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Department of Climate Change, Energy, the Environment and Water

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Gas Market Review – Consultation Paper

The Australian Financial Markets Association (AFMA) is responding to the Commonwealth Government's Gas Market Review Consultation Paper.

AFMA is the leading financial markets industry association promoting efficiency, integrity and professionalism in Australia's financial markets, including the capital, credit, derivatives, foreign exchange, energy, environmental, carbon, and other specialist markets. Our membership base is comprised of over 130 of Australia's leading financial market participants, including many of the energy firms who are key participants in the Australian gas market.

Key Points

i. **Current policy is not achieving the Government's objectives**
ii. **The review is an opportunity to introduce a more coherent framework that provides long-term certainty to investors and consumers**
iii. **Any change should be implemented in a transparent, predictable manner**

The current regulatory architecture of the Australian Domestic Gas Security Mechanism (ADGSM), Gas Market Code and the Heads of Agreement (HoA) was developed reactively and implemented rapidly without an overall view of how it should operate or what it should achieve. The rapid implementation of the framework caused significant disruption to the market and the resulting framework has failed to provide the coherent stable regulatory environment required to support the investment needed to secure the supply of gas to the east coast market. AFMA considers that this review presents an opportunity for the Commonwealth to reconsider its approach by introducing a new long-term framework to secure the east coast's gas supply.

1. Context for the review

The current gas supply framework was built in a series of ad-hoc responses to temporary price shocks in the east coast gas market. It is unclear what benefits the various interventions have delivered as the ACCC's latest Gas Inquiry report continues to identify supply challenges,[1] particularly in Victoria, and notes that the main impacts of the interventions have been:

- Producers pausing investment as a result of regulatory uncertainty
- Both gas buyers and sellers being frustrated by the Expression of Interest (EOI) process
- The chilling effect of regulation has made producers reluctant to contract outside of EOIs

Since 2022 regulatory uncertainty in the east coast gas market has limited the ability of the market to respond to ensure adequate supply. Uncertainty has been caused by both the near constant

[1] https://www.accc.gov.au/system/files/gas-inquiry-interim-june-2025.pdf

prospect of new regulation; and that new regulation introducing unpredictable and non-transparent discretionary ministerial powers that have made it difficult to invest in new assets or contract over long periods. The interventions have not delivered good outcomes for consumers who continue to complain about their inability to enter into long term contracts and any reductions in prices since mid-2022 have largely reflected movements in the global energy commodity markets rather being the result of Government policy. While the intervention has focused on Queensland based LNG producers, traditional gas fields in the southern states have continued their predicted decline leading to the increasing prospect of gas shortages with no clear policy developed to address these concerns.

AFMA considers that the review should look to develop a stable, long-term framework to ensure east coast gas security while also considering shorter term measures to increase regulatory certainty in the near term. Importantly, any changes recommended by this review should be implemented in a predictable and transparent manner to avoid further disruption to the gas market.

2. Current state of the gas market

AFMA's concerns

i. **Regulatory uncertainty has delayed contracting and needed investment**
ii. **The EOI framework is not working for buyers or sellers**
iii. **Well intentioned gas transparency measures have been poorly implemented**
iv. **Attempts to regulate wholesale prices have been counter productive**

2.1. Supply, security and trade

AFMA does not consider that the current gas supply framework has been effective in ensuring sufficient supply for the east coast market. We consider that the cumulative interventions have made the regulatory environment very uncertain, which has made it difficult to invest in gas production, transportation or storage assets. This has not been helped by the movement to quarterly ADGSM triggers which means that there is a near constant prospect of ministerial intervention in the export market. This uncertainty has been amplified by a broader lack of policy clarity regarding the role of gas in the energy market transition which has complicated long-term investment decisions. This has to a degree been alleviated by the Government's Future Gas Strategy.

As a result, many investment decisions, by both large LNG exporters and small domestic producers, have been delayed leading to less gas being available for the domestic market and increasing concerns about supply security in the southern states. The impact of these interventions is well described by the ACCC in their latest Gas Inquiry report, with a pause in investment in 2022 in anticipation of the introduction of the Code and further delays as a result of uncertainty caused by the policy debate around the last election. While AFMA's focus is the domestic gas market we note that the continued policy uncertainty, which has included recent proposals for gas reservation and interference in LNG export contracts, has had a negative impact on international perceptions of Australia as a reliable energy supplier.

