

EXPLANATORY STATEMENT

Issued by Authority of the Australian Competition and Consumer Commissioner

*Competition and Consumer (Gas Market Code) (Subsection 33(3), 34(3), 34(7) and 35(3))
Determinations 2023*

Authority

The Australian Competition and Consumer Commission (the ACCC) has made the *Competition and Consumer (Gas Market Code) (Subsection 33(3), 34(3), 34(7) and 35(3)) Determinations 2023* (the Instrument) under subsections 33(3), 34(3), 34(7) and 35(3) of the *Competition and Consumer (Gas Market Code) Regulations 2023* (the Code).

Purpose and operation of the Instrument

Purpose and history

The purpose of the Instrument is to promote transparency in the market and to enable the ACCC to effectively perform its compliance and enforcement under the Code.

On 19 April 2017, the Australian Government directed the ACCC to conduct a wide-ranging inquiry into the supply of and demand for natural gas in Australia, and to publish regular information on the supply and pricing of gas.

In 2022, following significant volatility and record prices for gas on international markets, brought about by the war in Ukraine, the Government committed to efforts to reduce the impact of the global energy crisis on Australian households, announcing the Energy Relief Plan to shield Australians from the worst impacts of energy prices.

Consistent with this objective, the *Competition and Consumer Act 2010* (the Act) was amended by the *Treasury Laws Amendment (Energy Price Relief Plan) Act 2022* to create a framework for regulation of the Australian gas market and limit increases in gas prices caused by disruptions in global energy markets. This included powers for the Government to impose a price cap, which was implemented on 23 December 2022 through the *Competition and Consumer (Gas Market Emergency Price) Order 2022*, and to implement an ‘ongoing mandatory code of conduct’ for the gas market.

The ongoing mandatory code of conduct for the wholesale gas market was implemented by the *Competition and Consumer (Gas Market Code) Regulations 2023* (the Code). The Code covers negotiation and agreements for the supply of regulated gas between covered suppliers and buyers in the east coast gas market and contains key requirements including in relation to record keeping, reporting and publication obligations for suppliers.

The Instrument requires covered suppliers to meet the record keeping, reporting and publishing obligations and timelines set out in the Instrument. The recording, reporting and publishing of this information will assist the ACCC in supporting the purpose of the Code, namely facilitating a well-functioning domestic wholesale gas market and ensuring adequate supply at reasonable prices and on reasonable terms for both suppliers and buyers.

In setting the proposed approach to record keeping and reporting under the Code, the ACCC has considered the type and degree of record keeping and reporting it considers will best achieve the Code's intended outcome of increased transparency of information in respect of available gas and the ACCC's ability to effectively monitor compliance with the Code.

Operation of the Instrument

- Part 1 sets out the machinery provisions, including the definitions.
- Part 2 sets out record keeping obligations in relation to agreements to supply regulated gas, variations to agreements to supply regulated gas, certain offers and gas EOIs.
- Part 3 sets out publication obligations in regards to availability of regulated gas and the timing of these publication obligations.
- Part 4 sets out the timing of reporting obligations.

A provision-by-provision description of the Instrument is set out below in Attachment A.

Consultation

Before the Instrument was made, the ACCC was satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the *Legislation Act 2003*.

On 15 November 2023, the ACCC released a consultation paper that included a draft version of the Instrument for comment and sought views from interested stakeholders. Public consultation was conducted on proposed Instrument between 15 November 2023 and 6 December 2023.

Submissions were received from 7 stakeholders over this period and the ACCC met with 4 stakeholders. In response to stakeholder feedback, some features of the proposed determinations were updated to provide greater clarity.

As part of its Inquiry work, the ACCC is currently collecting large proportions of this data under section 95ZK of the CCA. This history informed our consultation and led to only minor changes occurring, as a result of consultation.

The ACCC simultaneously consulted on the manner in which the details set out in this Instrument are to be recorded.

Documents incorporated by reference

The Determinations do not incorporate any document by reference.

Regulatory Impact Analysis

A preliminary assessment of the Determinations was conducted by the Office of Impact Analysis (OIA), for the purposes of determining whether an impact assessment would be required. OIA advised that it considers the proposal is unlikely to more than a minor impact and that a preparation of an Impact Analysis is not required.

Statement of compatibility with human rights

Subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* requires the rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislation Act 2003* applies to cause a statement of compatibility with human rights to be prepared in respect of that legislative instrument.

The statement of compatibility set out below has been prepared to meet that requirement.

Human rights implications

The ACCC has assessed whether the Determinations are compatible with human rights, being the rights and freedoms recognised or declared by the international instruments listed in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* as they apply to Australia.

Having considered the likely impact of the Determinations and the nature of the applicable rights and freedoms, the ACCC has formed the view that the Determinations do not engage any of those rights or freedoms.

