

VOLUNTARY CODE OF CONDUCT
FOR THE NEGOTIATION AND DEVELOPMENT OF GAS SUPPLY AGREEMENTS
BETWEEN GAS SUPPLIERS AND GAS CUSTOMERS IN AUSTRALIA

26 November 2021

PART A: INTRODUCTION

The Code

1. This is the voluntary code of conduct for the negotiation and development of Gas Supply Agreements between Gas Suppliers and Gas Customers on the East Coast of Australia.

Purpose of the Code

2. The purpose of the Code is:
 - a) to provide minimum standards of business conduct for Gas Suppliers in their interactions with Gas Customers and to build and sustain trust and cooperation between Gas Suppliers and Gas Customers;
 - b) to increase transparency and certainty for Gas Customers in the negotiation of Gas Supply Agreements with Gas Suppliers and to minimise disputes arising from a lack of certainty in respect of the terms being negotiated between Gas Suppliers and Gas Customers;
 - c) to provide an effective, fair and equitable dispute resolution process for Gas Customers to raise complaints about the compliance of Gas Suppliers with the Code and have those complaints investigated and resolved (but excluding disputes between Gas Customers and Gas Suppliers not related to the Code that arise under an executed Gas Supply Agreement which will be governed by the provisions the Gas Supply Agreement); and
 - d) to promote and support good faith in commercial dealings between Gas Suppliers and Gas Customers in the negotiation of Gas Supply Agreements.

Definitions

3. The following definitions are applicable under the Code:
 - a) **ACCC** means the Australian Competition and Consumer Commission.
 - b) **APPEA** means the Australian Petroleum Production & Exploration Association.
 - c) **Business Day** means a day that is not a Saturday, a Sunday or a public holiday in Queensland.
 - d) **Code** means this voluntary code of conduct for the negotiation and development of Gas Supply Agreements between Gas Suppliers and Gas Customers in Australia.
 - e) **Code Arbiter** means the independent person appointed under the Code who is responsible for managing the dispute resolution process under the Code.

- f) **Code Reviewer** means the independent person appointed to review the operation of the Code.
- g) **Commencement Date** means 1 June 2022.
- h) **Committee** means a committee of representatives appointed by each of APPEA, and the Customer Industry Body for the purposes of the Code.
- i) **Customer Industry Body** means the industry body appointed by Gas Customers to represent their interests in the administration of the Code.
- j) **Developed Reserves** means the quantities of gas expected to be recovered from wells and facilities which are in existence during the period in which the Gas Supply Agreement is negotiated.
- k) **East Coast** means the states of New South Wales, Queensland, South Australia, Tasmania and Victoria, and the Australian Capital Territory and Northern Territory.
- l) **EOI** means a non-binding expression of interest or invitation issued by a Gas Supplier for the purpose of ascertaining whether a Gas Customer has an interest to buy gas on the terms of the EOI.
- m) **EOI Period** means the binding period of time for which an EOI remains open as stipulated in the EOI.
- n) **EOI Response Period** means the binding period of time within which the Gas Supplier that issued the EOI will notify the Gas Customer that responded to the EOI of the outcome of the EOI once the EOI Period has expired and must be not more than 21 Business Days.
- o) **Gas or gas** means natural gas that:
 - i) consists of naturally occurring hydrocarbons, or a mixture of hydrocarbons and non-hydrocarbons but primarily consists of methane or ethane;
 - ii) is suitable for consumption;
 - iii) is produced from Developed Reserves; and
 - iv) does not primarily consist of butane, propane or other alkanes.
- p) **Gas Customer** means a buyer of gas that acquires or intends to acquire at least 0.5 PJ of gas on the East Coast for commercial or industrial purposes but not residential purposes within a 12 month period from a Gas Supplier pursuant to a Gas Supply Agreement and is not a Gas Supplier or a retailer of gas.

