



AUSTRALIAN COMPETITION  
& CONSUMER COMMISSION

# Determinations

## Gas Market Code

Record keeping, reporting and publishing obligations

20 December 2023

## Contents

Determinations.....	0
Executive Summary .....	2
Summary of determinations .....	2
1. Introduction.....	4
2. ACCC's role in the east coast gas market.....	4
3. Section 33 of the Code – Record keeping by a supplier.....	5
3.1. Summary of the ACCC's proposed determination under Section 33 .....	5
3.2. Summary of concerns raised in submissions .....	5
3.2.1. Compliance burden on gas suppliers .....	5
3.2.2. Commencement of determination .....	6
3.3. Amendments as compared to the proposed determination .....	6
4. Section 34 of the Code – Suppliers to publish information relating to available gas .....	7
4.1. ACCC's proposed determination under Section 34(3).....	7
4.2. Summary of submissions .....	7
4.3. Amendments as compared to the proposed determination .....	7
4.4. ACCC's proposed determination under section 34(7) .....	7
4.5. Summary of submissions .....	8
4.6. Amendments as compared to the proposed determination .....	8
5. Section 35 of the Code - suppliers to report information relating to available gas to the ACCC.....	9
5.1. ACCC's proposed determination under Section 35 .....	9
5.2. Summary of submissions .....	9
5.3. Amendments as compared to the proposed determination .....	9
6. Data Collection .....	10
6.1. The manner and form in which section 33 records are made and kept.....	10

## Executive Summary

On 18 December 2023, the ACCC made determinations pursuant to subsections 33(3), 34(3), 34(7) and 35(3) of the *Competition and Consumer (Gas Market Code) Regulations 2023* (the Code).

Under the Code, the ACCC may, by legislative instrument, make determinations in relation to certain provisions.

On 15 November 2023, the ACCC released proposed determinations under sections 33(3), 34(3), 34(7) and 35(7) of the Code. The ACCC held a period of consultation between 15 November and 6 December 2023, and received 7 submissions on its proposed determinations from a range of suppliers and industry bodies. Public versions of these submissions are available on the ACCC's website.

The determinations are effective from 1 April 2024. From 1 April 2024, covered suppliers are subject to record keeping, reporting and publishing requirements as per the determinations.

## Summary of determinations

A high-level summary of the ACCC's determinations under the Code are presented in Table E.1 below.

**Table E.1: Summary of the ACCC's determinations under the Code**

Section of the Code	Summary of ACCC's determination
Section 33	The ACCC's determination under section 33(3) requires covered suppliers to record certain details in respect of gas supply agreements, variations to gas supply agreements, offers and EOIs as specified by the ACCC, and keep these records for a period of 6 years.
Section 34	The ACCC's determination under section 34(3), requires covered suppliers to publish relevant information, as soon as practicable, after 1 April and 1 October of each year.  The ACCC's determination under section 34(7) requires covered suppliers to 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.
Section 35	The ACCC's determination under section 35(3) requires covered suppliers to provide the ACCC with relevant information, as soon as practicable, after 1 April and 1 October of each year.

If you would like broader information in relation to these requirements, guidance is available on the ACCC website:

- [\*\*ACCC's Gas Code Reporting Guide\*\*](#). This guide contains high-level information in relation to reporting requirements, timing and submission. The ACCC will update the reporting guide when we make the determinations to reflect our updated guidance on record keeping and reporting under the Code.
- [\*\*ACCC's Compliance and enforcement guidelines on the Gas Market Code\*\*](#). This provides further guidance on the key requirements and the consequences of non-compliance with the Code.

## 1. Introduction

The *Competition and Consumer (Gas Market Code) Regulations 2023* (the Code) commenced on 11 July 2023.<sup>1</sup> The Code is made under the *Competition and Consumer Act 2010* (CCA).<sup>2</sup> There was a 2-month transition period to provide companies time to adjust to the new conduct provisions, record keeping and reporting obligations.

