

CONSULTATION PAPER | *OPTIONS TO ENSURE THE DOMESTIC WHOLESALE GAS MARKET DELIVERS FOR AUSTRALIANS*

Australian Petroleum Production and Exploration Association | 7 February 2023

The Australian oil and gas industry is working to ensure the secure, reliable and affordable supply of natural gas for Australian households and businesses against a background of a global energy crisis and domestic market upheaval. The Russian invasion of Ukraine has compounded the underlying trend of energy price increases in the domestic energy market caused by underinvestment in new gas supply combined with increasing demand volatility.

New gas supply is key to putting sustained downward pressure on prices. In its January 2023 Gas Inquiry Interim Report, the Australian Competition & Consumer Commission (ACCC) anticipates gas shortfalls from 2027 that “*would place continued upward pressure on prices in the domestic gas market, as well as pressure on the electricity market*”. The ACCC concludes that “*avoiding long-term supply shortfalls will require development of new supply*”.

Government intervention is undermining investment confidence and increasing the risk of prolonged higher prices and future gas shortages. These interventions are creating enormous uncertainty in the market and have had an immediate and negative impact on investment plans. If Australia loses its reputation as a safe, dependable investment destination, it will have significant repercussions across the economy, not just in the gas market.

To ensure the domestic wholesale gas market continues to deliver for Australians, APPEA recommends:

- **The mandatory Code should be based on a good faith reflection of the key principles and approaches agreed as part of the voluntary Code.** The voluntary Code is the outcome of two years of extensive consultation between gas buyers and sellers, the Government and the ACCC, and addresses all key principles and inclusions of the proposed mandatory Code.
- **Gas prices should be determined by the market, not set by the government.** The market is best placed to efficiently connect gas producers and users based on mutually acceptable prices and conditions, while providing the signal necessary to drive new supply and give confidence to investors. Regulated gas prices, including the proposed “*reasonable pricing*” approach based on estimated costs of production, will result in an uncertain, inefficient and distorted gas market with reduced competition and investment. This will ultimately leave Australian households and manufacturers worse off and increase the risk of future supply shortfalls.
- **The arbitration process must maintain the right for buyers and sellers to decide how they do business.** Engaging in the market should not carry the risk of being bound ex ante to the outcomes of an unconstrained and uncertain future arbitration process – a process that promotes bad faith negotiations and which can dictate when, where and how much gas is supplied, and at what price.

APPEA and its members remain committed to working with government to find an effective, workable, and sustainable way forward that ensures sufficient supply and puts downward pressure on prices.

CONTENTS

BACKGROUND AND CONTEXT	2
COMMENTS AND RECOMMENDATIONS	4
1. The mandatory Code of Conduct should be based on a good faith reflection of the key principles and approaches agreed as part of the voluntary Code of Conduct	4
2. Gas prices should be determined by the market, not set by the government	4
3. The arbitration process must maintain the right for buyers and sellers to decide how they do business.	6
4. Proposed interventions disproportionately impact smaller gas producers, risking reduced competition in the market.	6
5. A Code of Conduct needs to be flexible and responsive to the requirements and circumstances of market participants.	7
6. Comments/responses to questions posed in the Consultation Paper	7
ANNEX 1: THE AUSTRALIAN UPSTREAM OIL AND GAS INDUSTRY	10
ANNEX 2: ISSUES TO BE INCLUDED IN THE PROPOSED MANDATORY CODE AND HOW THEY ARE ADDRESSED IN THE SEPTEMBER 2022 CODE	11

BACKGROUND AND CONTEXT

The Australian oil and gas industry is working to ensure the secure, reliable and affordable supply of natural gas for Australian households and businesses against a background of a global energy crisis and domestic market upheaval. The Russian invasion of Ukraine has compounded the underlying trend of price increases in the energy market. Energy and gas prices were increasing before the invasion of Ukraine, both at home and abroad, due to underinvestment in new gas supply, combined with increasing demand volatility.

Australia’s reliance on natural gas for secure and dispatchable power is increasing with the transition away from coal-fired power generation and growing shares of renewables. This was evident during the 2022 winter, where a combination of coal outages, limited renewable capacity and cold weather, saw demand for natural gas increase by 55% relative to the same time in 2021. The ability of industry to ramp up supply to meet this demand is key to keeping the lights on in the east coast of Australia.