- q) **Gas Supplier** means a supplier of gas that supplies or intends to supply at least 0.5 PJ of gas within a 12 month period to a Gas Customer pursuant to a Gas Supply Agreement and that has signed up to the Code under Part B.
- r) **Gas Supply Agreement** means a bilateral agreement with a term of at least 12 months entered into between a Gas Supplier and a Gas Customer for the sale and purchase of at least 0.5 PJ of gas on the East Coast within a 12 month period and includes any terms and conditions that apply in relation to that sale and purchase of gas (including the terms and conditions of master supply agreements, transaction notes and variations).
- s) **Minister** means the Commonwealth Minister responsible for this Code.
- t) **Offer** means an offer by a Gas Supplier to a Gas Customer for the supply of at least 0.5 PJ of gas within a 12 month period for the purposes of negotiating and potentially entering into a Gas Supply Agreement including offers that are in response to an expression of interest or request for gas from a Gas Customer.
- u) **Offer Period** means the period of time commencing on the date on which a Gas Supplier makes an Offer to a Gas Customer that is in compliance with clause 29 and for which an Offer remains open which must not be less than 7 Business Days,.
- v) **Party** means a Gas Supplier or a Gas Customer, as the case may be.
- w) **Parties** means both a Gas Supplier and a Gas Customer.
- x) **Supply or supply** means supply and/or sale.
- y) **Unwritten Law** means the Australian common law that rests its authority on judicial decision as distinguished from law originating in written statute.

PART B: APPLICATION OF THE CODE

Commencement of the Code

4. The Code will commence on the Commencement Date.

Signing up to the Code

5. The Code will only apply to a Gas Supplier that has provided written notice to the Committee of its intention to comply with the Code.
6. Where a Gas Supplier has provided written notice to the Committee of its intention to comply with the Code:
 - a) the Gas Supplier will not be required to comply with the Code until 21 Business Days after the date on which the written notice was provided by the Gas Supplier to the Committee; and
 - b) the Committee will, within 3 Business Days of receiving the written notice from the Gas Supplier, arrange for the name of the Gas Supplier intending to comply with the Code and the date on which compliance with the Code for that Gas Supplier becomes effective to be published on pages of the websites of APPEA and the Customer Industry Body that are dedicated to the Code.
7. A Gas Supplier may voluntarily sign up at any time to the Code.

Withdrawing from the Code

8. A Gas Supplier may withdraw from the Code if the Gas Supplier has provided written notice to the Committee of its intention to withdraw from the Code.
9. Where a Gas Supplier has provided written notice to the Committee of its intention to withdraw from the Code:
 - a) the Gas Supplier will not be required to comply with the Code from 21 Business Days after the date on which the written notice was provided to the Committee; and
 - b) the Committee will, within 3 Business Days of receiving the written notice from the Gas Supplier, arrange for the removal of the name of the Gas Supplier from the pages of the websites of APPEA and the Customer Industry Body that are dedicated to the Code on the date that the Gas Supplier is no longer required to comply with the Code.
10. To avoid doubt, a withdrawal from the Code by a Gas Supplier under clause 8 does not remove any obligation imposed on the Gas Supplier by this Code prior to that withdrawal.

Scope of the Code

11. The Code will apply to:
 - a) the conduct of Gas Suppliers in negotiating Gas Supply Agreements, issuing EOIs and making Offers after the Commencement Date; and
 - b) all Gas Supply Agreements that are executed after the Commencement Date (but only for the purposes of clause 37).

12. The Code will not apply to:
 - a) the conduct of Gas Suppliers in negotiating Gas Supply Agreements, issuing EOIs or making Offers before the Commencement Date;
 - b) any Gas Supply Agreement executed before the Commencement Date. This includes amendments or variations to a Gas Supply Agreement executed prior to the Commencement Date that take effect after the Commencement Date; or
 - c) the conduct of Gas Suppliers in negotiating Gas Supply Agreements, issuing EOIs or making Offers in relation to “related bodies corporate” as that term is defined under the *Corporations Act 2001* (Cth).

Transitional Arrangements

13. Where a Gas Supply Agreement is executed before the Commencement Date and a Gas Supplier proposes or agrees to amend or vary a provision of the Gas Supply Agreement relating to a matter in clause 37 after the Commencement Date, the Gas Supplier must, unless otherwise agreed by mutual written agreement with the Gas Customer, offer to enter into a Gas Supply Agreement with the Gas Customer that is in compliance with clause 37 within 60 days after the date of the amendment or variation.

14. For the avoidance of doubt, a Gas Supplier will not be required to comply with clause 37 where any Gas Supply Agreement is executed before the Commencement Date and is amended or varied after the Commencement Date if the amendment or variation is made to a provision that does not relate to a matter in clause 37 or if the amendment or variation is not proposed or agreed by the Gas Supplier.

