



# Competition and Consumer (Gas Market Code) Regulations 2023

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I, General the Honourable David Hurley AC DSC (Retd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 6 July 2023

David Hurley  
Governor-General

By His Excellency's Command

Chris Bowen  
Minister for Climate Change and Energy  
for the Treasurer

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## Part 1—Preliminary

### 1 Name

This instrument is the *Competition and Consumer (Gas Market Code) Regulations 2023*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	11 July 2023

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

### 4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) agreement (see section 53B of the Act);
- (b) Australia (see subsection 53E(2) of the Act);
- (c) expression of interest (see section 53B of the Act);
- (d) gas (see section 53B of the Act);
- (e) gas exchange (see section 53B of the Act);
- (f) offer (see section 53B of the Act).

- (1) In this instrument:

*Act* means the *Competition and Consumer Act 2010*.

*AEMO* has the same meaning as in the *Renewable Energy (Electricity) Act 2000*.

*affiliate* of a regulated gas producer: see subsection 6(3).

*annual turnover* has the same meaning as in the *Corporations Act 2001*.

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**buyer gas final offer:** a buyer gas final offer is an offer to acquire regulated gas that:

- (a) is in a form that is capable of being accepted; and
- (b) if accepted, gives rise to a binding agreement to acquire regulated gas.

**conditional Ministerial exemption** means a conditional Ministerial exemption under subsection 61(1).

**counted gas:** see subsection 55(4).

**covered supplier:** see subsection 6(1).

**Energy Department** means the Department administered by the Energy Minister.

**Energy Minister** means the Minister administering the *Australian Energy Market Act 2004*.

**foundational agreement** means an agreement for the supply of regulated gas where all the regulated gas will be sourced from undeveloped reserves, future development of contingent resources or prospective resources.

**gas day** means the period of 24 hours starting at 6 am Australian Eastern Standard Time.

**gas EOI:** a **gas EOI** is an expression of interest for the purpose of ascertaining whether a person is interested in acquiring regulated gas.

Note: Gas EOI is short for gas expression of interest.

**gas EOI open period:** if a person issues a gas EOI, the **gas EOI open period** is the period that:

- (a) starts on the day the person issues the gas EOI; and
- (b) ends on the day specified in the gas EOI.

Note: The day specified in the gas EOI must be at least 20 business days after the day on which the gas EOI is issued (see subsection 10(3)).

**gas EOI response period:** if a person (the **supplier**) issues a gas EOI, the **gas EOI response period** is the period that:

- (a) starts on the day after the end of the gas EOI open period; and
- (b) ends:
  - (i) 25 business days later; or
  - (ii) if there are more than 24 other persons, each of which gives the supplier, in the gas EOI open period, a notice in writing stating that the other person has an interest in further negotiations in relation to the gas EOI—35 business days later.

**gas final offer:** a gas final offer is an offer to supply regulated gas that:

- (a) is in a form that is capable of being accepted; and
- (b) if accepted, gives rise to a binding agreement to supply regulated gas.

**gas final offer open period:** if a person (the **supplier**) issues a gas final offer to another person (the **potential buyer**), the **gas final offer open period** is the period that:

- (a) starts on the day after the supplier issues the gas final offer; and



- (b) ends on the latest of the following:
- (i) the day specified in a document accompanying the gas final offer;
  - (ii) if the supplier and the potential buyer, in writing, fix a specified later day—that day.

Note: For subparagraph (b)(i), the day specified in the document accompanying the gas final offer must be (see subsection 20(3)):

- (a) if the supplier and the potential buyer fix a day in writing before the issue of the gas final offer—that day; or
- (b) otherwise—no earlier than 15 business days after the day on which the gas final offer is issued.

**gas initial offer:** an offer of basic terms forming the basis of negotiations for the purposes of entering into a binding agreement for the person making the offer to supply regulated gas is a **gas initial offer** if acceptance of the offer does not result in the entering into of such an agreement (but may lead to negotiations for the purposes of entering into such an agreement).

**gas initial offer open period:** if a person (the **supplier**) issues a gas initial offer to another person (the **potential buyer**), the gas initial offer open period is the period that:

- (a) starts on the day after the supplier issues the gas initial offer; and
- (b) ends on the latest of the following:
  - (i) the day specified in the gas initial offer;
  - (ii) if the gas initial offer is varied or reissued—the day specified in the varied or reissued gas initial offer;
  - (iii) if the supplier and the potential buyer, in writing, fix a specified later day—that day.

Note: For subparagraph (b)(i), the day specified in the gas initial offer must be (see subsection 16(3)):

- (a) if the supplier and the potential buyer fix a day in writing before the issue of the gas initial offer—that day; or
- (b) otherwise—no earlier than 15 business days after the day on which the gas initial offer is issued.

**gas initial offer response period:** if a person (the **supplier**) issues a gas initial offer to another person, and the other person gives the supplier a notice in writing stating that the other person has an interest in receiving a gas final offer in relation to the gas initial offer, the **gas initial offer response period** is the period that:

- (a) starts on the day after the other person gives the notice; and
- (b) ends on the latest of the following:
  - (i) 30 business days after the day mentioned in paragraph (a);
  - (ii) if the supplier and the other person agree in writing on a later day—that later day.

**gas penalty provision:** see section 60.

**gas pricing penalty provision:** see section 60.

**gas swap agreement** means an agreement to:

- (a) swap a quantity of regulated gas at one location for the same quantity of regulated gas at a different location; or

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- (b) swap a quantity of regulated gas at a location at one time for the same quantity of regulated gas at the same location at a different time.

**gas trading exchange** means a gas trading exchange established by AEMO under subsection 91BRK(1) of the National Gas Law.

**gas trading exchange agreement** has the same meaning as in the National Gas Law.

**Industry Minister** means the Minister who:

- (a) administers the *Industry Research and Development Act 1986*; and  
(b) is responsible for industry policy.

**liquefied natural gas** has the same meaning as in the *National Greenhouse and Energy Reporting Regulations 2008*.

**mandatory government agreement** means an agreement for the supply of regulated gas that a person has entered into because of a direction issued under the National Gas Law.

**material change in the supplier's circumstances**: see subsection 22(2).

**National Energy Retail Law** means the National Energy Retail Law set out in the Schedule to the *National Energy Retail Law (South Australia) Act 2011* (SA), as in force from time to time.

**National Gas Law** means the National Gas Law set out in the Schedule to the *National Gas (South Australia) Act 2008* (SA), as in force from time to time.

**price cap Order** means the *Competition and Consumer (Gas Market Emergency Price) Order 2022*.

**reasonable price**: see section 29.

**regulated gas** means gas that:

- (a) is in a gaseous state at standard temperature and pressure; and  
(b) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and  
(c) is suitable for consumption; and  
(d) is not liquefied natural gas; and  
(e) is not re-gasified natural gas that was imported as liquefied natural gas.

Note: Regulated gas is a gas commodity (see section 53B of the Act).

**regulated gas producer**: see section 5.

**Resources Department** means the Department administered by the Resources Minister.

**Resources Minister** means the Minister who:

- (a) administers the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*; and  
(b) is responsible for resources policy.

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**transition period** means the period that:

- (a) starts on the commencement of this instrument; and
- (b) ends 2 months after that commencement.

**uncontracted regulated gas**: regulated gas is **uncontracted regulated gas** at a time if, at that time, there is no agreement to supply the regulated gas.

- (2) To avoid doubt, an expression used in this instrument has the same meaning as in Part IVBB of the Act.
- (3) To avoid doubt, a reference in this instrument to a price for regulated gas or a price for the supply of regulated gas does not include the price for the provision of transportation services or storage services in relation to the regulated gas.

## **5 Definition of *regulated gas producer***

- (1) A person is a **regulated gas producer** if the person carries on a business of producing regulated gas.
- (2) For the purposes of subsection (1), disregard paragraph (c) of the definition of **regulated gas** in subsection 4(1) (requirement for gas to be suitable for consumption).

## **6 Definitions of *covered supplier* and *affiliate***

- (1) A person is a **covered supplier** if:
  - (a) the person is a regulated gas producer; or
  - (b) the person:
    - (i) is an affiliate of a regulated gas producer; and
    - (ii) has entered into an agreement (the **affiliate supply agreement**) for the supply of gas to the person by the regulated gas producer or another affiliate of the regulated gas producer; and
    - (iii) the agreement is not a mandatory government agreement; and
    - (iv) subsection (2) applies.
- (2) For the purposes of subparagraph (1)(b)(iv), this subsection applies if:
  - (a) the affiliate supply agreement is in force; or
  - (b) the person has entered into another agreement to supply the gas acquired under the affiliate supply agreement to another person, and that other agreement is in force; or
  - (c) the person intends to enter into another agreement to supply the gas acquired under the affiliate supply agreement to another person.
- (3) A person is an **affiliate** of a regulated gas producer if any of the following conditions are satisfied:
  - (a) the person and the regulated gas producer are related to each other (as determined in accordance with section 4A of the Act);
  - (b) the person and the regulated gas producer are related entities (within the meaning of the *Corporations Act 2001*);
  - (c) there is a joint venture in which the person and the regulated gas producer are participants;

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- (d) there is:
  - (i) a joint venture in which the person and a third person are participants;  
and
  - (ii) another joint venture in which the regulated gas producer and the third person are participants;
- (e) there is:
  - (i) a joint venture in which the person and a third person are participants;  
and
  - (ii) another joint venture in which the regulated gas producer and a related entity (within the meaning of the *Corporations Act 2001*) of the third person are participants;
- (f) there is:
  - (i) a joint venture in which the regulated gas producer and a third person are participants; and
  - (ii) another joint venture in which the person and a related entity (within the meaning of the *Corporations Act 2001*) of the third person are participants.

## **Part 2—Application**

### **7 General application**

*Application to gas EOIs, gas initial offers and gas final offers issued, and agreements made, after commencement*

- (1) Subject to this section, this instrument applies in relation to:
  - (a) a gas EOI issued after the transition period; and
  - (b) a gas initial offer issued after the transition period; and
  - (c) a gas final offer issued after the transition period; and
  - (d) an agreement to supply regulated gas that is made after the transition period.
- (2) Despite subsection (1), this instrument does not apply in relation to a gas initial offer made after the transition period if the gas initial offer relates to a gas EOI issued before or during the transition period.
- (3) Despite subsection (1), this instrument does not apply in relation to a gas final offer made after the transition period if any of the following conditions are satisfied:
  - (a) the gas final offer relates to a gas EOI issued before or during the transition period;
  - (b) the gas final offer relates to a gas initial offer issued before or during the transition period.
- (4) Despite subsection (1), this instrument (apart from the provisions covered by subsection (5)) does not apply in relation to an agreement made after the transition period to supply regulated gas if any of the following conditions are satisfied:
  - (a) the agreement relates to a gas EOI issued before or during the transition period;
  - (b) the agreement relates to a gas initial offer issued before or during the transition period;
  - (c) the agreement relates to a gas final offer issued before or during the transition period.
- (5) For the purposes of subsection (4), this subsection covers the following provisions:
  - (a) Division 2 of Part 4;
  - (b) section 31;
  - (c) paragraph 33(2)(k);
  - (d) any other provision in this instrument, to the extent that it relates to the provisions mentioned in paragraphs (a), (b) and (c).