New gas supply is the key to putting sustained downward pressure on prices. In its January 2023 Gas Inquiry Interim Report, the Australian Competition & Consumer Commission (ACCC) anticipates gas shortfalls from 2027 that “*would place continued upward pressure on prices in the domestic gas market, as well as pressure on the electricity market*”. The ACCC concludes that “*avoiding long-term supply shortfalls will require development of new supply*”.

Government intervention in the market – including the recent Gas Market Emergency Price Order and the proposed Mandatory Code of Conduct – is exacerbating, not easing, this situation. These interventions are creating enormous uncertainty in the market and are already negatively impacting investment in supply. Investors across the economy are watching these developments with great concern. Capital is mobile and if Australia loses its reputation as a safe, dependable investment destination, it will have significant repercussions across the economy and on the cost of living for all

Australians. This is especially the case given the investment we need to grow the economy and maintain secure affordable energy supply, while we transition to net zero.

To provide greater supply certainty to the market and improve transparency, the industry put in place a voluntary Code of Conduct in September 2022. The voluntary Code of Conduct was agreed following two years of close consultation with gas customers, the Government and the ACCC. The September 2022 Code of Conduct:

- Provides minimum standards of business conduct for gas suppliers in their interactions with gas customers in order to build and sustain trust and cooperation between gas suppliers and gas customers
- Increases transparency and certainty for gas customers in the negotiation of Gas Supply Agreements (GSAs) to minimise disputes arising from a lack of certainty in respect of the terms being negotiated between gas suppliers and gas customers
- Provides an effective, fair and equitable dispute resolution process for gas customers to raise complaints about the compliance of gas suppliers with the Code and to have those complaints investigated and resolved.
- Promotes and supports good faith in commercial dealings, including agreeing prices, between gas suppliers and gas customers in the negotiation of GSAs.

In October 2022, the government announced its intention to implement a mandatory Code just weeks after endorsing the industry Code . In December 2022, the government enacted into law a major intervention in the gas market in the form of a twelve-month price cap on wholesale gas contracts entered into after the 22 December 2022 for gas supplied before 31 December 2023. In parallel, the government made the decision to replace the collaborative September 2022 Code with a new mandatory Code of Conduct that doubles down on government intervention in the market in the form of an ongoing “*reasonable pricing*” provision and an unworkable, binding arbitration process. Implementation of the September 2022 Code was halted before it had been given the opportunity to work.

The government’s proposed mandatory Code of Conduct will severely impact future investments in and the ability of the market to deliver reliable, affordable energy for all Australians. The proposed mandatory Code of Conduct with a “*reasonable pricing*” provision and binding arbitration process will result in ongoing market uncertainty and entrenched market distortions, reduced competition, and reduced investment in new gas supply – the opposite of what the ACCC say is needed. In turn, these interventions will increase the risk of supply shortfalls in the domestic market and place upward pressure on domestic gas prices.

The stakes are high in realising the industry’s economic, social and energy security benefits. The decisions the Australian government makes on the proposed mandatory Code will play an important role in ensuring the significant and lasting contribution of the industry to Australia’s energy security and economic success (Annex 1).

This submission follows the two APPEA submissions made on 13 and 15 December and focuses on the options for a mandatory gas industry Code of Conduct raised in the Consultation Paper.

In addition to the APPEA submission, a number of APPEA members have made individual submissions on the Consultation Paper. This response should be read in conjunction with submissions from individual APPEA members.

COMMENTS AND RECOMMENDATIONS

1. The mandatory Code of Conduct should be based on a good faith reflection of the key principles and approaches agreed as part of the voluntary Code of Conduct

The Consultation Paper identifies several key principles and inclusions as part of the rationale for establishing the proposed mandatory Code, stating that the Code would contain:

- *obligations on both producers and purchasers to act in good faith;*
- *requirements for gas producers to publish or otherwise make offers broadly available to the domestic market;*
- *requirements for gas producers to disclose certain information when issuing expressions of interest (EOIs) or making offers to enter into a gas contract, such as the factors considered in determining the price;*
- *obligations around the timing for issuing EOIs [Expressions of Interest] and making offers (for example, specifying minimum periods for EOIs and offers to remain open);*
- *minimum standards for some terms and conditions of gas supply contracts;*
- *a reasonable pricing provision.*

The Consultation Paper also indicates that the proposed mandatory Code will include “*a formal process for the resolution of pre-contractual disputes, ranging from mediation to binding arbitration. Arbitration will generally be available on all terms of gas supply contract negotiations*”.