The Code is intended to facilitate a well-functioning domestic wholesale gas market with adequate gas supply at reasonable prices on reasonable terms for both suppliers and buyers.<sup>3</sup>

Key elements of the Code include:

- **Price rules** – prohibition on supply over the reasonable price, initially set at \$12/GJ.
- **Good faith obligations** – parties to negotiations and agreements must deal with each other in good faith.
- **Negotiations** – various requirements for expressions of interest (EOIs), offers and negotiations.
- **Transparency** – record keeping, reporting and publication obligations for suppliers.

The Code applies to all wholesale gas producers and their affiliates<sup>4</sup> in the Australian east coast gas market (including the Northern Territory).<sup>5</sup>

## 2. ACCC's role in the east coast gas market

The ACCC has a number of roles in relation to the gas market. This includes a wide-ranging Inquiry role into the supply of and demand for natural gas in Australia as directed by the Government and a regulatory role in relation to the Code.

For more information regarding the ACCC's role in the gas market see:

- [Compliance and enforcement guidelines on the Gas Market Code](#)
- [Gas Inquiry 2017-30](#)
- [ACCC's role in energy markets](#)

---

<sup>1</sup> *Competition and Consumer (Gas Market Code) Regulations 2023*.

<sup>2</sup> Section 53L of the CCA provides that regulations may prescribe matters required or permitted by the CCA to be prescribed by a gas market code.

<sup>3</sup> Explanatory Statement, *Competition and Consumer (Gas Market Code) Regulations 2023*.

<sup>4</sup> See Sections 5 and 6 of the Code.

<sup>5</sup> Section 9 of the Code.

## 3. Section 33 of the Code – Record keeping by a supplier

### 3.1. Summary of the ACCC's proposed determination under Section 33

The ACCC's proposed determination under section 33(3) of the Code included that suppliers record specific details in regards to:

- Agreements to supply regulated gas
  - Pricing information for agreements to supply regulated gas for 12 months or more
  - Non-price conditions for agreements to supply regulated gas for 12 months or more
- Variations to agreements to supply regulated gas
  - Pricing information for variations to agreements to supply regulated gas for 12 months or more
  - Non-price conditions for variations to agreements to supply regulated gas for 12 months or more
- Offers from a supplier to a buyer to supply regulated gas for 12 months or more
- Offers from a buyer to a supplier to be supplied regulated gas for 12 months or more
- Gas EOIs.

### 3.2. Summary of concerns raised in submissions

Issues raised in relation to section 33(3) are outlined below.

#### 3.2.1. Compliance burden on gas suppliers

##### 3.2.1.1. *Stakeholder submissions*

The ACCC heard from multiple stakeholders concerns over the reporting burden placed on suppliers. Specifically:

1. Reporting of duplicate data to multiple government bodies
2. Additional burden placed on suppliers by responding to data collection requests by the ACCC under section 95ZK and section 53ZT notices.

##### 3.2.1.2. *ACCC considerations*

When making these determinations the ACCC has been mindful of the compliance burden on suppliers. The ACCC acknowledges the concerns that suppliers have being subject to additional reporting and compliance burden.

The ACCC considers that, where possible, collecting data under the code will reduce regulatory burden. A key benefit of data collection under the Code is the ability to share data with a number of relevant government bodies, minimising data duplication and streamlining data sharing and reporting across government.<sup>6</sup>

---

<sup>6</sup> See section 42 of the Code.

However, there will remain some data that has to be collected under section 95ZK (which cannot be shared). To minimise burden and impacts on suppliers, the ACCC has drafted the determination to largely replicate the details currently collected under section 95ZK notices.

Further, in implementing the Code, the ACCC will seek to remove any duplication of information by collecting information under section 53ZT notices, where possible, rather than under section 95ZK notices. Further, we plan to issue both notices at the same time.

We note that some new data points have been added to account for new considerations under the Code.

