantity that is to be supplied, expressed in the measurement of petajoules, for all the first and all subsequent years of the agreement'.</p> <p>A similar change is required to section 8(1)(k)(ii) of the proposed legislative instrument.</p>

Reference (if applicable)	Topic	APLNG Submission
s10(1)(b)	Typo	The following typo in section 10(1)(b) of the proposed legislative instrument should be corrected: 'the offer under which the buyer is to be supplied regulated gas is for a period of 12 months or more'.
s11(2)(f)	The names of the persons to whom the gas EOI was issued, including (if applicable) either or both of the ABN and ACN of each of those persons	Section 11(2)(f) of the proposed legislative instrument should be replaced with the following: 'the names of the persons who responded stating an interest in further negotiations relating to the gas EOI, including (if applicable) either or both of the ABN and ACN of each of those persons'. The current drafting, which requires the names of the persons to whom the gas EOI was issued, is inconsistent with section 33(2)(l) of the Code and the Section 33 workbook.
s11(2)(k)	Whether the gas EOI proceeded to a gas initial offer and, if not, the reasons why not	Under section 14(d)(ii) of the Code, a gas EOI may proceed directly to a gas final offer. APLNG proposes the following changes to the proposed legislative instrument: 'whether the gas EOI proceeded to a gas initial offer or gas final offer and, if not, the reasons why not'. Corresponding changes should also be made to the Section 33 workbook. Specifically, columns O, P and Q of the 'Expression of Interests' worksheet should include references to gas final offers.
Row 3 in multiple worksheets	The following details are to be recorded under section 33 of the Gas Code Determination 2023	Row 3 in the 'Agreements', 'Variations', 'Offers' and 'Expressions of Interest' worksheets should reference either section 33 of the Code or the relevant section(s) of the proposed legislative instrument. There is no section 33 of the proposed legislative instrument.
Multiple worksheets	Application of record keeping exemptions	APLNG notes that the civil penalty provisions in section 33 of Part 6 of the Code do not apply to suppliers who are granted a conditional Ministerial exemption with respect to section 33(1)(b) of the Code and certain types of transactions. This includes: <ul style="list-style-type: none"> • regulated gas that is intended to be exported from Australia in a liquid state (section 47 of the Code) • gas swap agreements (section 48 of the Code) • gas exchange transactions (section 51 of the Code)

Reference (if applicable)	Topic	APLNG Submission
		<ul style="list-style-type: none"> retailers (section 53 of the Code) mandatory government agreements (section 54 of the Code). <p>This means suppliers are not required to keep records pertaining to the associated gas EOLs, gas initial offers, gas final offers and/or agreements under the Code. The Section 33 workbook appears to (in part) contradict this, by listing 'export sales', 'gas swap agreement' and 'mandatory government agreement' as exemption types that suppliers should select when entering details about an agreement, variation to an agreement, offer and/or gas EOI. We recommend the ACCC re-examine the circumstances in which suppliers are required to record details in the Section 33 workbook and update the exemption types accordingly.</p>
Multiple worksheets	Basin name	APLNG applies a portfolio approach to the marketing and supply of gas. As such, we do not know which basin will be the predominant source of regulated gas supplied under a specific agreement. We request that the ACCC add an 'Unknown' option in the drop-down list in the Section 33 workbook per the current section 95ZK notice. We also suggest ordering the basin names contained within the drop-down list alphabetically for ease of use.
Multiple worksheets	Base year and quarter	<p>APLNG seeks guidance from the ACCC on how suppliers should input the base year and quarter using the DD/MM/YYYY format (e.g. do suppliers enter the first day of the first month of the relevant quarter?). It may be easier for suppliers to input the base year and base quarter in separate columns. In addition, we wish to highlight the following issues:</p> <ul style="list-style-type: none"> the cells in column AF of the 'Agreements' worksheet are protected and users cannot input information the base year and quarter column widths need to be widened to display all of the inputted information.
Column H of the 'Agreements' worksheet and column G	Exemption types	APLNG recommends expanding the exemption types in the drop-down list to include all possible exemptions, including (but not limited to) the conditional Ministerial exemptions for gas pricing penalty provisions and other gas penalty provisions.

Reference (if applicable)	Topic	APLNG Submission
of the 'Variations' worksheet		<p>The following change should also be made to ensure better alignment with the expression used in the Code:</p> <p>'Subordinate contract or transaction notice that does not specify determine price'.</p>
Multiple columns in the 'Variations' worksheet	Incorrect formatting	<p>The formatting in columns N to P of the 'Variations' worksheet should be changed to a number format. There is also inconsistent formatting applied to the fixed component input cells in columns AG to AI, the commodity linked component input cells in columns AU to AW and the take or pay input cells in columns BJ to BL.</p>
Column I of the 'Offers' worksheet	Incorrect validation rules	<p>The ABN validation rules from column H have been applied to column I of the 'Offers' worksheet (which relates to the document identifier of the gas EOI), preventing users from entering the document identifier in the appropriate format.</p>
Column K of the 'Offers' worksheet	Practical application – Supply less than 12 months	<p>Section 10(1)(b) of the proposed legislative instrument specifies that the supplier is to record details of offers under which the buyer is to be supplied regulated gas for a period of 12 months or more. It is therefore APLNG's understanding that offers for a supply period of less than 12 months do not need to be recorded in the Section 33 workbook. As such, the 'Supply less than 12 months' exemption type in column K of the 'Offers' worksheet will never be selected and should be removed.</p>
Column D of the 'Expressions of Interest' worksheet	Alignment with Code – exemptions for gas EOIs with two or fewer persons	<p>Under section 46 of the Code, a gas EOI issued in respect of two or fewer persons is exempt from certain civil penalty provisions. APLNG therefore recommends that 'Gas EOIs – 2 or fewer persons' should be added as an exemption type in column D of the 'Expressions of Interest' worksheet.</p>