The September 2022 Code effectively addresses all key principles and inclusions of the proposed mandatory Code without creating new regulatory uncertainty. It also benefits from significant negotiation and input from gas suppliers and customers. Annex 2 highlights the issues to be included in the proposed mandatory Code and a description of how and where they are addressed in the September 2022 Code. When the September 2022 Code implementation was suspended following the government announcement, companies representing over 80 per cent of gas supply in the east coast gas market were signatories to the Code, with further companies indicating their intention to become signatories. These companies had prepared operating procedures for the September 2022 Code compliance and in many cases had already commenced operating in a manner consistent with the Code.

Any deviation from the voluntary Code should be well justified and extensively consulted with gas buyers and sellers before being applied. The voluntary Code was the basis of two years of extensive discussion, consultation and negotiation between gas buyers and sellers, the government and the ACCC. Any changes in approach, including around the setting of prices or how arbitration is conducted, will require an equivalent level of consultation and negotiation to ensure it is fit for purpose and will not result in unintended consequences for the market.

2. Gas prices should be determined by the market, not set by the government

The proposed “reasonable pricing” provision does not reflect the risks, uncertainties and cyclical nature of the oil and gas industry. It will have significant negative impacts on investment and on the functioning of the gas market. Globally, extensive experience has shown that regulatory price interventions in functioning, competitive markets cause market disruption and create investment uncertainty and in-turn reductions in supply. The recent government Gas Market Emergency Price Order provides a case-study, where a poorly conceived, rushed intervention continues to create uncertainty – damaging the functioning of the market and having the opposite effect to what was

intended. Analysis by ACIL Allen¹ suggests that the investment uncertainty associated with these interventions could increase gas prices in the long-term by as much as 40%, over and above where they would have been without government intervention.

Regulating prices in competitive markets is at odds with the principles of an open, market-based economy. A commitment to an open, market-based economy is a commitment to allowing the market to determine price and deliver effective signals for new investment. In contrast, the proposal by the government to exert control over the gas market through the implementation of a “reasonable pricing” regulation of prices, set at the discretion of the regulator, stands in stark contrast to these principles.

Placing government discretion and regulatory decision making at the centre of gas market operations creates significant ongoing uncertainties. The proposed “reasonable pricing” provision locks in a central role for the government in the functioning of the gas market – including determining the “reasonable pricing” framework and ruling on what is a “reasonable” rate of return on capital. The Consultation Paper suggests that regulatory intervention would occur upfront when a proposed framework is established and includes determining what can be considered as part of the cost of production. The cost of production would need to consider the full life-cycle of costs incurred by a producer including exploration costs, rig costs, inflation, interest, foreign exchange costs, labour costs, regulatory compliance costs including Safeguard Mechanism compliance, decommissioning as well as commercial costs, flexibility, etc. Accurately estimating these costs is extremely difficult, if not impossible, noting some gas fields can be in development for over 15 years (and incurring substantial costs) before commencing production. In practice, such an approach is simply not workable. The uncertainty it creates for project developers and investors in securing an adequate return on investment will result in a chilling of investment into new supply.

The government’s willingness to intervene in the market points to the very real possibility of further interventions and ad-hoc rule changes – potentially revisiting how “reasonable prices” are calculated or what is considered a “reasonable” rate of return. This is already evident in this process. In 2020, the ACCC considered a domestic price based on LNG netback prices to be reasonable, stating “*The ACCC’s LNG netback price series represents the prices east coast LNG producers could expect to receive for exporting their uncontracted gas to Asia under current market circumstances. For domestic gas buyers, these are the prices they can expect to pay when LNG producers have spare capacity and are in a position to sell their uncontracted gas either to the Australian market or overseas.*”² Only two years later, the government is looking to take a fundamentally different approach to determining what is a reasonable domestic price. It is impossible to predict how the government may determine reasonable prices in two years from now, let alone across the 20-30 year investment horizon of a new gas development. The ongoing threat of regulatory intervention in the market, overlaid with future changes in government and government policies creates significant ongoing uncertainties and undermines investor confidence.