Conclusion

The Determinations are compatible with human rights as it does not raise any human rights issues.

Other matters

The Code does not specify any conditions that need to be satisfied before the power to make the Instrument may be exercised.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Instrument commenced on 1 April 2024.

All references in this document are to provisions in the Determinations unless otherwise stated.

Details of the Competition and Consumer (Gas Market Code) (Subsection 33(3), 34(3), 34(7) and 35(3)) Instrument 2023

Part 1 – Preliminary

Part 1 sets out the machinery provisions, including the definitions.

Section 1 – Name

Section 1 provides that the name of the instrument is the *Competition and Consumer (Gas Market Code) (Subsection 33(3), 34(3), 34(7) and 35(3)) Determinations 2023*.

Section 2 – Commencement

Section 2 provides that Determination commences on 1 April 2024

Section 3 – Authority

Section 3 provides the Instrument are made under subsections 33(3), 34(3), 34(7) and 35(3) of the *Competition and Consumer (Gas Market Code) Regulations 2023*.

Section 4 – Definitions

Section 4 provides definitions of key terms used in the Instrument.

Part 2 – Details to be kept in records by suppliers

Part 2 requires covered suppliers to record and retain certain information relating to agreements to supply regulated gas, variations to agreements to supply regulated gas, certain offers and gas EOIs.

Section 5 – Purpose of this Part

Section 5 sets out that Part 2 is made for the purpose of paragraph 33(2)(m) of the Code.

Section 6 – Details relating to agreements to supply gas

Section 6 requires covered suppliers to make a record of the details of agreements to supply regulated gas that the supplier has entered into.

The details that must be recorded about the agreement are:

- the document identifier of the agreement;
- whether the agreement is:
 - a gas supply agreement;
 - a variation of a gas supply agreement, of the kind described in section 8(2) of the Code;
 - a gas master supply agreement; or

- a transaction notice;
- the title of the agreement;
- the name of the buyer who is supplied the regulated gas under the agreement, including (if applicable) either or both the buyer’s ABN and ACN;
- whether the agreement is subject to an exemption under the Code and, if so, which exemption applies;
- if the agreement is a variation of a kind described in section 8(2) of the Code, whether the variation determines the price payable;
- the delivery points of the regulated gas to be supplied to under the agreement;
- which of the following regions is the most applicable delivery region where the regulated gas is being supplied to:
 - Queensland;
 - Queensland—Carpentaria Gas Pipeline;
 - New South Wales;
 - Victoria;
 - Northern Territory;
 - South Australia;
 - East Coast, if supply is to more than one of the abovementioned regions;
- the date on which the term of the agreement commenced;
- the start date of supply under the agreement;
- the end date of supply under the agreement;
- either:
 - the annual contract quantity, expressed in the measurement of petajoules, for the first and all subsequent years for which the supplier has a contract quantity in place; or
 - if no annual contract quantity is specified in the agreement—the quantity that is to be supplied, expressed in the measurement of petajoules, for first and all subsequent years of the agreement;
- the basin that the supplier expects, at the time of entering into the agreement, to be the predominant source of regulated gas supplied under the agreement;
- whether an Australian market supply condition applies to the land from which any of the regulated gas to be supplied under the agreement is produced from, including the volume of regulated gas that is subject to that condition.

Subsection 6(2) requires suppliers to keep a record of the above-mentioned details for a period of 6 years starting after the agreement to supply gas was entered into.

Section 7 – Details relating to agreements to supply regulated gas for 12 months or more

Section 7 requires covered suppliers to make a record of the details of agreements to supply regulated gas over a period of 12 months or more that the supplier has entered into.

The details that must be recorded are:

- if the price payable for regulated gas under the agreement is calculated using the Consumer Price Index, whether the formula is calculated using a base year, including:
 - the base quarter;
 - the base year;
 - frequency with which the price payable is escalated by the Consumer Price Index;
- if the agreement has a fixed price component for regulated gas (excluding GST), the following:
 - the price for the fixed price component for each year of the agreement;
 - the currency terms of the fixed price component;
 - the pricing formula for regulated gas;
- if the agreement has a commodity linked slope component, the following:
 - the commodity linked slope for each year of the agreement;
 - the relevant commodity;
 - the measurement period;
 - the pricing formula for regulated gas;
- if the agreement has a take or pay multiplier, the take or pay multiplier for each year of the agreement, including:
 - if the take or pay multiplier varies—the variation; or
 - if there is an average of the take or pay multiplier—that average;
- if the agreement has a load factor, the load factor for the first and all subsequent years the load factor is active.

Subsection 7(2) requires suppliers to keep a record of the above-listed details for a period of 6 years starting after the variation was entered into.