PART C: OPERATIVE PROVISIONS

Obligation to deal with Gas Customers lawfully and in good faith

15. In negotiating a Gas Supply Agreement with a Gas Customer, a Gas Supplier must deal with Gas Customers lawfully and in good faith within the meaning of the Unwritten Law as in force from time to time.
16. In determining whether a Gas Supplier has acted in good faith in dealing with a Gas Customer, the following may be taken into account:
 - a) whether the Gas Supplier has acted honestly;
 - b) whether the Gas Supplier has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;
 - c) whether the Gas Supplier has not acted in a way that constitutes retribution against the Gas Customer for past complaints under the Code;
 - d) whether the Gas Supplier's trading relationship with the Gas Customer has been conducted without duress (within the meaning of the Unwritten Law as in force from time to time);
 - e) whether the Gas Supplier has observed any confidentiality requirements relating to information disclosed or obtained in dealing with or resolving a complaint or dispute with the Gas Customer under the Code; and
 - f) whether, in dealing with the Gas Supplier, the Gas Customer has acted in good faith.
17. Clause 16 does not limit clause 15.
18. A Gas Supplier will not be taken to have breached clause 15 above on the basis that it is acting in accordance with its legitimate commercial interests.

Obligations in Negotiating Gas Supply Agreements

EOIs

19. A Gas Supplier must not issue an EOI unless it includes the following information in writing:
 - a) the quantity of the gas intended to be supplied by the Gas Supplier;
 - b) the term (time period) over which the gas is intended to be supplied by the Gas Supplier;
 - c) the proposed delivery point(s) of the gas intended to be supplied by the Gas Supplier;

- d) 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);
 - e) the EOI Period;
 - f) the EOI Response Period;
 - g) a statement that the EOI will not be withdrawn or terminated by the Gas Supplier until the expiration of the EOI Period except as in accordance with any circumstances specified in the EOI;
 - h) the circumstances (if any) in which an EOI may be withdrawn or terminated by the Gas Supplier; and
 - i) any conditions precedent to the proposed Gas Supply Agreement intended to be entered for the supply or purchase of the gas.
20. To the extent that a Gas Supplier has determined, at the time of issuing an EOI, which gas fields, tenements or storage facilities will be the source of the gas supply by the Gas Supplier to a Gas Customer under the EOI, the Gas Supplier must not issue the EOI unless it also includes the following information in writing:
- a) the name of the gas fields, tenements or storage facilities from which the gas will be sourced; and
 - b) the names of any related bodies corporate (as that term is defined under the *Corporations Act 2001* (Cth)) with an ownership interest in those gas fields, tenements or storage facilities.
21. A Gas Supplier must comply with clause 20 of this Code unless the Gas Supplier:
- a) supplies gas from a portfolio of gas fields, tenements or storage facilities; or
 - b) can only identify the prospective gas fields, tenements or storage facilities that are intended to be the source of the supply of gas by the Gas Supplier to a Gas Customer under the EOI and has not made a determination at the time of the EOI about which of those gas fields, tenements or storage facilities will be the source of supply.
22. An EOI may contain any other provision (including a variation or amendment) that is lawful and consistent with the Code.
23. A Gas Supplier may, prior to complying with clause 19 or 20, require a Gas Customer to agree in writing that:

- a) the information provided by the Gas Supplier under clause 19 and 20 is confidential and commercially sensitive to the Gas Supplier; and
 - b) the Gas Customer will not disclose that information to any person without the prior written consent of the Gas Supplier unless required to do so by a lawful authority.
24. A Gas Supplier is not required to comply with clause 19 or 20 to the extent that compliance would result in the Gas Supplier otherwise breaching the law or if the Gas Customer has not agreed to the confidentiality requirements under clause 23.
25. A Gas Supplier that issues an EOI must not withdraw or terminate the EOI before the EOI Period expires unless it is in accordance with the circumstances in which an EOI may be withdrawn or terminated as specified under the EOI.
26. If a Gas Customer responds to an EOI within the EOI Period, the Gas Supplier that issued the EOI must within the EOI Response Period:
- a) consider and assess the responses received to the EOI; and
 - b) inform, in writing, all of the Gas Customers that responded to the EOI whether the EOI proceeded or not and if so, whether a Gas Customer's response to the EOI was successful or not.
27. If a Gas Supplier informs a Gas Customer that its response to the EOI was successful, the Gas Supplier must:
- a) within 3 Business Days of the notice to the successful Gas Customer, make an Offer to that Gas Customer in accordance with the provisions of the Code; or
 - b) within 7 Business Days of the notice to the successful Gas Customer, commence negotiating a Gas Supply Agreement with that Gas Customer.
28. The Parties may, at any time, opt out of any of the requirements relating to EOIs under clauses 19, 20, 26 and 27 by mutual written agreement.