Increased market distortions and ongoing uncertainty will ultimately reduce supply and impact the market’s ability to deliver reliable, affordable energy for all Australians. Investment is required by industry on an ongoing basis to maintain constant levels of gas supply to meet demand. To increase gas supply to meet expected increases in gas demand and address the ACCC’s forecast shortfalls requires further investment still. Government implementation of a “reasonable pricing” provision in the proposed mandatory Code of Conduct will create market uncertainty and deter investment – the opposite of the secure, stable investment environment required to stimulate investment.

¹ ACIL Allen 2022 *Impact of price caps in the east coast gas market* Final Report

² <https://www.accc.gov.au/media-release/extended-lng-netback-price-series-will-improve-price-transparency>

The immediate adverse impacts of regulatory intervention are already evident, with companies pausing development and investment plans following the December 2022 reforms. These plans involved investing billions of dollars into the Australian economy, bringing more gas in the domestic market and creating hundreds of jobs in regional communities. These investments have been put on hold until the details and implications of the interventions are made clear and the economics of the proposed projects can be reassessed. This is already evident with Senex making the decision, immediately following the December announcements, to put on hold the \$1 billion Atlas project expansion in Queensland, with the CEO of Senex stating that *“While Senex supports measures to provide relief to Australian households and businesses from rising energy prices, this legislation goes much further and now challenges the commercial rationale for investing in future gas supply projects because the company can now be required to accept an arbitrary return determined by others, and after the investment is made.”*³

3. The arbitration process must maintain the right for buyers and sellers to decide how they do business.

A binding arbitration process will make extensive, expensive, and time-consuming mediation and arbitration a feature of all east coast GSAs. Having a binding arbitration process risks creating an incentive for market participants to enter into negotiations in bad faith if they believe the arbitration process may lead to an improved outcome for themselves. The September 2022 Code contains extensive dispute resolution provisions, which were the subject of significant consultation and negotiation with gas customers when the Code was developed. These provisions however do not result in the regulatory uncertainty that will be brought about by arbitrated prices.

An arbitration process must preserve the right for the buyer or the seller to be free to not to enter into a contract for supply or purchase of gas. Both buyers and sellers should retain the right to not be bound by the outcomes of arbitration. That is, if either party is unsatisfied with the arbitrated outcome, they should be free to not enter into a contract for supply or purchase of gas. In contrast, the proposed binding arbitration process suggests that as soon as an offer or a bid is placed in the market, it may set in train a process outside of the control of an individual market participant that can result in a gas producer, or customer, being bound ex ante to the outcomes of an unconstrained and uncertain future arbitration process that can dictate when, where and how much gas it is contracted, and at what price. This process which may bind a seller to an uneconomically low price or a buyer to an uneconomically high price is unworkable and creates massive levels of uncertainty in the market. Sellers, and buyers, cannot make billion-dollar decisions when the economics of their investment may be derailed by the outcome of a future arbitration process that is outside their control.

Further, any arbitration process must contemplate the pre-existence of gas supply commitments and the interdependent nature of these agreements with new contracts. Many legacy supply arrangements that are operational today include material penalties for non-performance (i.e., delivering less than contractually committed).

4. Proposed interventions disproportionately impact smaller gas producers, risking reduced competition in the market.

The proposed interventions are expected to impact smaller producers disproportionately, in-turn further distorting the market and reducing competition. Smaller producers have less flexibility in their operations and can be more vulnerable to interventions that impact investment, limit their

³ <https://www.senexenergy.com.au/federal-government-gas-intervention-puts-1-billion-atlas-expansion-in-queensland-at-risk/>

negotiating power, and impose significant risks on operation. In most instances, smaller companies do not have the ability to smooth investment and returns across a large portfolio of projects and between domestic and export markets. Further, smaller producers already have reduced market power compared to large producers and large gas buyers. Therefore, shifting this balance further toward buyers disproportionately impacts small producers. For example, should a negotiation be taken into a binding arbitration process – which could be a lengthy and expensive process – small producers may not have the resources needed to adequately engage in such a process.

5. A Code of Conduct needs to be flexible and responsive to the requirements and circumstances of market participants.

The mandatory Code should not apply to contracts that supply or intend to supply less than 0.5 PJ of gas within a 12 month period, or with a term of less than 12 months. Small volume, short-duration contracts are necessary to provide flexibility to both buyers and suppliers and a rapid response to changes in market circumstances. If the mandatory Code were to apply to all contracts irrespective of size or duration, it would reduce the flexibility of the market and disproportionately impact smaller buyers and sellers, in-turn reducing competition.