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### *Application of good faith provisions*

- (6) Despite subsections (1), (2), (3) and (4), section 30 (good faith—dealing in relation to negotiations) applies in relation to negotiations entered into after the transition period.
- (7) Despite subsection (6), section 30 (good faith—dealing in relation to negotiations) does not apply in relation to negotiations entered into after the transition period if any of the following conditions are satisfied:
  - (a) the negotiations relate to a gas EOI issued before or during the transition period;
  - (b) the negotiations relate to a gas initial offer issued before or during the transition period;
  - (c) the negotiations relate to a gas final offer issued before or during the transition period.

### *Application in relation to agreements to which the price cap Order applies*

- (8) Despite the preceding subsections of this section, this instrument does not apply in relation to any of the following:
  - (a) an agreement to supply regulated gas:
    - (i) to which Part 3 of the price cap Order applies (or, if the price cap Order has been repealed, to which that Part applied immediately before that repeal); and
    - (ii) that was entered into in the price cap period mentioned in the price cap Order;
  - (b) a gas EOI that relates to such an agreement;
  - (c) a gas initial offer that relates to such an agreement;
  - (d) a gas final offer that relates to such an agreement;
  - (e) negotiations mentioned in section 30 that relate to such an agreement.

## **8 General application—variations to agreements**

- (1) This section applies if:
  - (a) a person is a covered supplier; and
  - (b) the person enters into an agreement for the supply of regulated gas; and
  - (c) the agreement is entered into before the commencement of this instrument; and
  - (d) after the transition period, the person enters into a variation of the agreement; and
  - (e) the variation includes a provision that determines the price of regulated gas to be supplied under the agreement.
- (2) For the purposes of section 7, as it has effect in respect of the provisions covered by subsection (3), treat the agreement, to the extent that it is varied under the variation, as being an agreement entered into at the time the variation is entered into.
- (3) This subsection covers the following provisions:
  - (a) Division 2 of Part 4;

- (b) section 31;
- (c) paragraph 33(2)(k);
- (d) any other provision in this instrument, to the extent that it relates to the provisions mentioned in paragraphs (a), (b) and (c).

## **9 Geographical application**

- (1) For the purposes of subsection 53N(2) of the Act, Parts 3, 4, 5, 6, 7, 8 and 9 of this instrument apply in relation to all parts of Australia other than any part of Australia in relation to which the requirement in subsection (2) of this section is met.
- (2) For the purposes of subsection (1), the requirement in this subsection is met in relation to a part of Australia if:
  - (a) there is a market for regulated gas in the part of Australia, and regulated gas is acquired and supplied in that market by means of a physical network of interconnected gas pipelines; and
  - (b) there is another market for regulated gas in another part of Australia, in respect of which all of the following conditions are satisfied:
    - (i) regulated gas is acquired and supplied in that market by means of a physical network of interconnected gas pipelines;
    - (ii) that physical network crosses a border or borders between States, or between a State and a Territory; and
  - (c) there is a physical separation between the network mentioned in paragraph (a) and the network mentioned in paragraph (b).

## Part 3—Negotiations

### Division 1—Gas EOIs

#### 10 Gas EOI must comply with certain requirements

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) the supplier issues a gas EOI; and
  - (c) the gas EOI does not specify the matters mentioned in subsection (2).

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

- (2) For the purposes of paragraph (1)(c), the matters are as follows:
  - (a) the quantity of regulated gas intended to be supplied in accordance with the gas EOI;
  - (b) if the gas EOI contemplates that there will be annual supply requirements in an agreement under which regulated gas will be supplied in accordance with the gas EOI—the annual quantity of regulated gas intended to be supplied in accordance with the gas EOI;
  - (c) the period over which the regulated gas is intended to be supplied in accordance with the gas EOI (including the dates the supply will commence and will cease, or a method for determining those dates);
  - (d) the delivery points of the regulated gas intended to be supplied in accordance with the gas EOI;
  - (e) the last day of the gas EOI open period (see subsection (3));
  - (f) if the gas EOI contemplates that there will be conditions precedent, relating to the supply of regulated gas, to an agreement under which regulated gas will be supplied in accordance with the gas EOI—those conditions precedent.

Note: The gas EOI must specify the matters set out in subsection (2), and may also specify other matters.

- (3) The last day of the gas EOI open period specified in accordance with paragraph (2)(e) must be at least 20 business days after the day on which the supplier issues the gas EOI.

#### 11 Gas EOI must be published

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas EOI; and
- (c) the supplier fails to publish the gas EOI on its website:
  - (i) at the same time that it issues the gas EOI; and
  - (ii) in a legible, prominent and unambiguous way.



Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

## **12 Gas EOI must remain open throughout gas EOI open period**

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas EOI; and
- (c) the gas EOI does not remain open throughout the gas EOI open period.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

## **13 Gas EOI—supplier must notify potential buyer whether or not successful**

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas EOI; and
- (c) another person (the *potential buyer*) gives the supplier, within the gas EOI open period, a notice in writing stating that the potential buyer has an interest in further negotiations in relation to the gas EOI; and
- (d) the supplier fails to give, within the gas EOI response period, a notice in writing to the potential buyer stating that the potential buyer is “successful” or “not successful” in relation to the gas EOI.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

## **14 Gas EOI—if notice of interest, supplier must issue offer**

(1) A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas EOI; and
- (c) the supplier gives another person (the *potential buyer*), within the gas EOI response period, a notice stating that the other person is “successful” in relation to the gas EOI; and
- (d) the supplier fails to give the potential buyer, within the gas EOI response period:
  - (i) unless subparagraph (ii) applies—a gas initial offer in relation to the gas EOI; or
  - (ii) if the potential buyer gives the supplier notice in writing for the purposes of this subparagraph—a gas final offer in relation to the gas EOI.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and

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- (b) for a person other than a body corporate—1,200 penalty units.
- (2) Subsection (1) does not apply if the supplier does not receive any response during the gas EOI open period from the potential buyer (other than a notice of a kind mentioned in paragraph 13(c)).

**15 Gas EOI—exception for material change of supplier’s circumstances, etc.**

Sections 12 and 13 and subsection 14(1) do not apply if:

- (a) any of the following conditions are satisfied:
  - (i) there has been a material change in the supplier’s circumstances resulting in the inability of the supplier to supply regulated gas in accordance with the gas EOI;
  - (ii) there has been a material change in the supplier’s financial circumstances or business structure, and the change will affect the ability of the supplier to supply regulated gas in accordance with the gas EOI;
  - (iii) a circumstance specified in a determination under subsection 23(1) exists; and
- (b) the supplier publishes a notice on its website before the end of the gas EOI response period stating that:
  - (i) those conditions are satisfied; and
  - (ii) the supplier withdraws the gas EOI; and
- (c) in the case of section 13 and subsection 14(1), if the potential buyer gave the supplier, within the gas EOI open period, a notice in writing stating that the potential buyer has an interest in further negotiations in relation to the gas EOI—the supplier gives a notice in writing to the potential buyer before the end of the gas EOI response period stating that:
  - (i) those conditions are satisfied; and
  - (ii) the supplier withdraws the gas EOI.

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## Division 2—Gas initial offers

### 16 Gas initial offer must comply with certain requirements

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) the supplier issues a gas initial offer to another person (the *potential buyer*); and
  - (c) the gas initial offer does not specify the matters mentioned in subsection (2).

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
  - (b) for a person other than a body corporate—1,200 penalty units.
- (2) For the purposes of paragraph (1)(c), the matters are as follows:
  - (a) the quantity of regulated gas intended to be supplied in accordance with the gas initial offer;
  - (b) if the gas initial offer contemplates that there will be annual supply requirements in an agreement under which regulated gas will be supplied in accordance with the gas initial offer—the annual quantity of regulated gas intended to be supplied in accordance with the gas initial offer;
  - (c) the intended degree of flexibility in determining that quantity (including conditions relating to load factor (such as conditions that determine variations in load factor over the course of a year));
  - (d) the period over which the regulated gas is intended to be supplied in accordance with the gas initial offer (including the dates the supply will commence and will cease, or a method for determining those dates);
  - (e) the delivery points of the regulated gas intended to be supplied in accordance with the gas initial offer;
  - (f) the price or price structure intended to apply to the supply of the regulated gas in accordance with the gas initial offer (including any intended take or pay conditions, and the effect of any such conditions and of any intended price escalation mechanisms);
  - (g) the last day of the gas initial offer open period (see subsection (3));
  - (h) if the gas initial offer contemplates that there will be conditions precedent, relating to the supply of regulated gas, to an agreement under which regulated gas will be supplied in accordance with the gas initial offer—those conditions precedent;
  - (i) whether the gas initial offer includes an offer to provide transportation services (including services in respect of transportation from delivery points mentioned in paragraph (e)) or storage services;
  - (j) if the gas initial offer includes an offer to provide services mentioned in paragraph (i)—the price or price structure intended to apply to the provision of those services in accordance with the gas initial offer (including the effect of any intended price escalation mechanisms).

Note: The gas initial offer must specify the matters set out in subsection (2), and may also specify other matters.

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- (3) The last day of the gas initial offer open period specified in accordance with paragraph (2)(g) must be:
- (a) if paragraph (b) does not apply—no earlier than 15 business days after the day on which the supplier issues the gas initial offer; or
  - (b) if the supplier and the potential buyer, in writing before the supplier issues the gas initial offer to the potential buyer, fix a specified day—that day.

**17 Gas initial offer must not be withdrawn or terminated before end of gas initial offer open period or gas initial offer response period**

A person (the *supplier*) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the supplier issues a gas initial offer to another person (the *potential buyer*) (whether or not in relation to a gas EOI); and
- (c) the supplier withdraws or terminates the gas initial offer before the end of:
  - (i) unless subparagraph (ii) applies—the gas initial offer open period; or
  - (ii) if there is a gas initial offer response period—the gas initial offer response period.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

**18 Gas initial offer—if notice of interest, supplier must issue gas final offer**

- (1) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) the supplier issues a gas initial offer to another person (the *potential buyer*) (whether or not in relation to a gas EOI); and
  - (c) the potential buyer gives the supplier, within the gas initial offer open period, a notice in writing stating that the potential buyer has an interest in receiving a gas final offer in relation to the gas initial offer; and
  - (d) the supplier fails, within the gas initial offer response period, to issue the potential buyer a gas final offer in relation to the gas initial offer.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

- (2) Subsection (1) does not apply if, during the gas initial offer open period, the potential buyer gives the supplier a buyer gas final offer in relation to the gas initial offer.

**19 Gas initial offer—exceptions for material change of supplier’s circumstances, agreement to terminate or withdraw, etc.**

Section 17 and subsection 18(1) do not apply if:

- (a) there has been a material change in the supplier’s circumstances resulting in the inability of the supplier to supply regulated gas in accordance with the gas initial offer; or

- (b) all of the following apply:
  - (i) there has been a material change in the supplier's financial circumstances or business structure;
  - (ii) the change will affect the ability of the supplier to supply regulated gas in accordance with the gas initial offer; or
- (c) a circumstance specified in a determination under subsection 23(1) exists; or
- (d) the supplier and the potential buyer agreed to the withdrawal or termination; or
- (e) the potential buyer gave the supplier written notice, before the end of the gas initial offer open period, that the potential buyer withdraws from the negotiation process.

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## Division 3—Gas final offers

### 20 Gas final offer must comply with certain requirements

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) the supplier issues a gas final offer to another person (the *potential buyer*); and
  - (c) any of the following applies:
    - (i) the gas final offer does not specify the matters mentioned in subsection (2);
    - (ii) the gas final offer is not accompanied by a notice in writing by the supplier that meets the requirements in subsection (3).