2.2. Contracting and bargaining power imbalances

AFMA Considers that the Gas Market Code's EOI process is one of the least successful elements of the gas market intervention. The contracting provisions received less scrutiny than the pricing provisions during the establishment of the Code but in some ways have had more impact on the gas market. The EOI process was intended to make it easier for gas consumers to enter into long-term gas supply contracts but, as observed in the ACCC's Gas Inquiry report, it seems to have had almost the opposite impact with producers feeling that they are only able to offer gas through EOIs and consumers are unhappy with the lack of flexibility resulting from the EOI process.

Members have particularly noted that the process for making final offers and agreeing contracts is unnecessarily prescriptive and cumbersome leading to delays in executing agreements which are frustrating for both buyers and sellers. In particular they note that the prohibition on discussing gas supply agreements prior to a buyer accepting a final offer unnecessarily extends the contracting process as work on the agreement, which would usually happen in parallel with the commercial discussions, must be delayed until later in the process. Separating the final offer and finalisation of the contract also means that firms will generally have to seek management approval individually for the final offer and the final contract, which also extends the process.

AFMA offers the following observations on why the EOI process has not been successful. Fundamentally the EOI process is designed to ensure that all purchasers can access gas at the same price and on the same terms and conditions. While superficially appealing it has pushed producers to offer vanilla, flat, wellhead products which are not suitable for all buyers and discouraged them from offering the type of differentiated products that some buyers value.

There is some discussion that the Gas Code does not prevent producers from selling gas bilaterally, but experience of its practical impact is that the threat of regulatory action has had a chilling impact on producers, that has discouraged them from contracting outside of producer EOI processes. Our members consider that the exception in section 46 of the Code, for EOI's made to less than 3 parties, is not effective. Their view is that the exemption is premised on the basis that producers can distinguish individual parcels of gas that they are looking to market and can then have bilateral discussions with up to two parties about that parcel. In practice producers do not divide their reserves in this way as they look to market all their available gas and therefore are likely to want to have discussions with more than two parties, rendering the exemption ineffective. They are also reluctant to explore mechanisms that could permit them to take advantage of this exemption as they risk very high penalties under the anti-avoidance provision of the Competition and Consumer Act.

2.3. Transparency

AFMA supports improving transparency in the gas market but considers that the current approach could be improved by implementing a coherent strategic approach to collecting gas market data. The current approach to data collection has unnecessarily increased costs for market participants through duplication and poor implementation and this cost is particularly difficult for smaller domestic producers to bear. Additionally, much of the market considers there is inadequate transparency discussions between LNG exporters and government under the HoA.

Gas market participants reporting obligations have increased significantly since the commencement of the ACCC's gas pricing inquiry in 2017. The implementation of the ACCC's reporting requirements was very onerous for the industry as there was an extended period of discussions with the ACCC about what data they wanted and frequent changes to the reporting requirements. Additionally, as the ACCC's inquiry is notionally a time limited ad-hoc investigation, they have not implemented any systems to facilitate the collection or storage of data, meaning that participants and the ACCC have not been able to automate any of their reporting and leaving significant concerns about data security. In addition, parties with exemptions under the Code have additional reporting requirements that overlap with and are sometimes inconsistent with their other reporting requirements.

At the same time AEMO began collecting short term gas transaction data through the Gas Bulletin Board. While AEMO's reporting requirements were not without cost, we note their implementation was relatively smooth and that participants are able to handle the ongoing obligations reasonably efficiently. We suggest that AEMO's superior technical capability, history of interacting with participants and the ongoing nature of these obligations all contributed to its relatively smooth implementation.

AFMA was hopeful that the implementation of the wholesale market monitoring functions would provide an opportunity to look at gas data reporting systematically and implement an appropriate long-term framework. While we continue to be optimistic, the AER's implementation process has been fraught and the Commonwealth Government has failed to resolve the overlap between the AER's gas transparency powers and the ACCC's ongoing gas pricing inquiry. In particular we want to note:

- Data sharing between the AER, ACCC, ASIC and AEMO is not effective
- The AER's technical capability is embryonic and they appear to have under-scoped the work involved in implementing an industry wide reporting framework
- The AER has not been able to effectively access ASX data
- Consultation on the data requirements has been overly formal and has not given the industry a clear picture of what data will be collected

On top of this already messy state we understand DCCEEW intends to propose a rule change to amend the AER's wholesale market monitoring powers to allow them to collect longer-term gas contracting data, similar to information currently collected by the ACCC, to allow then information to be published more frequency. While AFMA agrees with the logic behind this proposal the timing of the change is poor, and we think it is symptomatic of the lack of strategy behind the gas transparency measures. We consider that altering the AER's reporting framework during the implementation phase is a poor decision that will result in additional costs that could have been avoided if the requirement had been identified earlier or minimised if it was added as part of a broader post implementation review.