The mandatory Code should include the potential for exemption, based on the specific requirements and circumstances and with mutual agreement of market participants. The flexibility and practicality of mandatory Code would be enhanced if buyers and sellers could, by mutual agreement, apply for an exemption to some or all of the provisions on the mandatory Code. The option to apply for an exemption by mutual agreement, provides flexibility in the terms and conditions and other gas supply arrangements to fit with the specific circumstances facing both buyers and sellers. This includes foundational supply agreements that can be critical to underpin final investment decisions for new supply.

The mandatory Code should not apply to existing agreements which must instead be governed by the agreed contractual terms and conditions. Allowing the mandatory Code to apply to existing contracts, including as part of a contract variation process, creates further ongoing uncertainty in the market and undermines the sanctity of the contracts.

6. Comments/responses to questions posed in the Consultation Paper

APPEA offers the following comments/responses to the questions posed in the Consultation Paper.

Are the obligations outlined in the voluntary Code (summarised at Appendix C of the Consultation Paper), if made mandatory, adequate to address bargaining power imbalances between gas suppliers and purchasers in the negotiation of gas supply contracts?

The September 2022 Code considers and incorporates each of the issues raised in the Consultation Paper and adequately addresses concerns of bargaining power imbalances between gas suppliers and purchasers in the negotiation of gas supply contracts. The September 2022 Code, endorsed by the Australian Government as part of the Heads of Agreement, includes provisions to build and sustain trust and cooperation between gas suppliers and gas customers, increase transparency and certainty for gas customers in the negotiation of Gas Supply Agreements (GSAs), provide an effective, fair and equitable dispute resolution process, and to promote good faith in commercial dealings between gas suppliers and gas customers in the negotiation of GSAs. In doing so, it addresses potential bargaining power imbalances between gas suppliers and purchasers. It achieves the benefits of the proposed mandatory Code with none of the risks, costs and uncertainties.

How could the binding arbitration process be designed to ensure resolution in an efficient and cost-effective manner, particularly with regard to reasonable pricing?

A binding arbitration process is unnecessary and risks entrenching distortions to the operation of the east coast domestic gas market and making extensive, expensive and time-consuming mediation and arbitration a feature of all east coast GSAs. The September 2022 Code contains extensive dispute resolution provisions, from clauses 48-82. These clauses were the subject of significant consultation and negotiation with gas customers when the Code was developed.

The provisions outline the appointment process and functions of a Code Arbiter to manage disputes relating to the Code, including the investigation, determination and reporting of complaints made by gas customers. Consistent with the proposal in the Consultation Paper, the September 2022 Code provides that once a GSA is agreed, any disputes will be governed by the dispute resolution provisions within the relevant Agreement.

On what grounds should a party to a gas supply agreement negotiation be permitted to refer a dispute to a binding arbitration process? Should mediation be a pre-condition to accessing arbitration?

See the answer to the previous question.

On what basis should an arbitrator be able to make a determination on price?

- ***What factors should be considered for the reasonable pricing provision?***
- ***What type of guidance on reasonable pricing should be provided to support negotiations, and if necessary, arbitration?***

The September 2022 Code and the Heads of Agreement outline the factors to be considered when determining a reasonable price under a GSA. These factors are outlined through the pricing principles contained in Clauses 41-46. Similar provisions are set out in clause 3 of the Heads of Agreement (the two were designed to be consistent and complementary). An arbitrator should not determine gas prices given the regulatory uncertainty this causes, which will lead to a chilling of investment, reduced gas supply and higher prices.

What design features will ensure the reasonable pricing provision provides a sufficiently clear basis for producers and buyers to negotiate a price?

See the answer to the previous question.

What model of arbitration should be used to resolve disputes about reasonable pricing?

The September 2022 Code contains extensive dispute resolution provisions, from clauses 48-82. These clauses were the subject of significant consultation and negotiation with Gas Customers when the Code was developed. This model is appropriate in the circumstances and given the risks described above.

Does the proposed model appropriately mitigate the risks associated with market intervention?

The mandatory Code of Conduct model proposed in the Consultation Paper, with the inclusion of the “reasonable pricing” provision and binding arbitration, will exacerbate rather than appropriately mitigate the risks associated with market intervention.