Offers

29. A Gas Supplier must not make an Offer to a Gas Customer for the supply of gas unless the Offer includes the following information in writing:
- a) the quantity of the gas intended to be supplied by the Gas Supplier to the Gas Customer pursuant to a Gas Supply Agreement;

- b) the term (time period) over which the gas is intended to be supplied by the Gas Supplier to the Gas Customer pursuant to a Gas Supply Agreement;
 - c) the proposed delivery point(s) of the gas intended to be supplied by the Gas Supplier to the Gas Customer pursuant to a Gas Supply Agreement;
 - d) the price or price structure at which the gas is intended to be supplied by the Gas Supplier to the Gas Customer pursuant to a Gas Supply Agreement;
 - e) any other key terms and conditions that may affect the price of gas intended be supplied by the Gas Supplier to the Gas Customer pursuant to a Gas Supply Agreement (including take or pay obligations provisions);
 - f) the Offer Period;
 - g) the circumstances (if any) in which an Offer may be withdrawn or terminated by the Gas Supplier which must be reasonable;
 - h) a statement that the Offer will not be withdrawn or terminated by the Gas Supplier until the expiration of the Offer Period except as in accordance with any circumstances specified in the Offer; and
 - i) any conditions precedent required by the Gas Supplier for entry into a Gas Supply Agreement.
30. An Offer may contain any other provision (including a variation or amendment) that is lawful and consistent with the Code.
31. A Gas Supplier may, prior to complying with clause 29, require a Gas Customer to agree in writing that:
- a) the information provided by the Gas Supplier under clause 29 is confidential and commercially sensitive to the Gas Supplier; and
 - b) the Gas Customer will not disclose that information to any person without the prior written consent of the Gas Supplier unless required to do so by a lawful authority.
32. A Gas Supplier is not required to comply with clause 29 to the extent that compliance would result in the Gas Supplier otherwise breaching the law or if the Gas Customer has not agreed to the confidentiality requirements under clause 31.
33. A Gas Supplier must not withdraw or terminate an Offer before the Offer Period expires unless it is in accordance with the circumstances in which an Offer may be withdrawn or terminated as specified under the Offer.

34. If a Gas Customer confirms interest in an Offer within the Offer Period, a Gas Supplier will, within 3 Business Days of that confirmation, commence negotiating a Gas Supply Agreement with the Gas Customer.
35. The Parties may, at any time:
- a) end negotiations following an Offer; and/or
 - b) opt out of any of the requirements relating to Offers under clauses 29 and 34 by mutual written agreement.
36. If a Gas Supplier makes an Offer to a Gas Customer in response to a request or expression of interest issued by a Gas Customer, the Gas Supplier must comply with the Code except to the extent of any inconsistency with the Gas Customer's requirements under the request or expression of interest.

Minimum Standards relating to Gas Supply Agreements

37. A Gas Supplier must not enter into or give effect to a Gas Supply Agreement unless it includes the following matters in writing:
- a) the quantity of gas to be supplied by the Gas Supplier to the Gas Customer;
 - b) the flexibility of the volume of gas to be procured by the Gas Customer (such as take or pay or load factor);
 - c) the term (time period) over which the gas is to be supplied by the Gas Supplier to the Gas Customer;
 - d) the delivery point(s) of gas supply;
 - e) the price or price structure at which the gas will be supplied by the Gas Supplier to the Gas Customer;
 - f) a communication protocol for each Party to notify, within a reasonable time, the other Party of any major interruptions that occur that becomes known to the notifying Party;
 - g) the consequences (if any) if the quantity of gas to be supplied by the Gas Supplier to the Gas Customer is not delivered by the Gas Supplier or is not taken by the Gas Customer;
 - h) payment terms;
 - i) the circumstances in which a Gas Supplier may vary the terms of the Gas Supply Agreement;
 - j) the circumstances in which a Gas Supplier may terminate the Gas Supply Agreement;