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
  - (b) for a person other than a body corporate—1,200 penalty units.
- (2) For the purposes of subparagraph (1)(c)(i), the matters are as follows:
    - (a) the quantity of regulated gas intended to be supplied in accordance with the gas final offer;
    - (b) if the gas final offer contemplates that there will be annual supply requirements in an agreement under which regulated gas will be supplied in accordance with the gas final offer—the annual quantity of regulated gas intended to be supplied in accordance with the gas final offer;
    - (c) the intended degree of flexibility in determining that quantity (including conditions relating to load factor (such as conditions that determine variations in load factor over the course of a year));
    - (d) the period over which the regulated gas is intended to be supplied in accordance with the gas final offer (including the dates the supply will commence and will cease, or a method for determining those dates);
    - (e) the delivery points of the regulated gas intended to be supplied in accordance with the gas final offer;
    - (f) the price or price structure intended to apply to the supply of the regulated gas in accordance with the gas final offer (including any intended take or pay conditions, and the effect of any such conditions and of any intended price escalation mechanisms);
    - (g) the payment terms for the supply of regulated gas in accordance with the gas final offer;
    - (h) if the gas final offer includes an offer to provide transportation services (including services in respect of transportation from delivery points mentioned in paragraph (e)) or storage services—the price or price structure intended to apply to the provision of those services in accordance with the gas final offer (including the effect of any intended price escalation mechanisms);
    - (i) the circumstances (if any) in which the supplier or the potential buyer may vary the terms of an agreement under which regulated gas will be supplied in accordance with the gas final offer;

- (j) a protocol for the supplier and the potential buyer to notify each other, within a reasonable time, of any major interruptions to any of the following that become known to them:
  - (i) the supplier's ability to supply regulated gas in accordance with the gas final offer;
  - (ii) the potential buyer's ability to accept regulated gas in accordance with the gas final offer;
- (k) the consequences (if any) if the quantity of regulated gas intended to be supplied in accordance with the gas final offer is not delivered by the supplier or is not accepted by the potential buyer;
- (l) the circumstances in which the supplier or the potential buyer may terminate an agreement under which regulated gas will be supplied in accordance with the gas final offer;
- (m) the consequences of a breach of an agreement under which regulated gas will be supplied in accordance with the gas final offer;
- (n) procedures for resolving disputes arising under an agreement under which regulated gas will be supplied in accordance with the gas final offer.

Note: The gas final offer must specify the matters set out in subsection (2), and may also specify other matters. For example, if the gas final offer contemplates that there will be conditions precedent to an agreement under which regulated gas will be supplied in accordance with the gas final offer, it may specify those conditions precedent.

- (3) For the purposes of subparagraph (1)(c)(ii), the requirements are as follows:
  - (a) the notice sets out the last day of the gas final offer open period; and
  - (b) that last day is:
    - (i) if subparagraph (ii) of this paragraph does not apply—no earlier than 15 business days after the supplier issues the gas final offer; or
    - (ii) if the supplier and the potential buyer, in writing before the supplier issues the gas final offer to the potential buyer, fix a specified day—that day.

## **21 Gas final offer must not be withdrawn or terminated before end of gas final offer open period**

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) the supplier issues a gas final offer to another person (the *potential buyer*) (whether or not in relation to a gas EOI or gas initial offer); and
  - (c) the supplier withdraws or terminates the gas final offer before the end of the gas final offer open period.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
- (b) for a person other than a body corporate—1,200 penalty units.

- (2) Subsection (1) does not apply if:
  - (a) there has been a material change in the supplier's circumstances resulting in the inability of the supplier to supply regulated gas in accordance with the gas final offer; or
  - (b) all of the following apply:

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- (i) there has been a material change in the supplier's financial circumstances or business structure;
- (ii) the change will affect the ability of the supplier to supply regulated gas in accordance with the gas final offer; or
- (c) a circumstance specified in a determination under subsection 23(1) exists; or
- (d) the supplier and the potential buyer agreed to the withdrawal or termination; or
- (e) the potential buyer gave the supplier written notice, before the end of the gas final offer open period, that the potential buyer withdraws from the negotiation process.



## **Division 4—Miscellaneous**

### **22 Definition of *material change in the supplier's circumstances***

- (1) This section applies if a person (the *supplier*) issues a gas EOI, a gas initial offer or a gas final offer in accordance with which the supplier intends to supply regulated gas.
- (2) For the purposes of this Part, the occurrence of any of the following changes is taken to be a *material change in the supplier's circumstances*:
  - (a) a change to, or a new requirement for, an approval under a law of the Commonwealth, a State or a Territory that affects the supplier's ability to supply the regulated gas in accordance with the gas EOI, gas initial offer or gas final offer;
  - (b) a change to an existing legal obligation of, or the imposition of a new legal obligation on, the supplier that affects the supplier's ability to supply the regulated gas in accordance with the gas EOI, gas initial offer or gas final offer;
  - (c) in the case where a gas initial offer or gas final offer was issued—the person to whom it has been issued becomes insolvent;
  - (d) equipment needed to produce the regulated gas becomes unavailable due to circumstances that could not have been reasonably foreseen by the supplier;
  - (e) a service needed to deliver the regulated gas becomes unavailable due to circumstances that could not have been reasonably foreseen by the provider of the service;
  - (f) a technical or operational issue that could not have been reasonably foreseen by the supplier has had a substantial effect on the supplier's ability to supply the regulated gas in accordance with the gas EOI, gas initial offer or gas final offer;
  - (g) the regulated gas has been sold to another person.

### **23 Determination—withdrawal or termination circumstances**

- (1) The Commission may, by legislative instrument, make a determination specifying circumstances in which a covered supplier who has issued a gas EOI, gas initial offer or gas final offer may withdraw or terminate it.
- (2) Before making a determination under subsection (1), the Commission must consult with the public about the proposed determination.
- (3) In making a determination under subsection (1), the Commission must take into account comments made in consultations under subsection (2).

## Part 4—Agreements for supply of regulated gas

### Division 1—Procedural rules

#### 24 Agreement for supply of regulated gas—failure to issue gas final offer

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) the supplier enters into an agreement for the supply of regulated gas; and
  - (c) under the agreement, the supplier is to supply regulated gas to another person (the *buyer*); and
  - (d) the supplier did not issue a gas final offer, in relation to the agreement, to the buyer before entering into the agreement.

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
  - (b) for a person other than a body corporate—1,200 penalty units.
- (2) Subsection (1) does not apply if the buyer gave the supplier a buyer gas final offer in relation to the agreement under subsection 18(2) before entering into the agreement.

#### 25 Agreement for supply of regulated gas must comply with certain requirements

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) the supplier enters into an agreement for the supply of regulated gas; and
  - (c) under the agreement, the supplier is to supply regulated gas to another person (the *buyer*); and
  - (d) the agreement does not specify the matters mentioned in subsection (2).

Civil penalty:

- (a) for a body corporate—6,000 penalty units; and
  - (b) for a person other than a body corporate—1,200 penalty units.
- (2) For the purposes of paragraph (1)(d), the matters are as follows:
  - (a) the quantity of regulated gas to be supplied in accordance with the agreement;
  - (b) if there are annual supply requirements in the agreement—the annual quantity of regulated gas to be supplied in accordance with the agreement;
  - (c) the degree of flexibility in determining that quantity (including conditions relating to load factor (such as conditions that determine variations in load factor over the course of a year));
  - (d) the period over which the regulated gas is to be supplied in accordance with the agreement (including the dates the supply will commence and will cease, or a method for determining those dates);

- (e) the delivery points of the regulated gas to be supplied in accordance with the agreement;
- (f) the price or price structure to apply to the supply of the regulated gas in accordance with the agreement (including any take or pay conditions, and the effect of any such conditions and any price escalation mechanisms);
- (g) the payment terms for the supply of regulated gas in accordance with the agreement;
- (h) if the agreement includes terms to provide transportation services (including services in respect of transportation from delivery points mentioned in paragraph (e)) or storage services—the price or price structure to apply to the provision of those services in accordance with the agreement (including the effect of any price escalation mechanisms);
- (i) the circumstances (if any) in which the supplier or the buyer may vary the terms of the agreement;
- (j) a protocol for the supplier and the buyer to notify each other, within a reasonable time, of any major interruptions that become known to them to:
  - (i) the supplier’s ability to supply regulated gas in accordance with the agreement; or
  - (ii) the buyer’s ability to accept regulated gas in accordance with the agreement;
- (k) the consequences (if any) if the quantity of regulated gas to be supplied in accordance with the agreement is not delivered by the supplier or is not accepted by the buyer;
- (l) the circumstances in which the supplier or the buyer may terminate the agreement;
- (m) the consequences of a breach of the agreement;
- (n) procedures for resolving disputes arising under the agreement.

Note: The agreement must specify the matters set out in subsection (2), and may also specify other matters. For example, it may specify that it is subject to conditions precedent.

## Division 2—Price rules

### 26 Agreement for supply of regulated gas—entering into agreement where price could exceed reasonable price

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) the supplier enters into an agreement for the supply of regulated gas; and
  - (c) under the agreement, the supplier is to supply regulated gas to another person; and
  - (d) the price payable under the agreement, for regulated gas to be supplied by the supplier, could exceed a reasonable price.
- (2) Subsection (1) is a civil penalty provision.
- (3) Subsection (1) applies only if entering into the agreement mentioned in paragraph (1)(b) is gas market conduct described in subsection 53ZZA(1) of the Act.

### 27 Agreement for supply of regulated gas—price for supplied gas exceeds reasonable price

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) the supplier entered into an agreement for the supply of regulated gas; and
  - (c) the supplier supplies regulated gas under the agreement; and
  - (d) the price payable under the agreement, for that regulated gas, exceeds a reasonable price.
- (2) Subsection (1) is a civil penalty provision.
- (3) Subsection (1) applies only if the supply mentioned in paragraph (1)(c) is gas market conduct described in subsection 53ZZA(1) of the Act.

### 28 Offer on gas trading exchange for supply of regulated gas—price under offer exceeds reasonable price

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) the supplier makes an offer on a gas trading exchange for the supply of regulated gas; and
  - (c) the price under the offer, for that gas, exceeds a reasonable price.
- (2) Subsection (1) is a civil penalty provision.
- (3) Subsection (1) applies only if making the offer mentioned in paragraph (1)(b) is gas market conduct described in subsection 53ZZA(1) of the Act.