As noted above, the appropriate way forward, and the one that provides the best option available to mitigate these risks, is to ensure the mandatory Code is based on a good faith reflection of the key principles and approaches developed as part of the voluntary Code, endorsed by the Australian Government as part of the Heads of Agreement. The September 2022 Code is the result of nearly two years of analysis, development, consultation and negotiation and incorporates the issues raised in the Consultation Paper.

Yours sincerely

A handwritten signature in black ink that reads "S McCulloch". The signature is written in a cursive, flowing style.

Samantha McCulloch
Chief Executive

ANNEX 1: THE AUSTRALIAN UPSTREAM OIL AND GAS INDUSTRY

The Australian oil and gas industry has invested well over \$400 billion in the Australian economy undertaking exploration and developing natural gas production, transport, liquefaction and export facilities over the last decade. A further \$27 billion commitment has been made in the past 18 months.

This investment will deliver returns for Australia for decades to come, through increased gas supply for Australian customers, export revenue, jobs, and in payments to governments in royalties and taxes – nearly \$65 billion⁴ in payments have been made to government over the last decade.

LNG is now Australia's second largest export commodity after iron ore, with export revenue of more than \$70 billion in 2021-22, expected to rise to over \$90 billion in 2022-23.⁵ As well as providing a significant return to the Australian economy, this LNG export industry is also a key enabler of domestic gas supply.

The oil and gas industry supports 80,000 jobs directly and indirectly in Australia and hundreds of thousands more in manufacturing.

Investment in new gas supply for the east coast market is critical to the ongoing functioning of a stable, reliable electricity market and affordable domestic gas supply while the broader energy market transitions through the closure of coal-fired power generators, the construction and grid connection of new renewable projects and the implementation of storage or peaking capacity to firm renewables.⁶

The industry is pivotal to reaching net zero, supporting the transition away from coal, providing the firm dispatchable energy required to unlock our renewable energy potential, and powering Australian industries across the economy. The industry is also central to delivering step-change technologies including carbon capture, utilisation and storage (CCUS) and low-carbon hydrogen.

⁴ See [Media Release: Oil and gas industry helps bankroll public services despite pandemic challenge | APPEA](#) and [Historical-Summary-2019-20.pdf \(appea.com.au\)](#) for more information. Over and above this, Australia's LNG exporters are set to almost triple their financial contribution to the public this financial year, forecasted to pay an extra \$9 billion to federal and state governments. New preliminary forecasts released in October 2022 revealed the gas export sector is estimated to pay around \$13 billion during 2022-23 – up from \$4.8 billion forecast for last financial year (see [Media Release: LNG exporters forecast to pay extra \\$9 billion to governments as tax and royalty collections almost triple | APPEA](#) for more information).

⁵ See [Office of the Chief Economist - Resources and Energy Quarterly - September 2022 \(industry.gov.au\)](#) for more information.

⁶ For example, the Australian Energy Market Operator's (AEMO) recent *2022 Integrated System Plan* (available at [AEMO | 2022 Integrated System Plan \(ISP\)](#)) confirmed the long and enduring value of natural gas partnering with renewables with the report finding (page 57): *"Peaking gas-fired generators will play a crucial role as significant coal-fired generation retires, as an on-demand fuel source during extended periods of low VRE output, and to provide power system services for grid security and stability and High renewable output and high demand – gas is needed to meet the demand peaks just after sunset, and to keep going through the night to cover wind variability."* See [Media Release: 'Crucial' role for gas powering electricity grid for decades: AEMO report | APPEA](#) for more information.