Section 8 – Details on relation to variations for agreements to supply regulated gas

Section 8 requires covered suppliers to make a record of the details about a variation of an agreement to supply regulated gas that the supplier has entered into.

The details that must be recorded are:

- the document identifier of the variation;
- the title of the variation;
- the name of the buyer who is supplied the regulated gas under the variation, including (if applicable) either or both the buyer’s ABN and ACN;
- whether the original agreement being varied is subject to an exemption under the Code and, if so, which exemption applies;
- the document identifier of the original agreement that is being varied;
- the delivery points of the regulated gas to be supplied to under the variation;
- which of the following regions is the most applicable delivery region where the regulated gas is being supplied to:
 - Queensland;
 - Queensland—Carpentaria Gas Pipeline;
 - New South Wales;
 - Victoria;
 - Northern Territory;
 - South Australia;
 - East Coast, if supply is to more than one of the abovementioned regions;
- the date on which the term of the variation commenced;
- the start date of supply under the variation.
- the end date of supply under the variation
- either:
 - the annual contract quantity, expressed in the measurement of petajoules, for the first and all subsequent years for which the supplier has a contract quantity in place; or
 - if no annual contract quantity is specified in the variation—the quantity that is to be supplied, expressed in the measurement of petajoules, for all the first and all subsequent years of the variation;

- the basin that the supplier expects, at the time of entering into the agreement, to be the predominant source of regulated gas supplied under the variation;
- whether an Australian market supply condition applies to the land from which any of the regulated gas to be supplied under the variation is produced from, including the volume of regulated gas that is subject to that condition.

Subsection 8(2) requires suppliers to keep a record of the above-listed details for a period of 6 years starting after the variation was entered into.

Section 9 – Details relating to variations to agreements to supply regulated gas for 12 months or more

Section 9 requires covered suppliers to make a record of the details about a variation to an agreement to supply regulated gas over a period of 12 months or more that the supplier has entered into.

The details that must be recorded are:

- if the price payable for regulated gas under the variation is calculated using the Consumer Price Index, whether the formula is calculated using a base year, including:
 - the base quarter;
 - the base year;
 - frequency with which the price payable is escalated by the Consumer Price Index;
- if the variation has a fixed price component for regulated gas (excluding GST), the following:
 - the price for the fixed price component for each year of the variation;
 - the currency terms of the fixed price component;
 - the pricing formula for regulated gas;
- if the variation has a commodity linked slope component, the following:
 - the commodity linked slope for each year of the variation;
 - the relevant commodity;
 - the measurement period;
 - the pricing formula for regulated gas;
- if the variation has a take or pay multiplier, the take or pay multiplier for each year of the variation, including:
 - if the take or pay multiplier varies—the variation; or
 - if there is an average of the take or pay multiplier—that average;

- if the variation has a load factor, the load factor for the first and all subsequent years the load factor is active.

Subsection 9(2) requires suppliers to keep a record of the above-listed detail for a period of 6 years starting after the variation was entered into.

Section 10 – Details in relation to certain offer

Section 10 requires covered suppliers to make a record of the details about an offer if the offer is either a:

- supplier gas offer issued by the supplier; or
- buyer gas offer given to the suppliers;

under which the buyer is to be supplied regulated gas for a period of 12 months or more.

The details that must be recorded about the offer are:

- whether the offer is one of the following:
 - a gas initial offer;
 - a gas final offer;
 - a buyer gas initial offer;
 - a buyer gas final offer;
- the date the offer was issued by the supplier to a buyer or given to the supplier by a buyer (whichever is applicable);
- the date that a response was given by (whichever is applicable):
 - the buyer to the offer issued by the supplier; or
 - the supplier to the offer issued by the buyer;
- whether the offer is:
 - accepted; or
 - rejected; or
 - under consideration; or
 - superseded;
- the document identifier for the offer, if known;
- the name of the buyer, including (if applicable) either or both the buyer's ABN and ACN, if known;
- if the offer was the result of a gas EOI, state the document identifier of the gas EOI;

- whether the offer, or the agreement proposed by the offer, is subject to an exemption under the Code and, if so, which exemption applies;
- whether the offer proceeded to an agreement to supply regulated gas and, if not, the reasons why not;
- if the offer proceeded to an agreement to supply regulated gas, the document identifier of the agreement.