- k) the consequences for breach of the Gas Supply Agreement by a Gas Customer;
 - l) a clause that requires the Parties to act in good faith in dealing with each other under the Gas Supply Agreement; and
 - m) a dispute resolution clause.
38. A Gas Supply Agreement may contain any other provision (including a variation or amendment) that is lawful and not inconsistent with the Code.
39. The Parties can agree, by mutual written agreement, to opt out of any of the requirements relating to Gas Supply Agreements under clause 37.
40. Once a Gas Supply Agreement is entered into by the Parties, the terms and conditions of the Gas Supply Agreement and not the Code (including but not limited to the provisions under clauses 37 to 39) govern the obligations between the Parties.

Pricing Principles

41. Gas Suppliers acknowledge that:
- a) LNG netback prices based on Asian LNG spot prices (as referenced by the ACCC LNG netback price series) play a role in influencing spot gas prices on the East Coast; and
 - b) the regular ACCC Gas Inquiry Reports provide an independent assessment of Gas Supplier and Gas Customer behaviour on the East Coast.
42. Where a Gas Supplier makes an Offer to a Gas Customer, the individual price of the Offer will have regard to the following factors, to the extent applicable:
- a) prevailing and/or reasonably expected future market conditions;
 - b) factors that may be relevant to the individual circumstances of the Offer, including the terms and conditions of the Gas Supply Agreement being negotiated by the Gas Supplier and Gas Customer and any applicable transportation or retailer charges;
 - c) the actual or likely alternatives to supplying and purchasing gas during the term of the proposed Gas Supply Agreement; and
 - d) any other factor that may be relevant to the supply and purchase of gas at competitive market prices under a Gas Supply Agreement.

43. If, at any time prior to entering into a Gas Supply Agreement, a Gas Customer makes a request to a Gas Supplier, for the information under clause 42,, the Gas Supplier must, within 3 Business Days of receiving the request, provide the Gas Customer with the information it has considered under clause 42.
44. A Gas Supplier may, prior to complying with clause 43, require a Gas Customer to agree in writing that:
- a) the information provided by the Gas Supplier under clause 43 is confidential and commercially sensitive to the Gas Supplier; and
 - b) the Gas Customer will not disclose that information to any person without the prior written consent of the Gas Supplier unless required to do so by a lawful authority.
45. A Gas Supplier is not required to comply with clause 43 to the extent that compliance would result in the Gas Supplier otherwise breaching the law or if the Gas Customer has not agreed to the confidentiality requirements under clause 44.
46. The Parties can agree, by mutual written agreement, to opt out of any of the requirements relating to the pricing of an Offer under clauses 42 to 43.

PART D: DISPUTE RESOLUTION

Appointment of Code Arbiter

48. Prior to the Commencement Date, the Committee must:
- a) appoint the Code Arbiter;
 - b) determine the term of the appointment of the Code Arbiter;
 - c) arrange for the name and contact details of the Code Arbiter to be published on pages of the websites of APPEA and the Customer Industry Body; and
 - d) determine how the Code Arbiter will be funded, including ensuring that the Code Arbiter is sufficiently resourced to perform the Code Arbiter's functions under the Code.
49. The Code Arbiter must be suitably experienced and qualified to undertake the role, must be independent of the Parties, APPEA, the Customer Industry Body, the Committee, and the Code Reviewer, and must not be engaged by any of these entities in any capacity (other than as Code Arbiter).
50. The Committee can decide to terminate the appointment of the Code Arbiter at any time.
51. If the position of the Code Arbiter is terminated by the Committee under clause 50, the Committee will endeavour to appoint a new Code Arbiter as soon as practicable.

Function of Code Arbiter

52. The function of the Code Arbiter is to review complaints made by a Gas Customer for non-compliance with any of the provisions of Part C of the Code.
53. In accordance with clause 40, once a Gas Supply Agreement is entered into by the Parties, a complaint made by a Gas Customer will be governed by the terms and conditions of the Gas Supply Agreement and not the Code.
54. The Code Arbiter must develop and act in accordance with a written complaints handling procedure that is consistent with the Code and complies with legal principles of natural justice and procedural fairness.
55. The Code Arbiter must:
- a) arrange for a copy of the complaints handling procedure to be published on pages of the websites of APPEA and the Customer Industry Body prior to the Commencement Date;

- b) provide a copy of the complaints handling procedure to a Gas Customer that makes a complaint to the Code Arbiter; and
 - c) annually review the complaints handling procedure and update it as necessary.
56. The Code Arbiter will arrange for any updated complaints handling procedure to be published on pages of the websites of APPEA and the Customer Industry Body within 7 Business Days of the update.