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**29 Reasonable price**

- (1) For the purposes of this Division:
  - (a) the price mentioned in subsection (2) is taken to be a reasonable price for regulated gas; and
  - (b) a price for regulated gas that exceeds the price mentioned in subsection (2) is taken to exceed a reasonable price for regulated gas.
- (2) The price is:
  - (a) unless paragraph (b) applies—\$12 per gigajoule; or
  - (b) if the Commission makes a determination under subsection (3)—the price for regulated gas specified in the determination.
- (3) The Commission may, by legislative instrument, make a determination specifying a price for regulated gas that the Commission considers is a reasonable price for regulated gas.
- (4) Before making a determination under subsection (3), the Commission must consult with the public about the reasons why the Commission considers a price specified by the Commission to be a reasonable price for regulated gas.
- (5) In making a determination under subsection (3), the Commission must take into account comments made in consultations under subsection (4).
- (6) In making a determination under subsection (3), the Commission may take into account any of the following matters:
  - (a) the extent to which the determination would promote the following:
    - (i) a workably competitive market for regulated gas in the parts of Australia to which this Part applies (see section 9);
    - (ii) the affordability and availability of regulated gas in those parts of Australia;
    - (iii) the sufficiency or adequacy of investment in, and production of, regulated gas to meet demand in those parts of Australia;
  - (b) the effect or expected effect of other related decisions or government policies;
  - (c) any other matter the Commission considers relevant.
- (7) The Commission cannot make a determination under subsection (3) within the period of 2 years starting after the commencement of this instrument, unless:
  - (a) the Commission considers that there has been a substantial change in market conditions for regulated gas; or
  - (b) the Energy Minister and the Resources Minister jointly notify the Commission in writing that it may do so.
- (8) If the Commission makes a determination under subsection (3) on a day, it cannot make a further determination under subsection (3) within the period of 2 years starting after that day, unless:
  - (a) the Commission considers that there has been a substantial change in market conditions for regulated gas; or
  - (b) the Energy Minister and the Resources Minister jointly notify the Commission in writing that it may do so.

## Part 5—Good faith

### 30 Good faith—dealing in relation to negotiations

- (1) A person (the *party*) contravenes this paragraph if:
  - (a) the party participates in negotiations with another person (the *other party*) about a proposed supply of regulated gas by a covered supplier; and
  - (b) the covered supplier is the party or the other party; and
  - (c) the party fails to deal in good faith, within the meaning of the unwritten law from time to time, with the other party in relation to the negotiations.
- (2) Subsection (1) is a civil penalty provision.
- (3) To avoid doubt, subsection (1) does not prevent a person from acting in the person's legitimate commercial interests.

### 31 Good faith—dealing in relation to agreement

- (1) A person (the *party*) contravenes this paragraph if:
  - (a) the party enters into an agreement with another person (the *other party*) for the supply of regulated gas by a covered supplier; and
  - (b) the covered supplier is the party or the other party; and
  - (c) the party fails to deal in good faith, within the meaning of the unwritten law from time to time, with the other party in relation to the agreement.
- (2) To avoid doubt, for the purposes of subsection (1), dealing in relation to the agreement includes any of the following:
  - (a) exercising rights or performing obligations under the agreement;
  - (b) dealing with or resolving complaints or disputes arising under or in connection with the agreement;
  - (c) varying or terminating the agreement.
- (3) Subsection (1) is a civil penalty provision.
- (4) To avoid doubt, subsection (1) does not prevent a person from acting in the person's legitimate commercial interests.

### 32 Good faith—matters to take into account

Without limiting the matters to which a court may have regard for the purpose of determining whether a person deals in good faith with another person in relation to negotiations or an agreement, a court may have regard to the following matters:

- (a) the extent to which the person has acted honestly;
- (b) in the case of dealing in relation to an agreement—whether the person has tried to cooperate with the other party to achieve the purposes of the agreement;
- (c) the extent to which the person has not acted arbitrarily, capriciously, unreasonably, recklessly or with ulterior motives;

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- (d) the extent to which the person has acted in a way that constitutes retribution against the other party for past disputes with the other party (including disputes in mediation or arbitration);
- (e) the nature of the person's relationship with the other party (including the extent to which the person has conducted the relationship without duress);
- (f) the extent to which the person's relationship with the other party has been conducted in recognition of the need for certainty regarding the risks and costs of supplying or acquiring regulated gas;
- (g) the extent to which the person has undermined, or denied the other party, a benefit of any agreement;
- (h) any other relevant matter.

## Part 6—Record keeping, information and publication

### 33 Record keeping by supplier

- (1) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) the supplier fails to:
    - (i) make records, in writing, recording details mentioned in subsection (2) in a form (if any) approved in writing by the Commission; and
    - (ii) keep those records for the period mentioned in subsection (2) that is relevant to the records; and
    - (iii) keep those records in a manner (if any) approved in writing by the Commission.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
  - (b) for a person other than a body corporate—600 penalty units.
- (2) For the purposes of paragraph (1)(b), the details (and the period relevant to the records) are as follows:
- (a) each gas EOI issued by the supplier that proceeded to an agreement to supply regulated gas (for the period of 6 years starting after the agreement was entered into);
  - (b) each gas EOI issued by the supplier that has not proceeded to an agreement to supply regulated gas, regardless of whether the gas EOI was withdrawn or terminated, and regardless of whether it proceeded to a gas initial offer or a gas final offer (for the period of 6 years starting after the record was made);
  - (c) each gas initial offer issued by the supplier that proceeded to an agreement to supply regulated gas (for the period of 6 years starting after the agreement was entered into);
  - (d) each gas initial offer issued by the supplier that has not proceeded to an agreement to supply regulated gas, regardless of whether the gas initial offer was withdrawn or terminated, and regardless of whether it proceeded to a gas final offer (for the period of 6 years starting after the record was made);
  - (e) each buyer gas final offer given to the supplier that proceeded to an agreement to supply regulated gas (for the period of 6 years starting after the agreement was entered into);
  - (f) each buyer gas final offer given to the supplier that has not proceeded to an agreement to supply regulated gas, regardless of whether the buyer gas final offer was withdrawn or terminated (for the period of 6 years starting after the record was made);
  - (g) each gas final offer issued by the supplier that proceeded to an agreement to supply regulated gas (for the period of 6 years starting after the agreement was entered into);



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- (h) each gas final offer issued by the supplier that has not proceeded to an agreement to supply regulated gas, regardless of whether the gas final offer was withdrawn or terminated (for the period of 6 years starting after the record was made);
  - (i) all documents and information exchanged between the supplier and a person with whom the supplier has negotiated in respect of a gas EOI, gas initial offer, buyer gas final offer or gas final offer mentioned in paragraphs (a) to (h), including:
    - (i) each version of such a gas initial offer, buyer gas final offer or gas final offer; and
    - (ii) if such a gas EOI, gas initial offer, buyer gas final offer or gas final offer did not proceed to an agreement to supply regulated gas— documents and information containing reasons as to why it did not proceed to such an agreement;
 

(for the period of 6 years starting after the supplier started to hold the document or information);
  - (j) any other documents or information that the supplier creates, obtains or holds and that relates to the supply, price or marketing of regulated gas (for the period of 6 years starting after the supplier created, obtained or first held the document or information);
  - (k) each agreement to supply regulated gas entered into by the supplier (for the period of 6 years starting after the agreement was entered into);
  - (l) the name of each person who gave the supplier a notice in writing, in each calendar year ending after the commencement of this instrument, stating an interest in further negotiations in relation to a gas EOI issued by the supplier (for the period of 6 years starting after the end of the calendar year);
  - (m) details of a kind specified in a determination made under subsection (3) (for the period specified in the determination).
- (3) For the purposes of paragraph (2)(m), the Commission may, by legislative instrument, make a determination specifying kinds of details that must be recorded, and the period which those records must be kept.
  - (4) Before making a determination under subsection (3), the Commission must consult with the public about the proposed determination.
  - (5) In making a determination under subsection (3), the Commission must take into account comments made in consultations under subsection (4).

### **34 Supplier to publish information relating to available gas, etc.**

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) as soon as practicable after each day covered by subsection (2), the supplier fails to maintain on its website a statement that:
    - (i) states that it is published for the purposes of this section; and
    - (ii) sets out the information covered by subsection (6) in relation to the 24 month period starting on that day; and
    - (iii) complies with subsection (10).

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Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
  - (b) for a person other than a body corporate—600 penalty units.
- (2) For the purposes of paragraph (1)(b), this subsection covers a day, on or after the day the supplier became a covered supplier, that:
- (a) is the day after the end of the transition period; or
  - (b) is a day set out in a determination made under subsection (3).
- (3) For the purposes of paragraph (2)(b), the Commission may, by legislative instrument, make a determination specifying a day.
- (4) Before making a determination under subsection (3), the Commission must consult with the public about the proposed determination.
- (5) In making a determination under subsection (3), the Commission must take into account comments made in consultations under subsection (4).
- (6) For the purposes of subparagraph (1)(b)(ii), this subsection covers the following information in relation to a 24 month period:
- (a) details of each gas EOI that the supplier intends to issue in that 24 month period, including:
    - (i) the volume of regulated gas proposed to be supplied in accordance with the gas EOI; and
    - (ii) the period over which that regulated gas is proposed to be supplied in accordance with the gas EOI;
  - (b) the volume of uncontracted regulated gas that is likely to be available to the supplier in that 24 month period;
  - (c) the volume of that uncontracted regulated gas:
    - (i) that the supplier intends to be the subject of a gas EOI, a gas initial offer or a gas final offer in that 24 month period; or
    - (ii) to be supplied under an agreement into which the supplier intends to enter in that 24 month period.
  - (d) information of a kind specified in a determination under subsection (7).
- (7) For the purposes of paragraph (6)(d), the Commission may, by legislative instrument, make a determination specifying kinds of information.
- (8) Before making a determination under subsection (7), the Commission must consult with the public about the proposed determination.
- (9) In making a determination under subsection (7), the Commission must take into account comments made in consultations under subsection (8).
- (10) For the purposes of subparagraph (1)(b)(iii), the statement complies with this subsection if it:
- (a) sets out the information mentioned in subparagraph (1)(b)(ii) in a legible and prominent way; and
  - (b) is in a form approved by the Commission in writing (if any).

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**35 Supplier to report information to Commission—information relating to available gas, etc.**

- (1) A person (the *supplier*) contravenes this subsection if:
  - (a) the supplier is a covered supplier; and
  - (b) as soon as practicable after each day covered by subsection (2), the supplier fails to give the Commission a notice that:
    - (i) states that it is given for the purposes of this section; and
    - (ii) sets out the information covered by subsection (6) in relation to the 24 month period starting on that day; and
    - (iii) complies with subsection (10).

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
  - (b) for a person other than a body corporate—600 penalty units.
- (2) For the purposes of paragraph (1)(b), this subsection covers a day, on or after the day the supplier became a covered supplier, that:
  - (a) is the day after the end of the transition period; or
  - (b) is a day set out in a determination made under subsection (3).
- (3) For the purposes of paragraph (2)(b), the Commission may, by legislative instrument, make a determination specifying days.
- (4) Before making a determination under subsection (3), the Commission must consult with the public about the proposed determination.
- (5) In making a determination under subsection (3), the Commission must take into account comments made in consultations under subsection (4).
- (6) For the purposes of subparagraph (1)(b)(ii), this subsection covers the following information in relation to a 24 month period:
  - (a) the information covered by subsection 34(6) in relation to that 24 month period;
  - (b) whether the supplier intends to, in that 24 month period, do either or both of the following:
    - (i) issue a gas EOI, gas initial offer or gas final offer in respect of regulated gas that is uncontracted regulated gas on the day mentioned in subparagraph (1)(b)(ii);
    - (ii) supply regulated gas that is uncontracted regulated gas on that day;
  - (c) information of a kind specified in a determination under subsection (4).
- (7) For the purposes of paragraph (6)(c), the Commission may, by legislative instrument, make a determination specifying kinds of information.
- (8) Before making a determination under subsection (7), the Commission must consult with the public about the proposed determination.
- (9) In making a determination under subsection (7), the Commission must take into account comments made in consultations under subsection (8).