Subsection 10(3) provides that details about the following matters must be recorded about to the offer to the extent the offer deals with them:

- the delivery points of the regulated gas to be supplied to in accordance with the offer;
- which of the following regions is the most applicable delivery region where the regulated gas is intended to be supplied in accordance with the offer:
 - Queensland;
 - Queensland—Carpentaria Gas Pipeline;
 - New South Wales;
 - Victoria;
 - Northern Territory;
 - South Australia;
- East Coast, if supply is to more than one of the abovementioned regions;
 - the proposed start date of supply;
 - the proposed end date of supply;
- either:
 - the annual contract quantity, expressed in the measurement of petajoules, for the first and all subsequent years of the agreement proposed by the offer; or
 - if no annual contract quantity is specified in the offer—the quantity that is offered to be supplied, expressed in the measurement of petajoules, for all the first and all subsequent years of the agreement proposed by the offer;
- if the agreement proposed by the offer has a take or pay multiplier—the take or pay multiplier;
- if the agreement proposed by the offer has a load factor—the load factor;
- whether the agreement proposed by the offer has banking rights;

- if the price payable for regulated gas under the agreement proposed by the offer is calculated using the Consumer Price Index, whether the formula is calculated using a base year, including:
 - the base quarter; and
 - the base year;
- if the agreement proposed by the offer has a fixed price component for the regulated gas (excluding GST), the following:
 - the price for the fixed price component, for each year;
 - the currency terms of the fixed price component;
 - the pricing formula for regulated gas.
- if the agreement proposed by the offer has a commodity linked slope component, the following:
 - the commodity linked slope for each year;
 - the relevant commodity;
 - the measurement period;
 - the pricing formula for regulated gas.

Subsection 10(4) provides that, if the offer proceeded to an agreement to supply regulated gas, the supplier is required to keep a record containing the above-listed details for a period of 6 years starting after the agreements was entered into. Suppliers are otherwise required to keep a record of the above detail for a period of 6 years after the making of the record.

Section 11 – Details in relation to gas EOIs

Section 11 requires covered suppliers who issue a gas EOI to record and retain certain details about the gas EOI.

The details that must be recorded about the gas EOI are:

- the document identifier for the gas EOI;
- the date the gas EOI was issued;
- whether the gas EOI is subject to an exemption under the Code and, if so, the exemption that applies;
- the number of persons to whom the gas EOI was issued;
- the number of persons who responded stating an interest in further negotiations relating to the gas EOI;
- 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;

- the URL of the website that the gas EOI was published on and the date on which the gas EOI was so published;
- the date the gas EOI opened;
- the date the gas EOI closed;
- whether a public holiday occurred during the period the gas EOI was open;
- whether the gas EOI proceeded to a gas initial offer or a gas final offer (if there is no gas initial offer) and, if not, the reasons why not;
- if the gas EOI did proceed to a gas initial offer or a gas final offer (if there is no gas initial offer), the document identifier of the offer.

Subsection 11(3) provides that details about the following matters must be recorded about the gas EOI to the extent the gas EOI deals with them:

- the intended start date of supply of gas in accordance with the gas EOI;
- the intended end date of supply of gas in accordance with the gas EOI;
- the delivery points of the regulated gas to be supplied to in accordance with the gas EOI;
- which of the following regions is the most applicable delivery region where the regulated gas is intended to be supplied in accordance with the gas EOI:
 - Queensland;
 - Queensland—Carpentaria Gas Pipeline;
 - New South Wales;
 - Victoria;
 - Northern Territory;
 - South Australia;
 - East Coast, if supply is to more than one of the abovementioned regions;
- either:
 - the annual contract quantity, expressed in the measurement of petajoules, for the first and all subsequent years of the agreement proposed by the gas EOI; or
 - if no annual contract quantity is specified in the gas EOI—the quantity of regulated gas that is proposed to be supplied, expressed in the measurement of petajoules, for all current and future years;
- if the agreement proposed by the gas EOI has a take or pay multiplier—the take or pay multiplier;

- if the agreement proposed by the gas EOI has a load factor— the load factor;
- if the agreement proposed by the gas EOI has banking rights.

Subsection 11(4) provides that, if the gas EOI proceeded to an agreement to supply regulated gas, the supplier is required to keep a record containing the above-listed details for a period of 6 years starting after the agreement was entered into. Suppliers are otherwise required to keep a record of the above detail for a period of 6 years after the making of the record.

Part 3 – Information to be published by supplier

Section 12 – Timing of information to be published by supplier

Section 12 sets out that the information contained in paragraph 34(2)(b) of the Code, is to be published, biannually, after the following days:

- 1 April in each year;
- 1 October in each year.

Section 13 – Information to be published by supplier

Section 13 requires covered suppliers are to record on their website, as soon as practicable after each of the above dates, the volume of uncontracted regulated gas that is likely to be available to the supplier in each quarter that occurs in a 24-month period starting on those days.

Part 4 – Information to be reported by supplier

Section 14 – Timing of information to be reported by supplier

Section 14 sets out that the information contained in paragraph 35(2)(b) of the Code, is to be reported to the ACCC, biannually, after the following days:

- 1 April in each year;
- 1 October in each year.