Making a complaint to the Code Arbiter

57. A Gas Customer can only make a complaint to the Code Arbiter after it has raised, and taken all reasonable steps to resolve, the complaint with the relevant Gas Supplier but has not succeeded in doing so.
58. A Gas Customer may make a complaint to the Code Arbiter for alleged non-compliance with any of the provisions under Part C of the Code by a Gas Supplier.
59. Notwithstanding clause 40, a Gas Customer may make a complaint under clause 58 either before or after a Gas Supply Agreement has been executed by the Parties, but only in relation to conduct that occurred after the Commencement Date and before that Gas Supply Agreement was executed.
60. The complaint must:
- a) be in accordance with any requirements of the Code Arbiter's complaints handling procedure;
 - b) be in writing; and
 - c) include the following information:
 - i) the name and contact details of the Gas Customer making the complaint and the Gas Supplier against which the complaint is made;
 - ii) the details of the conduct giving rise to the complaint, including any documents or other information that would assist the investigation of the complaint; and
 - iii) the provisions of the Code that are relevant to the complaint.
61. The Code Arbiter will provide the Gas Supplier against which a complaint is made the information under clause 60.c) within 3 Business Days of receiving the complaint.

Withdrawing a complaint

62. A Gas Customer that has made a complaint under the Code may withdraw the complaint at any time by notifying the Code Arbiter in writing.
63. The Code Arbiter will provide notice of the withdrawal to the Gas Supplier against which the complaint was made (in circumstances where that Gas Supplier has been notified of the complaint).

Responding to a complaint

64. The Gas Supplier against which a complaint is made under the Code shall have a reasonable opportunity to respond to a complaint in accordance with the complaints handling procedure. The response must be in writing to the Code Arbiter, who must provide a copy of the response to the Gas Customer making the complaint.

Investigation by Code Arbiter

65. The Code Arbiter must take all reasonable steps to:
 - a) investigate the complaint in accordance with the complaints handling procedure; and
 - b) conclude the investigation within 28 Business Days, or a longer period as agreed with the Gas Customer making the complaint and the Gas Supplier against which the complaint is made.
66. The Code Arbiter must not commence an investigation of the complaint unless the complaint is in accordance with clause 60.
67. In investigating a complaint, the Gas Supplier must take all reasonable steps to ensure that the Code Arbiter has access to:
 - a) all documentation relevant to the complaint except any communications that are the subject of legal professional privilege; and
 - b) any personnel of the Gas Supplier who can provide information to the Code Arbiter in relation to the complaint.

Determination by Code Arbiter

68. If, after investigating the complaint (including a withdrawn complaint), the Code Arbiter is satisfied that the complaint is vexatious, trivial, misconceived or lacking in substance, the Code Arbiter must give written notice to the Parties setting out:
 - a) the Code Arbiter's finding that the complaint is vexatious, trivial, misconceived or lacking in substance; and

- b) the Code Arbiter's reasons for being satisfied that the complaint is vexatious, trivial, misconceived or lacking in substance.
69. The Code Arbiter must not make a finding that a complaint is vexatious, trivial, misconceived or lacking in substance if the only ground for the complaint is that the Gas Customer making the complaint will suffer or has suffered detriment as a result of a breach of the Code by a Gas Supplier.
70. If the Code Arbiter is satisfied that that the complaint is not vexatious, trivial, misconceived or lacking in substance, then after investigating a complaint, the Code Arbiter must determine whether there has been non-compliance with a provision of Part C of the Code.
71. Within 7 Business Days after the conclusion of the investigation, the Code Arbiter must give the Gas Customer that made the complaint and the Gas Supplier against which the complaint was made a notice in writing setting out:
- a) the determination made by the Code Arbiter in relation to whether there has been non-compliance with the Code;
 - b) the Code Arbiter's reasons for making that determination; and
 - c) the steps (if any) that must be taken by the Gas Supplier to ensure compliance with the Code.
72. In making a determination under clause 71.a), the Code Arbiter cannot require a Gas Supplier to:
- a) enter into a Gas Supply Agreement with a Gas Customer;
 - b) supply gas to a Gas Customer on particular terms or conditions; or
 - c) pay any form of compensation or damages, whether monetary or otherwise, to a Gas Customer nor any other person.
73. The Code Arbiter's decision under clause 71 is binding.
74. Within 14 Business Days of a determination being made under clause 71.a), the Code Arbiter must provide to the Committee the following information:
- a) with the consent of the Gas Customer, the names of the Parties to the dispute; and
 - b) the time period between the date that the dispute was referred to the Code Arbiter and the date of the determination; and
 - c) the information in clause 71 above.