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- (10) For the purposes of subparagraph (1)(b)(iii), the notice complies with this subsection if it is:
- (a) in writing; and
  - (b) in a form approved by the Commission in writing (if any).

**36 Supplier to report information to Commission—gas EOIs**

- (1) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) the supplier issues a gas EOI; and
  - (c) the supplier fails to give the Commission a notice in writing, within 3 business days after issuing the gas EOI, that:
    - (i) states that it is given for the purposes of this section; and
    - (ii) sets out the date on which the supplier issued the gas EOI.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

- (2) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) the supplier issues a gas EOI; and
  - (c) the supplier fails to give the Commission a copy of the gas EOI on or before the deadline specified in a determination under subsection (3) for giving a notice under this subsection in respect of the issue of a gas EOI.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

- (3) For the purposes of paragraph (2)(c), the Commission may, by legislative instrument, make a determination specifying a deadline for giving a notice under subsection (2) in respect of the issue of a gas EOI.
- (4) Before making a determination under subsection (3), the Commission must consult with the public about the proposed determination.
- (5) In making a determination under subsection (3), the Commission must take into account comments made in consultations under subsection (4).

**37 Supplier to report information to Commission—gas initial offers, buyer gas final offers and gas final offers**

- (1) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) either:
    - (i) the supplier issues a gas initial offer or a gas final offer; or
    - (ii) the supplier is given a buyer gas final offer; and
  - (c) the supplier fails to give the Commission a notice in writing, on or before the deadline specified in a determination under subsection (2) for giving a

notice under this subsection in respect of the issue of the gas initial offer or gas final offer, or the receipt of the buyer gas final offer, that:

- (i) states that it is given for the purposes of this section; and
- (ii) sets out the date on which the supplier issued the gas initial offer or gas final offer, or received the buyer gas final offer; and
- (iii) includes a copy of the gas initial offer, gas final offer, or buyer gas final offer.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
  - (b) for a person other than a body corporate—600 penalty units.
- (2) For the purposes of paragraph (1)(c), the Commission may, by legislative instrument, make a determination specifying a deadline for giving a notice under subsection (1) in respect of the issue of a gas initial offer or gas final offer, or the receipt of a buyer gas final offer.
- (3) Before making a determination under subsection (2), the Commission must consult with the public about the proposed determination.
- (4) In making a determination under subsection (2), the Commission must take into account comments made in consultations under subsection (3).

### **38 Supplier to report information to Commission—agreements to supply regulated gas**

- (1) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) the supplier enters into an agreement to supply regulated gas; and
  - (c) the supplier fails to give the Commission a notice in writing, on or before the deadline specified in a determination under subsection (2) for giving a notice under this subsection in respect of the entering into of the agreement, that:
    - (i) states that it is given for the purposes of this section; and
    - (ii) sets out the date on which the supplier entered into the agreement; and
    - (iii) includes a copy of the agreement.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
  - (b) for a person other than a body corporate—600 penalty units.
- (2) For the purposes of paragraph (1)(c), the Commission may, by legislative instrument, make a determination specifying a deadline for giving a notice under subsection (1) in respect of the entering into of an agreement.
- (3) Before making a determination under subsection (2), the Commission must consult with the public about the proposed determination.
- (4) In making a determination under subsection (2), the Commission must take into account comments made in consultations under subsection (3).

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**39 Supplier to report information to Commission—conditional Ministerial exemptions**

- (1) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) the supplier is specified in a conditional Ministerial exemption; and
  - (c) the conditional Ministerial exemption states that it is subject to conditions; and
  - (d) the supplier fails to give the Commission a notice in writing, as soon as practicable after the end of a period covered by subsection (3), that:
    - (i) states that it is given for the purposes of this section; and
    - (ii) sets out the information covered by subsection (2) in relation to the period.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
  - (b) for a person other than a body corporate—600 penalty units.
- (2) This subsection covers information in relation to a period if the information demonstrates that the supplier complied with the conditions mentioned in paragraph (1)(c) throughout the period.
- (3) For the purposes of this section, this subsection covers the following periods:
- (a) the period of 3 months beginning on the day the conditional Ministerial exemption was granted;
  - (b) if the conditional Ministerial exemption was in force at a time in a subsequent period of 3 months that:
    - (i) started immediately after the end of the period mentioned in paragraph (a); or
    - (ii) started immediately after the end of the period mentioned in subparagraph (i), or the end of a period covered by a previous operation of this subparagraph;that subsequent period of 3 months.

**40 Supplier to report information to Commission—retailers**

- (1) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) at the time immediately after the end of the transition period, the supplier was covered by subsection (4) of this section; and
  - (c) the supplier fails to give the Commission a notice, within 3 business days, that complies with subsections (5) and (9).
- (2) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) at a time after the end of the transition period, the supplier starts to be covered by subsection (4) of this section; and
  - (c) the supplier fails to give the Commission a notice, within 3 business days, that complies with subsections (5) and (9).

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- (3) A person (the *supplier*) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) at a time after the end of the transition period, the supplier ceases to be covered by subsection (4) of this section; and
  - (c) the supplier fails to give the Commission a notice, within 3 business days, that states that fact and complies with subsection (9).
- (4) For the purposes of subsections (1), (2) and (3), a supplier is covered by this subsection if the supplier:
- (a) holds a retailer authorisation (within the meaning of the *National Energy Retail Law* as it applies in a State or a Territory); or
  - (b) is a retailer (within the meaning of the *Electricity Industry Act 2000* (Vic.)); or
  - (c) holds a licence authorising the person to sell gas by retail under the *Gas Industry Act 2001* (Vic.).
- (5) For the purposes of subsections (1) and (2), a notice given by a supplier complies with this subsection if it:
- (a) states that it is given for the purposes of this section; and
  - (b) if paragraph (4)(a) or (c) applies to the supplier—includes a copy of the retailer authorisation or licence mentioned in that paragraph; and
  - (c) if paragraph (4)(b) applies to the supplier—includes a link to a publicly available website that allows access to the text of the supplier’s retailer’s licence (within the meaning of the *Electricity Industry Act 2000* (Vic.)); and
  - (d) sets out information demonstrating that no more than 50 per cent of the annual turnover of the supplier during the most recent financial year ending before the time mentioned in paragraph (1)(b) or (2)(b) (as the case may be), to the extent that it is attributable to business operations related to the production, supply and acquisition of gas, is attributable to a business of producing regulated gas carried on by the supplier; and
  - (e) sets out information of a kind specified in a determination under subsection (6).

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
  - (b) for a person other than a body corporate—600 penalty units.
- (6) For the purposes of paragraph (5)(e), the Commission may, by legislative instrument, make a determination specifying kinds of information.
- (7) Before making a determination under subsection (6), the Commission must consult with the public about the proposed determination.
- (8) In making a determination under subsection (6), the Commission must take into account comments made in consultations under subsection (7).
- (9) For the purposes of this section, a notice complies with this subsection if it is:
- (a) in writing; and
  - (b) in a form approved by the Commission in writing (if any).

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**41 Supplier to report information to Commission—small suppliers**

- (1) A person (the **supplier**) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) the amount of counted gas in relation to the supplier, that was produced in the most recent calendar year, is nil or is less than 100 petajoules; and
  - (c) the supplier fails to give the Commission a notice complying with subsection (11) and setting out the information covered by subsection (2) on or before:
    - (i) if subparagraph (ii) does not apply—the third business day after that calendar year; or
    - (ii) if the calendar year is the most recent calendar year that ended on or before the commencement of this instrument—23 December 2023.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
  - (b) for a person other than a body corporate—600 penalty units.
- (2) This subsection covers the following information:
- (a) a statement that the notice is given for the purposes of this section;
  - (b) information demonstrating that the amount of counted gas in relation to the supplier, that was produced in the calendar year, is nil or less than 100 petajoules;
  - (c) information of a kind specified in a determination under subsection (3).
- (3) For the purposes of paragraph (2)(c), the Commission may, by legislative instrument, make a determination specifying kinds of information.
- (4) Before making a determination under subsection (3), the Commission must consult with the public about the proposed determination.
- (5) In making a determination under subsection (3), the Commission must take into account comments made in consultations under subsection (4).
- (6) A person (the **supplier**) contravenes this subsection if:
- (a) the supplier is a covered supplier; and
  - (b) the amount of counted gas in relation to the supplier, that was produced in the most recent calendar year, is nil or is less than 100 petajoules; and
  - (c) at a time on or after the commencement of this instrument:
    - (i) the supplier forms an intention to enter into an agreement to supply regulated gas to another person (the **potential buyer**) as soon as practicable; and
    - (ii) the potential buyer has an intention to export that regulated gas from Australia; and
    - (iii) the agreement is not a gas swap agreement, a mandatory government agreement or an agreement mentioned in section 51 or subsection 52(1) or (2); and
  - (d) the supplier fails to give the Commission a notice complying with subsection (11) and setting out the following information, on or before the



third business day after the calendar year following that mentioned in paragraph (b):

- (i) a description of the intention mentioned in subparagraph (c)(i);
- (ii) a description of the intention mentioned in subparagraph (c)(ii);
- (iii) information of a kind specified in a determination under subsection (8).

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

(7) A person (the **supplier**) contravenes this subsection if:

- (a) the supplier is a covered supplier; and
- (b) the amount of counted gas in relation to the supplier, that was produced in the most recent calendar year, is nil or is less than 100 petajoules; and
- (c) at a time on or after the commencement of this instrument:
  - (i) the supplier enters into an agreement to supply regulated gas to another person (the **buyer**) as soon as practicable; and
  - (ii) the buyer has an intention to export that regulated gas from Australia; and
  - (iii) the agreement is not a gas swap agreement, a mandatory government agreement or an agreement mentioned in section 51 or subsection 52(1) or (2); and
- (d) the supplier fails to give the Commission a notice complying with subsection (11) and setting out the following information, on or before the third business day after the calendar year following that mentioned in paragraph (b):
  - (i) a description of the agreement mentioned in subparagraph (c)(i);
  - (ii) a description of the intention mentioned in subparagraph (c)(ii);
  - (iii) information of a kind specified in a determination under subsection (8).

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
- (b) for a person other than a body corporate—600 penalty units.

(8) For the purposes of subparagraphs (6)(d)(iii) and (7)(d)(iii), the Commission may, by legislative instrument, make a determination specifying kinds of information.

(9) Before making a determination under subsection (8), the Commission must consult with the public about the proposed determination.

(10) In making a determination under subsection (8), the Commission must take into account comments made in consultations under subsection (9).

(11) For the purposes of this section, a notice complies with this subsection if it is:

- (a) in writing; and
- (b) in a form approved by the Commission in writing (if any).

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### **42 Commission may disclose information**

- (1) The Commission may disclose information that is given to it in accordance with this Part to any of the following, for a purpose or purposes covered by subsection (2):
  - (a) the Minister administering Part IVBB of the Act;
  - (b) the Energy Minister;
  - (c) the Resources Minister;
  - (d) the Industry Minister;
  - (e) the Departments administered by those Ministers.
- (2) This subsection covers the following purposes:
  - (a) the purpose of administering Part IVBB of the Act;
  - (b) the purpose of administering Division 6 of Part 3 of the *Customs (Prohibited Exports) Regulations 1958* (the ADGSM);
  - (c) the purpose of developing government policy in relation to regulated gas.