### 3.2.2. Commencement of determination

#### 3.2.2.1. Stakeholder submissions

The ACCC heard from some stakeholders that they considered 1 April 2024 to be an appropriate commencement date for record keeping obligations under the section 33(3) determination.

#### 3.2.2.2. ACCC considerations

The ACCC acknowledges the concerns raised in these submissions and has amended the determination so that it will commence on 1 April 2024.

### 3.3. Amendments as compared to the proposed determination

Table 1A outlines the amendments to the determination compared to the proposed determination. New text has been bolded.

**Table 1A: Changes between proposed determination and determination**

Relevant section	Change
Section 2	<b>The legislative instrument will commence on 1 April 2024</b>
Section 3	Reference to subsection 35(7) has been removed
Section 4	The fixed price component <b>for regulated gas</b> means the part of a pricing formula <b>for the regulated gas</b> that remains constant
Section 4	The pricing formula <b>for regulated gas</b> means the calculation used to determine the price payable <b>for the regulated gas</b> for a given period
Section 6(1)(iii)	A gas <b>master</b> supply agreement
Section 8(1)(d)	Changed from “variation” to “ <b>original agreement being varied</b> ”
Section 10(2)(e)	“ <b>if known</b> ” added
Section 10(2)(f)	“ <b>if known</b> ” added
Section 11(2)(k)	“ <b>or a gas final offer (if there is no gas initial offer)</b> ” added
Section 11(2)(l)	“ <b>or a gas final offer (if there is no gas initial offer)</b> ” added

## 4. Section 34 of the Code – Suppliers to publish information relating to available gas

### 4.1. ACCC's proposed determination under Section 34(3)

The ACCC's proposed determination under section 34(3) of the Code was that covered suppliers publish, on their website, the relevant information under section 34, as soon as practicable, after 1 April and 1 October of each year.

### 4.2. Summary of submissions

#### 4.2.1.1. *Stakeholder submissions*

Overall, the submissions received by the ACCC expressed support for the reporting dates set out in the proposed determination.

EUAA noted that they thought the determination should be altered so that covered suppliers are required to publish the relevant information under section 34 "no later than" 1 April and 1 October each year, rather than "as soon as practicable".

Furthermore, APLNG noted that they would prefer the requirement to publish updated information to be once a year rather than biannually, with a preference for the date to be 1 October.

#### 4.2.1.2. *ACCC considerations*

The ACCC's determination power under section 34(3) is limited to "specifying a day" where a covered supplier is to publish certain information. Therefore, the ACCC does not have the power to amend the wording in the way EUAA has suggested above.

An objective of the Code is to promote greater transparency in the market. In order to promote and support this objective, the ACCC considers it is reasonable for suppliers to publish timely and up-to-date information biannually while imposing the minimum burden on suppliers to achieve this objective. Therefore, the ACCC considers updated figures should be published biannually to ensure timely and, largely, accurate information is available to the market, supporting the Code's objective of transparency.

### 4.3. Amendments as compared to the proposed determination

The ACCC has not made any amendments to the determination compared to the proposed determination.

### 4.4. ACCC's proposed determination under section 34(7)

The ACCC's proposed determination under section 34(7) of the Code was that covered suppliers publish the volume of uncontracted regulated gas that is likely to be available to the supplier, in each financial quarter, over the relevant 24 month period.

Under the proposed determination, suppliers were required to report the details pursuant to section 34(7) to the ACCC under section 35(6)(a).



## 4.5. Summary of submissions

### 4.5.1.1. Stakeholder submissions

In general, the ACCC heard from suppliers that they understood the reasons for making the proposed determination. They also indicated that a quarterly breakdown of uncontracted regulated gas the maximum granularity acceptable.