75. The Committee will arrange for the information provided by the Code Arbiter under clause 74 to be published on pages of the websites of APPEA and the Customer Industry Body within 7 Business Days after receiving it.

Records to be kept by Code Arbiter

76. If a complaint is made under the Code, the Code Arbiter must keep the following for at least three years from the time of the complaint:
- a) a record of the complaint;
 - b) a record of the investigations undertaken to investigate the complaint;
 - c) a copy of any notice that a complaint is vexatious, trivial, misconceived or lacking in substance; and
 - d) a copy of any determination in relation to a complaint.

Report by Code Arbiter

77. The Code Arbiter must prepare a written report for each 12 month period after the Commencement Date.
78. The report must set out the following:
- a) the number of complaints received by the Code Arbiter under the Code;
 - b) the nature of the complaints received;
 - c) the time taken to investigate each complaint;
 - d) the outcome of each investigation; and
 - e) any other matters the Code Arbiter considers appropriate.
79. The Code Arbiter must give a copy of the report within 2 months after the expiry of each 12 month period to the following:
- a) the Committee;
 - b) the Minister;
 - c) the ACCC; and
 - d) the Code Reviewer.

80. The Committee will arrange for the report to be published on pages of the websites of APPEA and the Customer Industry Body within 7 Business Days after receiving it.

Confidentiality by Code Arbiter

81. For the purposes of this Part D, the Code Arbiter must observe and protect any commercially sensitive information provided by a Party that makes a claim of confidentiality over that information.

Costs of Dispute Resolution

82. The Parties are responsible for their own costs for the compliance with any dispute resolution process under this Part D.

PART E: ADMINISTRATIVE MATTERS

Committee

83. Prior to the Commencement Date, APPEA and the Customer Industry Body will:
- a) each appoint two representatives from each of their respective members to the Committee; and
 - b) agree upon the appointment of one further representative to the Committee who is independent of APPEA, the Customer Industry Body, the Code Arbiter, the Code Reviewer and the Parties.
84. The representatives of the Committee will be appointed for an initial term of 2 years.
85. Once the Committee has been established, it will discuss and agree within three months after the Commencement Date rules relating to:
- a) future appointments of representatives to the Committee, including the term of appointment which will be for not less than two years;
 - b) meetings of the Committee;
 - c) the functions of the Committee under the Code;
 - d) the funding of the Committee;
 - e) whether standard form gas supply agreements should be established under the Code, and if so, the development and commencement of standard form gas supply agreements; and
 - f) any other matters that it considers appropriate to ensure that the Committee can perform its obligations under the Code.
86. On the Commencement Date and each year on the anniversary of the Commencement Date, the Committee will take reasonable steps to make available the following information on the websites of APPEA and the Customer Industry Body to the extent that it is publicly available:
- a) operating costs for gas fields/tenements for the supply of gas on the East Coast;
 - b) latest data on 2P and 3P reserves as defined by the internationally-recognised Petroleum Resources Management System; and
 - c) transport costs for pipelines that are likely to be required for the delivery of gas on the East Coast.

87. All decisions of the Committee will require unanimous support.

Variation of the Code

88. Subject to clause 89, the Committee may vary the provisions of the Code including the Commencement Date.

89. Any variation to the Code that is made under clause 88 will not have any effect unless all of the following conditions are satisfied:

- a) the Committee has sought (and incorporated where relevant) feedback from the ACCC and the Minister on the proposed variation; and
- b) the Committee has published an updated version of the Code incorporating any variation on its respective representatives' websites and has provided notice of the variation to Gas Suppliers (including the date on which the variation is to take effect).