### **43 Commission may publish information relating to small supplier deemed exemption or conditional Ministerial exemption**

- (1) The Commission must publish information covered by subsection (2) in relation to a supplier in a manner that the Commission considers appropriate, as soon as practicable after the Commission obtains the information.
- (2) This subsection covers the following information:
  - (a) if subsection 26(1), 27(1) or 28(1) does not apply in relation to the supplier because of subsection 55(1)—the name of the supplier;
  - (b) if the supplier is specified in a conditional Ministerial exemption:
    - (i) the name of the supplier; and
    - (ii) the period during which the conditional Ministerial exemption is in force; and
    - (iii) conditions (if any) specified in the conditional Ministerial exemption; and
    - (iv) if the conditional Ministerial exemption is varied—details regarding the variation; and
    - (v) if the conditional Ministerial exemption is revoked—details regarding the revocation.
- (3) However, the Commission must not publish the information if doing so:
  - (a) would prejudice the commercial interests of the supplier in a substantial way; or
  - (b) is contrary to the public interest.

### **44 Joint ventures—specified person to publish or report**

- (1) This section applies if:
  - (a) a covered supplier carries on a joint venture; and
  - (b) the joint venture is, or includes, gas market conduct.

- (2) Any of the persons who carry on the joint venture may notify the Commission in writing that:
- (a) a specified person will publish or report information on behalf of the joint venture for the purposes of this subsection; and
  - (b) the information published or reported will relate to specified covered suppliers; and
  - (c) the notice has effect for a specified period.
- (3) If the Commission receives a notice under subsection (2), during the period specified in the notice under paragraph (2)(c):
- (a) for the purposes of section 34, treat any statement maintained by the specified person on its website, to the extent it specifies that it is published for the purposes of that section and that it relates to the joint venture, as being a statement maintained on the website of each covered supplier specified in the notice under paragraph (2)(b) of this section;
  - (b) for the purposes of sections 35 to 40, treat any notice given to the Commission by the specified person, to the extent it specifies that it is given for the purposes of any of those sections and that it relates to the joint venture, as being a notice given to the Commission by each of those covered suppliers.

## Part 7—Exemptions, etc.

### 45 Deemed exemption for supply of regulated gas for less than 12 months

- (1) The civil penalty provisions in Division 1 of Part 3 do not apply if the gas EOI mentioned in the provision relates to a proposed supply of regulated gas for a period of less than 12 months.
- (2) The civil penalty provisions in Division 2 of Part 3 do not apply if the gas initial offer mentioned in the provision relates to a proposed supply of regulated gas for a period of less than 12 months.
- (3) The civil penalty provisions in Division 3 of Part 3 do not apply if the gas final offer mentioned in the provision relates to a proposed supply of regulated gas for a period of less than 12 months.
- (4) The civil penalty provisions in Division 1 of Part 4 do not apply if the agreement or offer mentioned in the provision relates to a proposed supply of regulated gas for a period of less than 12 months.

### 46 Deemed exemption for gas EOI issued in respect of 2 or fewer persons

The civil penalty provisions in Division 1 of Part 3, and sections 34, 35 and 36, do not apply in relation to a gas EOI if all of the following apply:

- (a) the supplier has issued the gas EOI for the purpose of ascertaining whether one or more particular persons (each of which is a **gas EOI target**) is interested in acquiring regulated gas;
- (b) the total number of gas EOI targets is 2 or fewer;
- (c) the supplier has not issued the gas EOI to a person who is not a gas EOI target.

### 47 Deemed exemption for export

- (1) The civil penalty provisions in Division 2 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas initial offer, do not apply if, at the time the gas initial offer is issued, the person to whom the gas initial offer is issued intends to export the regulated gas intended to be supplied in accordance with the gas initial offer, from Australia in a liquid state.
- (2) The civil penalty provisions in Division 3 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas final offer, do not apply if, at the time the gas final offer is issued, the person to whom the gas final offer is issued intends to export the regulated gas intended to be supplied in accordance with the gas final offer, from Australia in a liquid state.
- (3) The civil penalty provisions in Part 4 and the civil penalty provisions in Parts 5 and 6 (other than section 41), to the extent that they relate to an agreement to supply regulated gas, do not apply if, at the time the agreement is entered into, the person to whom the regulated gas is to be supplied under the agreement intends to export the regulated gas from Australia in a liquid state.

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**48 Deemed exemption for gas swap agreements**

- (1) The civil penalty provisions in Division 1 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas EOI, do not apply if the gas EOI relates to a proposed supply of regulated gas under a gas swap agreement.
- (2) The civil penalty provisions in Division 2 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas initial offer, do not apply if the gas initial offer relates to a proposed supply of regulated gas under a gas swap agreement.
- (3) The civil penalty provisions in Division 3 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas final offer, do not apply if the gas final offer relates to a proposed supply of regulated gas under a gas swap agreement.
- (4) The civil penalty provisions in Part 4 and the civil penalty provisions in Parts 5 and 6 (other than section 41), to the extent that they relate to an agreement to supply regulated gas, do not apply if the agreement is a gas swap agreement.

**49 Deemed exemption for foundational agreements and gas master supply agreements**

- (1) The civil penalty provisions in Division 1 of Part 3 do not apply if the gas EOI mentioned in the provision relates to a proposed supply of regulated gas under a foundational agreement or a gas master supply agreement.
- (2) The civil penalty provisions in Division 2 of Part 3 do not apply if the gas initial offer mentioned in the provision relates to a proposed supply of regulated gas under a foundational agreement or a gas master supply agreement.
- (3) The civil penalty provisions in Division 3 of Part 3 do not apply if the gas final offer mentioned in the provision relates to a proposed supply of regulated gas under a foundational agreement or a gas master supply agreement.
- (4) The civil penalty provisions in Division 1 of Part 4 do not apply if the agreement mentioned in the provision is a foundational agreement or a gas master supply agreement.

**50 Deemed exemption for subordinate contract or transaction notice not determining price**

The civil penalty provisions in Part 4 (other than section 28) do not apply if all of the following conditions are satisfied:

- (a) the agreement is a subordinate contract, or transaction notice, under a gas master supply agreement;
- (b) the price of the regulated gas to be supplied under the subordinate contract or transaction notice was determined under the gas master supply agreement or under another contract;
- (c) the subordinate contract or transaction notice does not include a provision determining that price.

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### **51 Deemed exemption for gas exchange transactions**

The civil penalty provisions in Part 4 and the civil penalty provisions in Parts 5 and 6, to the extent that they relate to an agreement to supply regulated gas, do not apply if the agreement results directly from a transaction on a gas exchange that is:

- (a) a declared wholesale gas market (within the meaning of the National Gas Law); or
- (b) a short term trading market (within the meaning of the National Gas Law).

### **52 Deemed exemption for gas trading exchange transactions**

- (1) Subsections 26(1) and 27(1) do not apply if all of the following conditions are met:
  - (a) the agreement results directly from a transaction on a gas trading exchange;
  - (b) the transaction is not any of the following:
    - (i) a Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
    - (ii) a Broker Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange).
- (2) Subsections 26(1) and 27(1) do not apply if all of the following conditions are met:
  - (a) the agreement results directly from a transaction on a gas trading exchange;
  - (b) the transaction is any of the following:
    - (i) a Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
    - (ii) a Broker Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
  - (c) under the agreement mentioned in paragraph (a), all of the regulated gas to be supplied under that agreement is to be so supplied no later than the end of the period that:
    - (i) starts at the time when that agreement is entered into; and
    - (ii) ends at the end of the third gas day starting after that time;
  - (d) all of the regulated gas to be supplied under that agreement is so supplied before the end of that period.
- (3) Subsection 28(1) does not apply if all of the following conditions are met:
  - (a) under the offer made on the gas trading exchange, all of the regulated gas to be supplied in accordance with the offer is to be so supplied no later than the end of the period that:
    - (i) starts at the time when the offer is made; and
    - (ii) ends at the end of the third gas day starting after that time;
  - (b) all of the regulated gas to be supplied in accordance with the offer is so supplied before the end of that period.
- (4) Subsection 28(1) does not apply if the offer is for a transaction that is any of the following:

- 
- (a) a Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
  - (b) a Broker Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange).

### **53 Deemed exemption for retailers**

A civil penalty provision in Parts 3, 4, 5 and 6 does not apply at a time if all of the following conditions are met:

- (a) at the time, the person mentioned in that provision:
  - (i) held a retailer authorisation (within the meaning of the National Energy Retail Law as it applies in a State or a Territory); or
  - (ii) was a retailer (within the meaning of the *Electricity Industry Act 2000* (Vic.)); or
  - (iii) held a licence authorising the person to sell gas by retail under the *Gas Industry Act 2001* (Vic.);
- (b) no more than 50 per cent of the annual turnover of the person during the most recent financial year ending before the time, to the extent that it is attributable to business operations related to the production, supply and acquisition of gas, is attributable to a business of producing regulated gas carried on by the person.

### **54 Deemed exemption for mandatory government agreements**

- (1) The civil penalty provisions in Division 1 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas EOI, do not apply if the gas EOI relates to a proposed supply of regulated gas under a mandatory government agreement.
- (2) The civil penalty provisions in Division 2 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas initial offer, do not apply if the gas initial offer relates to a proposed supply of regulated gas under a mandatory government agreement.
- (3) The civil penalty provisions in Division 3 of Part 3, and the civil penalty provisions in Parts 5 and 6 to the extent that they relate to a gas final offer, do not apply if the gas final offer relates to a proposed supply of regulated gas under a mandatory government agreement.
- (4) The civil penalty provisions in Part 4 and the civil penalty provisions in Parts 5 and 6 (other than section 41), to the extent that they relate to an agreement to supply regulated gas, do not apply if the agreement is a mandatory government agreement.

### **55 Deemed exemption for small suppliers supplying the domestic market**

- (1) Subsections 26(1), 27(1) and 28(1) do not apply at a time to the supplier mentioned in those subsections if:
  - (a) the amount of counted gas in relation to the supplier, that has been produced in the most recent calendar year ending before the time, is nil or is less than 100 petajoules; and

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- (b) subsection (2) does not apply; and
  - (c) the supplier has not entered into an agreement, at a time on or after the commencement of this instrument, to supply regulated gas with a person who (at that time) intended to export the regulated gas from Australia.
- (2) For the purposes of paragraph (1)(b), this subsection applies if:
- (a) the supplier entered into an agreement, before the commencement of this instrument, to supply regulated gas with a person; and
  - (b) the supplier has varied the agreement, on or after that commencement, to increase the amount of regulated gas to be supplied under the agreement; and
  - (c) at the time of the variation, the person intended to export regulated gas supplied under the agreement (as varied) from Australia.
- (3) For the purposes of paragraph (1)(c) and subsection (2), disregard an agreement if it is a gas swap agreement, a mandatory government agreement or an agreement mentioned in section 51 or subsection 52(1) or (2).

### *Counted gas*

- (4) The following regulated gas is **counted gas** in relation to a person (the **supplier**):
- (a) any regulated gas produced by the supplier or a related body corporate in the parts of Australia to which this Part applies (see section 9);
  - (b) if there is an agreement under which the supplier or a related body corporate has a right to ownership, or the value of sale, of a particular amount of regulated gas produced by the parties to that agreement (other than by the supplier or a related body corporate) in those parts of Australia, in accordance with that agreement—that particular amount of regulated gas;
  - (c) if there is an agreement under which the supplier or a related body corporate has a right to ownership, or the value of sale, of the regulated gas produced by the parties to that agreement (other than by the supplier or a related body corporate) in those parts of Australia, in accordance with that agreement—so much of that regulated gas as is covered by subsection (5).
- (5) For the purposes of paragraph (4)(c), this subsection covers regulated gas if:
- (a) the supplier, or a related body corporate, is a party to an agreement (the **second agreement**) with the parties to the agreement mentioned in paragraph (4)(c); and
  - (b) under the second agreement, the regulated gas is to be sold or marketed.
- (6) For the purposes of paragraphs (4)(b) and (c), disregard an agreement if it is a gas swap agreement or a mandatory government agreement.