However, an exception amongst suppliers was APLNG, which expressed concern over the proposed requirement. APLNG's concerns included:

- Reporting of such information could harm APLNG's competitive position as an exporter of LNG
- The current aggregate volume they publish is an estimate only
- The current aggregate volume they publish does not reflect uncontracted gas that is available to APLNG to market to the domestic market on a firm basis
- Need to publish twice a year will add significant burden without improving available information to the market
- Quarterly reporting will compound inaccuracies in APLNG's best estimate of uncontracted regulated gas likely to be available
- APLNG considers gas EOs to be a better mechanism for communicating with the market.

In contrast to suppliers, the EUAA supported the proposed requirement. Further, the EUAA also suggested that a public statement should be made if there was a significant reduction in available gas in a subsequent 6 monthly reporting period.

### 4.5.1.2. ACCC's considerations

The ACCC notes that APLNG was the only covered supplier that expressed concern over the proposed requirement. In contrast, the EUAA supported the proposed requirement.

The ACCC understands that figures published by covered suppliers are based on a range of circumstances and a number of assumptions, that can change over time. Changes to circumstances can include unplanned downtime and shifting demand. Further, the ACCC (and the industry) understands that accuracy of forecast generally reduce as the time period extends into the future.

The ACCC has considered alternative options (with longer time periods) but consider on balance it is appropriate that the proposed requirement remains given the improved transparency it will provide to domestic gas buyers. The ACCC's expectation is that suppliers provide their best estimate of uncontracted regulated gas likely to be available in each quarter, at the time of publishing (i.e. 1 April and 1 October).

## 4.6. Amendments as compared to the proposed determination

The ACCC has not made any amendments to the determination compared to the proposed determination.

## 5. Section 35 of the Code - suppliers to report information relating to available gas to the ACCC

### 5.1. ACCC's proposed determination under Section 35

The ACCC's proposed determination under section 35(3) of the Code was that covered suppliers provide a notice to the ACCC setting out the information required to be published under section 35, as soon as practicable, after 1 April and 1 October of each year.

### 5.2. Summary of submissions

The ACCC did not receive any submissions addressing concerns directly related to the proposed determination under section 35(3).

### 5.3. Amendments as compared to the proposed determination

The ACCC has not made any amendments to the determination compared to the proposed determination.

## 6. Data Collection

### 6.1. The manner and form in which section 33 records are made and kept

Separate from the section 33(3) proposed determination but as part of the consultation package, the ACCC released the proposed section 33 workbook.

The ACCC released it as part of the consultation package to provide suppliers with the ability to test the workbook. We thank suppliers who have provided suggestions on how to improve the workbook after testing it themselves and have implemented their feedback.

#### 6.1.1.1. *Stakeholder submissions*

The ACCC heard from suppliers that there was a strong preference for suppliers to be able to make and keep records of the specified details under section 33(3) on their own business systems and then populate the section 33 workbook with the relevant details when the ACCC issues a section 53ZT notice.

#### 6.1.1.2. *ACCC's considerations*

A benefit of having the form specifically set out, is this would result in timely collection of data. However, suppliers have also strongly indicated that it would increase the regulatory burden on them and require a transitional period to ensure their data systems are updated.

The ACCC considers it appropriate that suppliers can make and keep records of the specific details outlined in the determination under section 33(3) in their own business systems in a manner that is capable of being transposed into the section 33 workbook.<sup>7</sup>

It is likely that suppliers will have different timing requirements to transfer data from their information systems into the proposed workbooks. For example, one submission suggested that 2 days would be reasonable and another one suggested 10 business days.

The exact timing of the data collection will be set out in the Notices. Overtime, the ACCC will work with suppliers to reduce the length of time it takes between sending the Notices out and having the data being submitted to the ACCC. The ACCC will also be seeking to have this information collected via a data portal.

Specifically, the Commission has decided that pursuant to section 33(1)(b)(i), covered suppliers must make the records mentioned in section 33(2) in a form capable of being transposed into the "section 33 workbook". Note that failure to do so is a breach of a penalty provision.

---

<sup>7</sup> See section 33(1)(b)(iii) of the Code.