90. Any variations made to the Code under Part E will not become effective until 7 Business Days after the Committee has complied with the conditions in clause 89 or any other such time period as determined by the Committee.

Code Reviewer

Appointment of Code Reviewer

91. Prior to the Commencement Date, the Committee must:

- a) appoint the Code Reviewer; and
- b) determine how the Code Reviewer will be funded, including ensuring that the Code Reviewer is sufficiently resourced to perform the Code Reviewer's functions under the Code.

92. The Code Reviewer must be independent of the Parties, APPEA, the Customer Industry Body, the Committee, and the Code Arbiter and must not be engaged by any of these entities in any capacity (other than as Code Reviewer).

93. The Minister may recommend a person to the Committee for the appointment as Code Reviewer, which may be accepted or rejected at the Committee's discretion.

94. A Gas Supplier must not unduly influence, or attempt to unduly influence, the Code Reviewer in the performance of the Code Reviewer's functions under the Code.

95. The Committee can decide to terminate the appointment of the Code Reviewer at any time.

96. If the position of the Code Reviewer is terminated by the Committee under clause 95, the Committee will endeavour to appoint a new Code Reviewer as soon as practicable.

Code Review

97. Within 6 months after the first anniversary of the Commencement Date and every 36 months thereafter, the Code Reviewer must complete a review of the effectiveness of the operation of the Code having regard to the purpose of the Code under clause 2 and any other matter the Code Reviewer considers appropriate.
98. The Committee must establish processes relating to the following matters in relation to the review of the Code by the Code Reviewer:
- a) the information/and or documents that the Code Reviewer can obtain from the Parties, the Committee and the Code Arbitrer;
 - b) the form in which the Code Reviewer must publish its findings and recommendations; and
 - c) any other procedures or processes to ensure that the review of the effectiveness of the operation of the Code can be undertaken efficiently and effectively.
99. The report published by the Code Reviewer must be provided to the Committee and made publicly available, and the Committee must provide a copy to the Minister and the ACCC.
100. The Committee will discuss and implement in a timely manner any recommendations it determines appropriate that are made by the Code Reviewer.

Confidentiality by Code Reviewer

101. For the purposes of this Part E, the Code Reviewer must observe and protect any commercially sensitive information provided by a Party that makes a claim of confidentiality over that information.

Founding Principles of the Code

1. On 15 September 2020, the Prime Minister, the Honourable Scott Morrison MP, the Minister for Energy and Emissions Reduction, the Honourable Angus Taylor MP and the Minister for Resources, Water and Northern Australia, the Honourable Keith Pitt MP published a media release, pursuant to which the Prime Minister announced a series of reforms for the gas industry.
2. The reforms seek to “reset the east coast gas market” through a number of means including “empowering gas customers”.
3. One of the ways in which the Federal Government proposes to “better empower gas consumers”, is to “[l]evel the negotiating playing field for gas producers and consumers through a voluntary industry-led code of conduct.”
4. On 12 November 2020, the Minister for Energy and Emissions Reduction, the Honourable Angus Taylor MP and the Minister for Resources, Water and Northern Australia, the Honourable Keith Pitt MP hosted a Gas Industry Roundtable to discuss, amongst other things, the “Voluntary, Industry-led Code of Conduct”.
5. The discussion paper relating to the Gas Industry Roundtable set out the Federal Government’s expectations in relation to the Code and stated (amongst other things) that:
 - a) the aim of the Code is:

“To ensure fair and effective engagement between commercial and industrial consumers and suppliers of gas in the process of negotiating competitive outcomes for gas supply.”
 - b) *“the content of the code should be agreed by consensus.”*
 - c) the Code should not *“include anti-competitive terms, such as pricing obligations or targets.”*
 - d) *“the focus of the code should be a comprehensive negotiation framework that facilitates competitive outcomes.”*
 - e) the Code should include provisions relating to good faith negotiation including timely engagement and response; disclosure of key terms and risks; and transparency of EOI processes.
 - f) *“Industry is best placed to develop the code.”*

6. The Federal Government and the ACCC, through its 2017-2025 Gas Inquiry Interim Reports, have made it clear that the Code should apply to the conduct of Gas Suppliers in their gas supply negotiations with commercial and industrial Gas Customers located on the East Coast.
7. The Code has been drafted in accordance with these founding principles.