ANNEX 2: ISSUES TO BE INCLUDED IN THE PROPOSED MANDATORY CODE AND HOW THEY ARE ADDRESSED IN THE SEPTEMBER 2022 CODE

Issues to be included in the proposed mandatory Code	Treatment in the September 2022 Code
Obligations on both producers and purchasers to act in good faith	<p>A unilateral requirement for gas suppliers to act in good faith is contained in clauses 15-18 of the September 2022 Code.</p> <p>A mutual good faith obligation was included in a draft version of the Code provided to gas customer groups in March 2021 but rejected in writing by gas customers in correspondence sent to APPEA on 18 June 2021.</p>
Requirements for gas producers to publish or otherwise make offers broadly available to the domestic market	<p>The information required to be included in offers made to the domestic market are outlined in clauses 19-20 and 29.</p> <p>Signatories were developing processes to make such information broadly available⁷ when the Australian Government made its 25 October 2022 announcements.⁸ A central point for these offers was to be included in the Code website (which was under development when the Australian Government’s announcements were made).</p>
Requirements for gas producers to disclose certain information when issuing expressions of interest (EOIs) or making offers to enter into a gas contract, such as the factors considered in determining the price;	<p>Clauses 19-20 set obligations for signatories that an EOI must include, in writing, an extensive body of information including <i>the quantity of the gas intended to be supplied; the term (time period) over which the gas is intended to be supplied; the proposed delivery point(s) of the gas; any other key terms and conditions intended to apply to the supply or purchase of the gas that may affect the price of the gas supplied (including take or pay obligations provisions); the EOI Period; the EOI Response Period; a statement that the EOI will not be withdrawn or terminated by the Gas Supplier until the expiration of the EOI; the circumstances (if any) in which an EOI may be withdrawn or terminated by the Gas Supplier; and any conditions precedent to the proposed Gas Supply Agreement intended to be entered for the supply or purchase of the gas.</i></p> <p>Clause 29 obliges that a gas supplier must not make an offer to a gas customer for the supply of gas unless the offer a similar set of information is provided in writing.</p> <p>The Code sets out reasonable pricing provisions through the pricing principles contained in clauses 41-46. Similar provisions are set out in Clause 3 of the Heads of Agreement.</p>
Obligations around the timing for issuing EOIs and making offers (for example, specifying minimum periods for EOIs and offers to remain open);	<p>Amongst the extensive range of information required under clauses 19-20 and 29, is information about the “EOI Period” and “EOI Response Period” and the “Offer Period”.</p> <p>Clause 3 of the Code sets out definitions for key terms used in the Code, including EOI Period, EOI Response Period and EOI Period. Each of the</p>

⁷ Under clause 5 of the Heads of Agreement, signatories agreed with the Australian Government that they “... will publish on their websites information that provides domestic customers with visibility on uncontracted gas volumes and allow domestic customers to approach LNG Exporters to purchase these volumes.” As an example, see [Domestic Gas Offers – Australia Pacific LNG \(aplng.com.au\)](http://aplng.com.au). Similar processes were under development when work on Code implementation was suspended following the Australian Government’s 25 October 2022 announcements.

⁸ See [Improving energy security, reliability and affordability | Ministers for the Department of Industry, Science and Resources](#) for more information.

	<p>definitions set out in Clause 3 sets out specific business day requirements for each term.</p> <p>Over and above this, the Code places obligations on gas suppliers in considering and responding to EOIs and offers. These are set out in clauses 21-27.</p> <p>Further, Clause 28 provides that the Parties may, at any time, opt out of any of the requirements relating to EOIs under clauses 19, 20, 26 and 27 by <u>mutual written agreement</u>.</p>
Minimum standards for some terms and conditions of gas supply contracts;	Clauses 37-40 of the Code set out a comprehensive list of “Minimum Standards relating to Gas Supply Agreements”
A reasonable pricing provision	<p>The Code sets out reasonable pricing provisions through the pricing principles contained in clauses 41-46 with similar provisions are set out in Clause 3 of the Heads of Agreement.</p> <p>Specifically, the clauses set out the factors that a gas supplier must consider when determining the price of gas in an offer, including obligations requiring gas suppliers to disclose what factors were considered in determining the price of an offer.</p> <p>In doing so, the pricing principles in the Code, together with the pricing obligations and the Heads of Agreement set out an agreed framework for what constitutes a reasonable price.</p>
A formal process for the resolution of pre-contractual disputes, ranging from mediation to binding arbitration	<p>The Code as drafted already contains extensive dispute resolution provisions, which form a substantive part of the Code from clauses 48-82. These clauses were the subject of significant consultation and negotiation with Gas Customers when the Code was developed.</p> <p>The provisions outline the appointment process and functions of a Code Arbiter to manage disputes relating to the Code, including the investigation, determination and reporting of complaints made by gas customers.</p> <p>The process to appoint a Code Arbiter (such as a retired Justice of the High Court of Australia, supported by a prominent firm of legal advisers) was underway when the Government’s announcements were made on 25 October 2022.</p> <p>Consistent with the proposal in the Consultation Paper, the Code as drafted provides that once a GSA is agreed, any disputes will be governed by the dispute resolution provisions within the relevant Agreement.</p>