

ACCC PROPOSED DETERMINATIONS UNDER THE GAS MARKET CODE

6 DECEMBER 2023

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade.

The EUAA has been a strong supporter of the Gas Market Code (the Code) because our members have seen first hand the exercise of market power by gas suppliers. The market our members have been operating in, and which has been highlighted by successive ACCC Gas Reports, is far from the Code's purpose:

“...to facilitate a well-functioning domestic wholesale gas market with adequate supply at reasonable prices and on reasonable terms for both suppliers and buyers.”

We were pleased to see the Code legislation finally pass Parliament last week.

Transparency is a necessary, but not sufficient, condition for this purpose to be fulfilled. While important for the ACCC's compliance and enforcement role, it is also crucial for public support for the Code. It is not just about what information under the determinations is provided to the ACCC, but how that information is publicly available e.g. through the ACCC Gas Reports, in a way that furthers the Code's purpose.

In summary, we support the proposed determinations under subsections 33(3), 34(3), 34(7) and 35(3) with one additional suggestion for Section 34 to give increased clarity and certainty to gas buyers. We do not see these determinations as imposing an undue burden on producers. The information should be readily available internally in those organisations so there would only be a relatively minor activity to provide the required information to the ACCC.

We agree with the ACCC's propose to shift information previously collected under compulsory notices in the course of the ACCC's Inquiry function be shifted to collection under the Code as part of minimising the information collecting burden and duplication while still providing the required timely information.

Section 33 – Record keeping by a supplier

We support the proposed determination relating to offers, EOIs and all agreements (and variations) to supply regulated gas including the additional details applying to contracts (original and variations) to supply regulated gas for a period of 12 months or more. We agree that this information is required to enable the ACCC to fulfill its compliance and enforcement role under the Code. We do not consider it an administrative burden to provide information that should already be readily available internally in the supplier's business.

Section 34 – Suppliers to publish information relating to available gas

The publication of this information is seen as complimentary to the information the ACCC will publish on the terms of a large producer's enforceable commitments it has made to the Commonwealth Government and EOI information on the supplier's website.

Section 34(3)

We recommend the information to be published 'by or no later than' 1 April and 1 October rather than 'as soon as practicable, after 1 April and 1 October'. We think a clearer deadline still provides sufficient time to prepare the required information and removes the uncertainty around 'as soon as practicable'. Our members looking to contract for gas want to have as much information as possible available to assist in their decision of which EOIs to respond to. They should not have to wait for covered suppliers to dribble out that information over a number of weeks following 1 April and 1 October. A set date is more consistent with a 'streamlined' process.

Section 34(7)

We support this determination providing for publication of uncontracted regulated gas quarterly for the following two years.

We acknowledge that the volume of uncontracted gas available in the future can change over time. And that the number provided will be a supplier's 'best estimate'. We would suggest that the ACCC require some form of public explanation from the supplier where there is a 'significant' reduction in available gas in a subsequent 6 monthly reporting date. 'Significant' might be defined as $\geq 25\%$ over the two-year reporting period.

Consistent with the transparency aims of this determination process, we look forward to the ACCC publishing full details of the enforceable commitments made by producers under conditional exemptions to the Code.

Section 35 – Suppliers to report information relating to available gas to the ACCC

We see the requirements on suppliers to provide information as simply providing for the publication of data that should be standard internal business planning information and in no way burdensome.

Transitional provisions

We support the ACCC using section 95ZK notices to collect data in the initial months of the Code's operation. As we noted at the start of this submission transparent and timely publication of information is essential to gas users having confidence that the Government's purpose will be achieved.

Do not hesitate to be in contact should you have any questions. We are happy for this submission to be published on the ACCC website.



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