## **56 Deemed exemption for person covered by conditional Ministerial exemption—gas pricing penalty provisions**

- (1) Subsection 26(1) does not apply if all of the following conditions are met:
- (a) the supplier mentioned in that subsection is specified in a conditional Ministerial exemption;



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- (b) the conditional Ministerial exemption states that it applies in relation to subsection 26(1);
  - (c) on the day on which the supplier enters into the agreement for the supply of regulated gas as mentioned in paragraph 26(1)(b), the conditional Ministerial exemption is in force.
- (2) Subsection 27(1) does not apply if all of the following conditions are met:
- (a) the supplier mentioned in that subsection is specified in a conditional Ministerial exemption;
  - (b) the conditional Ministerial exemption states that it applies in relation to subsection 27(1);
  - (c) on the day on which the supplier supplies regulated gas under the agreement as mentioned in paragraph 27(1)(c), the conditional Ministerial exemption is in force.
- (3) Subsection 28(1) does not apply if all of the following conditions are met:
- (a) the supplier mentioned in that subsection is specified in a conditional Ministerial exemption;
  - (b) the conditional Ministerial exemption states that it applies in relation to subsection 28(1);
  - (c) on the day on which the supplier makes the offer on a gas trading exchange for the supply of regulated gas as mentioned in paragraph 28(1)(b), the conditional Ministerial exemption is in force.

### **57 Deemed exemption for person covered by conditional Ministerial exemption—other gas penalty provisions**

- (1) The provision specified in column 1 of an item in the following table does not apply if all of the following conditions are met:
- (a) the supplier mentioned in that provision is specified in a conditional Ministerial exemption;
  - (b) the conditional Ministerial exemption states that it applies in relation to that provision;
  - (c) the conditional Ministerial exemption is in force on the day on which the supplier engaged in the conduct specified in column 2 of the item.

<b>Conditional Ministerial exemptions applying in relation to provisions in Parts 3 and 4</b>		
<b>Item</b>	<b>Provision</b>	<b>Specified conduct</b>
1	subsection 10(1)	issuing the gas EOI as mentioned in paragraph 10(1)(b)
2	section 11	issuing the gas EOI as mentioned in paragraph 11(b)
3	section 12	issuing the gas EOI as mentioned in paragraph 12(b)
4	section 13	issuing the gas EOI as mentioned in paragraph 13(b)
5	subsection 14(1)	issuing the gas EOI as mentioned in paragraph 14(1)(b)
6	subsection 16(1)	issuing the gas initial offer as mentioned in paragraph 16(1)(b)
7	section 17	issuing the gas initial offer as mentioned in paragraph 17(b)
8	subsection 18(1)	issuing the gas initial offer as mentioned in paragraph 18(1)(b)
9	subsection 20(1)	issuing the gas final offer as mentioned in paragraph 20(1)(b)

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<b>Conditional Ministerial exemptions applying in relation to provisions in Parts 3 and 4</b>		
<b>Item</b>	<b>Provision</b>	<b>Specified conduct</b>
10	subsection 21(1)	issuing the gas final offer as mentioned in paragraph 21(1)(b)
11	subsection 24(1)	entering into the agreement as mentioned in paragraph 24(1)(b)
12	subsection 25(1)	entering into the agreement as mentioned in paragraph 25(1)(b)

- (2) The provision specified in column 1 of an item in the following table does not apply if all of the following conditions are met:
- the party mentioned in that provision is specified in a conditional Ministerial exemption;
  - the conditional Ministerial exemption states that it applies in relation to that provision;
  - the conditional Ministerial exemption is in force on the day on which the party fails to deal in good faith as mentioned in the paragraph specified in column 2 of the item.

<b>Conditional Ministerial exemptions applying in relation to provisions in Part 5</b>		
<b>Item</b>	<b>Provision</b>	<b>Specified paragraph</b>
1	subsection 30(1)	paragraph 30(1)(c)
2	subsection 31(1)	paragraph 31(1)(c)

- (3) The provision specified in column 1 of an item in the following table does not apply if all of the following conditions are met:
- the supplier mentioned in that provision is specified in a conditional Ministerial exemption;
  - the conditional Ministerial exemption states that it applies in relation to that provision;
  - the conditional Ministerial exemption is in force on the day on which the supplier fails to meet the requirement mentioned in the paragraph specified in column 2 of the item.

<b>Conditional Ministerial exemptions applying in relation to provisions in Part 6</b>		
<b>Item</b>	<b>Provision</b>	<b>Specified paragraph</b>
1	subsection 33(1)	paragraph 33(1)(b)
2	subsection 34(1)	paragraph 34(1)(b)
3	subsection 35(1)	paragraph 35(1)(b)
4	subsection 36(1)	paragraph 36(1)(c)
5	subsection 36(2)	paragraph 36(2)(c)
6	subsection 37(1)	paragraph 37(1)(c)
7	subsection 38(1)	paragraph 38(1)(c)
8	subsection 39(1)	paragraph 39(1)(d)
9	subsection 40(1)	paragraph 40(1)(c)
10	subsection 40(2)	paragraph 40(2)(c)

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**Conditional Ministerial exemptions applying in relation to provisions in Part 6**

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<b>Item</b>	<b>Provision</b>	<b>Specified paragraph</b>
11	subsection 40(3)	paragraph 40(3)(c)
12	subsection 41(1)	paragraph 41(1)(c)
13	subsection 41(6)	paragraph 41(6)(d)
14	subsection 41(7)	paragraph 41(7)(d)

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## **Part 8—Conditional Ministerial exemptions**

### **Division 1—Application for conditional Ministerial exemption**

#### **58 Application for conditional Ministerial exemption**

- (1) A person or persons may apply to the Energy Minister for a conditional Ministerial exemption.

Note: See sections 56 and 57 for the effect of a conditional Ministerial exemption.

- (2) The application must:
  - (a) be in writing; and
  - (b) be in a form approved by the Energy Minister in writing.

#### **59 Withdrawal of application**

- (1) If a person makes, or persons make, an application under section 58, the person or persons may withdraw the application unless the Energy Minister:
  - (a) has decided to grant the conditional Ministerial exemption; or
  - (b) has decided not to grant the conditional Ministerial exemption.
- (2) The withdrawal must:
  - (a) be in writing; and
  - (b) be in a form approved by the Energy Minister in writing.
- (3) For the purposes of this Part, if a person withdraws, or persons withdraw, an application at a time in accordance with subsection (1), Divisions 2 and 5 apply, on and after that time, as if the person or persons had not made the application.

## **Division 2—Grant of conditional Ministerial exemption**

### **60 Meaning of *gas penalty provision* and *gas pricing penalty provision***

- (1) Each of the following is a ***gas penalty provision***:
- (a) a gas pricing penalty provision;
  - (b) subsection 10(1);
  - (c) section 11;
  - (d) section 12;
  - (e) section 13;
  - (f) subsection 14(1);
  - (g) subsection 16(1);
  - (h) section 17;
  - (i) subsection 18(1);
  - (j) subsection 20(1);
  - (k) subsection 21(1);
  - (l) subsection 24(1);
  - (m) subsection 25(1);
  - (n) subsection 30(1);
  - (o) subsection 31(1);
  - (p) subsection 33(1);
  - (q) subsection 34(1);
  - (r) subsection 35(1);
  - (s) subsection 36(1);
  - (t) subsection 36(2);
  - (u) subsection 37(1);
  - (v) subsection 38(1);
  - (w) subsection 39(1);
  - (x) subsection 40(1);
  - (y) subsection 40(2);
  - (z) subsection 40(3);
  - (za) subsection 41(1);
  - (zb) subsection 41(6);
  - (zc) subsection 41(7).
- (2) Each of the following is a ***gas pricing penalty provision***:
- (a) subsection 26(1);
  - (b) subsection 27(1);
  - (c) subsection 28(1).

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**61 Energy Minister, with agreement of Resources Minister, may grant conditional Ministerial exemption**

- (1) The Energy Minister may, in writing, grant a conditional Ministerial exemption, in relation to a person or more than one person, from any or all of the gas penalty provisions if:
- (a) the Energy Minister receives an application under section 58 from:
    - (i) that person; or
    - (ii) each of those persons; and
  - (b) where the conditional Ministerial exemption is to be subject to conditions:
    - (i) the Energy Minister has given that person, or each of those persons, a notice under section 62 setting out those conditions; and
    - (ii) 14 business days has passed since that notice was given; and
  - (c) the Energy Minister is satisfied that it is appropriate to grant the conditional Ministerial exemption; and
  - (d) the Resources Minister is satisfied that it is appropriate to grant the conditional Ministerial exemption.

Note: The Energy Minister cannot exercise a power under this subsection unless the Resources Minister is satisfied of the matter mentioned in paragraph (d).

- (2) Paragraph (1)(b) does not apply if:
- (a) that application mentioned in subsection (1) sets out proposed conditions to which the conditional Ministerial exemption will be subject; and
  - (b) the conditional Ministerial exemption mentioned in that subsection specifies the same conditions.
- (3) Paragraph (1)(b) does not apply if the Energy Minister reasonably considers that the proposed conditions are necessary to address exceptional circumstances.
- (4) For the purposes of being satisfied that it is appropriate to grant the conditional Ministerial exemption, a Minister may take into account any of the following matters:
- (a) the extent to which the conditional Ministerial exemption would promote a workably competitive market for regulated gas in the parts of Australia to which this Part applies (see section 9);
  - (b) the extent to which the conditional Ministerial exemption would promote the affordability and availability of regulated gas on reasonable terms in those parts of Australia;
  - (c) the extent to which the conditional Ministerial exemption would promote the sufficiency or adequacy of investment in, and supply and production of, regulated gas to meet demand in those parts of Australia;
  - (d) the effect or expected effect of other related decisions or government policies;
  - (e) the impact on trade and exports, and on international relations, of granting the conditional Ministerial exemption;
  - (f) the impact on the economy of granting the conditional Ministerial exemption;
  - (g) the object of Part IVBB of the Act;
  - (h) any other matter the Minister considers relevant.

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- (5) The Energy Minister must not grant a conditional Ministerial exemption from gas penalty provisions that are not gas pricing penalty provisions unless:
- (a) the Energy Minister is satisfied that the grant of the conditional Ministerial exemption would not have a significant impact on the matters specified in subsection (4); and
  - (b) the Resources Minister is satisfied that that grant would not have a significant impact on those matters.

Note: The Energy Minister cannot grant the conditional Ministerial exemption unless the Resources Minister is satisfied of the matter mentioned in paragraph (b).

- (6) The Energy Minister must consult with each of the following before granting a conditional Ministerial exemption:
- (a) the Minister administering Part IVBB of the Act;
  - (b) the Industry Minister.
- (7) However, a failure to comply with subsection (6) does not affect the validity of the conditional Ministerial exemption.

## **62 Conditions notices**

- (1) This section applies if the Energy Minister is considering:
- (a) granting a conditional Ministerial exemption; and
  - (b) specifying in the conditional Ministerial exemption that it is subject to conditions.

- (2) The Energy Minister may give each person to be specified in the conditional Ministerial exemption a notice in writing setting out those conditions.

Note: The Energy Minister cannot grant a conditional Ministerial exemption unless the Resources Minister is satisfied of the matter mentioned in paragraph 61(1)(d).

- (3) The Energy Minister must give the Commission a copy of the notice as soon as practicable.

## **63 Conditions in conditional Ministerial exemption that Energy Minister and Resources Minister consider appropriate**

- (1) A conditional Ministerial exemption may specify that it is subject to conditions if:
- (a) the Energy Minister is satisfied that the conditions are appropriate; and
  - (b) the Resources Minister is satisfied that the conditions are appropriate.
- (2) For the purposes of being satisfied that the conditions are appropriate, a Minister may have regard to the matters mentioned in subsection 61(4).
- (3) Without limiting the scope of subsection (1), the conditions that may be specified include the following kinds of conditions:
- (a) a condition that applies in respect of a particular gas production area or particular gas production areas;
  - (b) conditions that, in specified circumstances, are contravened if a person specified in the conditional Ministerial exemption engages in conduct that,

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apart from the conditional Ministerial exemption, would contravene a gas penalty provision.

### **64 Contents of conditional Ministerial exemption**

A conditional Ministerial exemption granted in relation to a person or more than one person must:

- (a) specify the person or persons; and
- (b) state that it applies in relation to one or more specified gas penalty provisions; and
- (c) specify the day on which the decision to make the conditional Ministerial exemption was made; and
- (d) state the period during which it is in force, which must:
  - (i) start on or after the day on which the decision to grant the conditional Ministerial exemption is made; and
  - (ii) end no earlier than 12 months after the day on which it starts; and
- (e) state the conditions (if any) to which the conditional Ministerial exemption is subject.

### **65 Notice of decision**

- (1) This section applies if the Energy Minister receives an application under section 58 from a person for a conditional Ministerial exemption, and either of the following apply:
  - (a) the Energy Minister decides to grant the conditional Ministerial exemption;
  - (b) the Energy Minister decides not to grant the conditional Ministerial exemption.
- (2) The Energy Minister must give the person a decision notice (see subsection (3)) as soon as practicable.
- (3) The decision notice must:
  - (a) be in writing; and
  - (b) if paragraph (1)(a) applies:
    - (i) include a copy of the conditional Ministerial exemption; and
    - (ii) state the reasons for the decision to grant the conditional Ministerial exemption; and
  - (c) if paragraph (1)(b) applies—state the reasons for the Energy Minister deciding not to grant the conditional Ministerial exemption.
- (4) If paragraph (1)(a) applies, the Energy Minister must give a copy of the decision notice to the Commission as soon as practicable.



### **Division 3—Application for variation or revocation of conditional Ministerial exemption**

#### **66 Application for variation or revocation of conditional Ministerial exemption**

- (1) The person that applied for the grant of the conditional Ministerial exemption may apply to the Energy Minister for a variation or revocation of a conditional Ministerial exemption.

Note: See sections 56 and 57 for the effect of a conditional Ministerial exemption.

- (2) The application must:
  - (a) be in writing; and
  - (b) be in a form approved by the Energy Minister in writing.

#### **67 Withdrawal of application**

- (1) If a person makes an application under section 66, the person may withdraw the application unless the Energy Minister:
  - (a) has decided to grant the conditional Ministerial exemption; or
  - (b) has decided not to grant the conditional Ministerial exemption.
- (2) The withdrawal must:
  - (a) be in writing; and
  - (b) be in a form approved by the Energy Minister in writing.
- (3) For the purposes of this Part, if a person withdraws an application at a time in accordance with subsection (1), Divisions 4 and 5 apply, in relation to later times, as if the person had not made the application.

## **Division 4—Variation or revocation of conditional Ministerial exemption**

### **68 Variation or revocation of conditional Ministerial exemption**

- (1) The Energy Minister may, in writing, vary or revoke a conditional Ministerial exemption granted in relation to a person or more than one person if:
  - (a) the Energy Minister receives an application under section 66 from:
    - (i) that person; or
    - (ii) one of those persons; and
  - (b) both of the following apply:
    - (i) the Energy Minister has given all of those persons a notice under section 69 in relation to the variation or revocation;
    - (ii) 14 business days has passed since that notice was given; and
  - (c) the Energy Minister is satisfied that it is appropriate to make the variation or revocation; and
  - (d) the Resources Minister is satisfied that it is appropriate to make the variation or revocation.

Note: The Energy Minister cannot exercise a power under this subsection unless the Resources Minister is satisfied of the matter mentioned in paragraph (d).

- (2) Paragraph (1)(a) does not apply if the Energy Minister reasonably considers that a person specified in the conditional Ministerial exemption:
  - (a) has contravened, or is contravening, a condition to which the conditional Ministerial exemption is subject; or
  - (b) has contravened, or is contravening a provision of the Act or this instrument.
- (3) Paragraph (1)(a) does not apply in the case of a variation that is of a minor or technical nature.
- (4) Paragraph (1)(b) does not apply if the Energy Minister reasonably considers that the variation or revocation is necessary to address exceptional circumstances.
- (5) Subsections 61(4), (5), (6) and (7) apply in relation to the variation or revocation of a conditional Ministerial exemption under subsection (1) in the same way that they apply in relation to the grant of a conditional Ministerial exemption.

### **69 Notices of proposed variation or revocation**

- (1) The Energy Minister may give a person a notice in writing stating that the Energy Minister is proposing to vary or revoke a conditional Ministerial exemption that specifies the person.
- (2) The notice must set out the following:
  - (a) the proposed variation or revocation;
  - (b) the reasons for the proposed variation or revocation;
  - (c) the day on which the proposed variation or revocation is to take effect.

## **70 Contents of variation or revocation**

A variation or revocation made under section 68 must specify the details of the variation or revocation, including:

- (a) the day on which the decision to make the variation or revocation was made; and
- (b) the day on which the variation or revocation takes effect; and
- (c) in the case of a variation that changes the period during which the conditional Ministerial exemption is in force—that period; and
- (d) in the case of a variation that changes or removes conditions to which the conditional Ministerial exemption is subject—state that change or removal.

## **71 Notice of decision to vary or revoke conditional Ministerial exemption**

- (1) This section applies if:
  - (a) the Energy Minister decides to vary or revoke a conditional Ministerial exemption; or
  - (b) in a case where a person has applied for a variation or revocation of a conditional Ministerial exemption—the Energy Minister decides not to make the variation or revocation.
- (2) The Energy Minister must give the person a decision notice (see subsection (3)) as soon as practicable.
- (3) The decision notice must:
  - (a) be in writing; and
  - (b) if paragraph (1)(a) applies:
    - (i) in the case of a variation—include a copy of the conditional Ministerial exemption as varied; and
    - (ii) in the case of a revocation—include a statement that the conditional Ministerial exemption is revoked; and
    - (iii) state the reasons for the decision to make the variation or revocation; and
  - (c) if paragraph (1)(b) applies—state the reasons for the Energy Minister deciding not to make the variation or revocation.
- (4) If paragraph (1)(a) applies, the Energy Minister must give a copy of the decision notice to the Commission as soon as practicable.

## **72 Renewals**

- (1) This section applies if:
  - (a) a person makes an application under section 66 for a variation of a conditional Ministerial exemption; and
  - (b) the effect of the proposed variation is to extend the period during which the conditional Ministerial exemption is in force.
- (2) Treat the conditional Ministerial exemption as being in force until the Energy Minister gives the person a notice under section 71 that the Energy Minister has decided:

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- (a) to make the variation; or
- (b) not to make the variation.

## **Division 5—Miscellaneous**

### **73 Obligation to comply with conditions in conditional Ministerial exemption**

- (1) A person contravenes this subsection if:
  - (a) the person is specified in a conditional Ministerial exemption; and
  - (b) the person engages in conduct at a time when the conditional Ministerial exemption is in force; and
  - (c) the conduct contravenes a condition specified in the conditional Ministerial exemption.
- (2) Subsection (1) is a civil penalty provision.

### **74 Additional or corrected information in relation to application**

- (1) A person (the *applicant*) contravenes this subsection if:
  - (a) the applicant makes an application under section 58 or 66; and
  - (b) the applicant becomes aware that any of the following was incomplete or incorrect:
    - (i) information included in the application;
    - (ii) information, or a document, given by the applicant to the Energy Minister in relation to the application; and
  - (c) the applicant fails, as soon as practicable after becoming so aware, to give the Energy Minister the relevant complete and corrected information and documents.

Civil penalty:

- (a) for a body corporate—3,000 penalty units; and
  - (b) for a person other than a body corporate—600 penalty units.
- (2) Subsection (1) does not apply if the relevant complete and corrected information and documents have already been given by any person to the Energy Minister in connection with any application to grant, vary or revoke a conditional Ministerial exemption.

### **75 Minister may request additional information and documents**

- (1) If a person makes an application under section 58 or 66, the Energy Minister may request a person covered by subsection (2) to give the Energy Minister specified information or documents relevant to the application.
- (2) For the purposes of subsection (1), this subsection covers the following persons:
  - (a) the person that made the application;
  - (b) any other person that the Energy Minister reasonably considers to have information or documents relevant to the application.
- (3) The request must:
  - (a) be in writing; and
  - (b) specify a time by which the information or documents requested are to be given to the Energy Minister.

## Part 9—Miscellaneous

### 76 Review of this instrument

- (1) The Energy Minister and the Resources Minister, acting jointly, may cause a review of the operation of this instrument to be undertaken.
- (2) The Energy Minister and the Resources Minister must, acting jointly, consult with the following before causing the review to be undertaken:
  - (a) the Minister administering Part IVBB of the Act;
  - (b) the Industry Minister.
- (3) However, a failure to comply with subsection (2) does not affect the validity of the review.
- (4) The person or persons undertaking the review may be any of the following:
  - (a) the Commission;
  - (b) any other person who the Energy Minister and the Resources Minister consider to be qualified to undertake the review.
- (5) The person or persons undertaking the review must:
  - (a) offer an opportunity for interested parties to make written submissions; and
  - (b) take those written submissions into account in undertaking the review.
- (6) The person or persons undertaking the review must give the Energy Minister and the Resources Minister a written report of the review.
- (7) No later than 1 July 2025, the Energy Minister and the Resources Minister, acting jointly, must cause a review of the operation of this instrument to be undertaken under subsection (1).
- (8) To avoid doubt, subsection (7) does not prevent the Energy Minister or the Resources Minister from causing another review of the operation of this instrument to be undertaken at any time.

### 77 Delegation

- (1) The Energy Minister may, in writing, delegate all or any of the Energy Minister's powers or functions under Part 8 to:
  - (a) the Secretary of the Energy Department; or
  - (b) an SES employee, or an acting SES employee, in the Energy Department.
- (2) The Resources Minister may, in writing, delegate all or any of the Resources Minister's powers or functions under Part 8 to:
  - (a) the Secretary of the Resources Department; or
  - (b) an SES employee, or an acting SES employee, in the Resources Department.

- (3) In exercising a power or performing a function under a delegation under this section, the delegate must comply with any written directions of the Energy Minister or the Resources Minister (as the case may be).