While the current framework imposes many obligations on market participants to report information about their commercial activity many market participants consider that there is a lack of clarity regarding discussions between the Government and LNG exporters under the HoA and a perception that these conversations lead to agreements that are not visible to the market. Some participants have the perception that the current arrangements rely on non-transparent deal making between a small number of firms and the Government, while we think this framework should be revised, as long as it remains in place we consider that there should be as much transparency as possible about these arrangements to give the market confidence that the Government is not favouring any class of participants.

2.4. Pricing

AFMA considers that attempts to cap wholesale gas prices have been ineffective at delivering lower prices to consumers and have had negative impact on investment and the development of the gas market. The initial $12 price cap made under the emergency price order caused producers to delay gas projects and made it extremely difficult for parties to contract, more or less bringing the east coast gas market to a halt without delivering lower prices for gas consumers.

The impact of the price cap only began to be mitigated with the granting of exemptions under the Gas Market Code, which essentially removed price regulation in exchange for promises to supply the domestic market. While the exemption framework is an improvement our members note that:

- The small domestic supplier exemption is problematic as it prevents any contracting with the largest east coast participants
- Time limiting of conditional exemptions inhibits producers' ability to contract over the long term or make long-term investment decisions

Allowing the market to determine the price of gas is essential to ensuring the stable investment environment required to provide a secure gas supply for the east coast. AFMA considers that future policy development should focus on ensuring that an adequate volume of gas is available to the east coast market rather than trying to determine the price it is supplied at.

2.5. Efficient Markets

The consultation paper notes that facilitated gas markets have not developed as rapidly as hoped. While noting the importance of bilateral contracting and acknowledging that it is likely to remain the pre-dominant mode of transacting for the foreseeable future, AFMA would also like to see further development of facilitated gas markets and the gas financial market.

In AFMA's view regulatory uncertainty has been the main impediment to the development of facilitated gas markets. While the Declared Wholesale Gas Market and Short Term Trading Markets have continued to work well in the operational timeframe, longer term trading on the Gas Supply Hub (GSH) has been inhibited by the Code which effectively prevented producers from contracting for periods beyond T+3. While the conditional exemptions have assisted some participants to trade on the GSH the terms of the small domestic supplier exemption have prevented domestic producers from participating as they may unwittingly breach the Code if they are matched with an LNG exporter.

More broadly, lack of certainty about government gas policy has made it very difficult for market participants to take long-term views on future gas prices as parties who enter into long-term contracts risk large losses if government policy moves gas prices unexpectedly or prevents them from performing under their contract.

Collectively, the lack of policy certainty has limited the development of the facilitated gas markets and the gas financial market. This has contributed to many of the outcomes discussed in the paper such as wide bid/ ask spreads, low trading volumes and high volatility.

Additionally, the gas intervention has distracted policy makers from reforms that could have facilitated the development of the facilitated markets. We particularly note the reforms to allow anonymous trading on the GSH and to streamline gas prudential arrangements agreed to by Ministers at their August 2022 meeting that are yet to be implemented.[2]

2.6. Governance of Gas Market Regulations

As discussed above AFMA considers that the current governance framework is unwieldy and would benefit from a strategic review. Our main observations are:

a) Entrenching discretionary ministerial decisions making in the regulatory framework does not support regulatory certainty

b) The roles of the AER and ACCC are overlapping and confused, and it is unclear why the ACCC's gas inquiry is continuing now that the AER has been given an ongoing market monitoring function

c) Information sharing between the ACCC, AER, ASIC and AEMO is dysfunctional leading to duplication and higher compliance costs for the industry

AFMA considers that policy makers should look to remove ministers from the operation of the gas framework, assign roles to the bodies best equipped to perform them and ensure appropriate arrangements for information sharing between the various bodies.

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[2] https://www.energy.gov.au/sites/default/files/2022-08/Energy%20Ministers%20Meeting%20Communique%20-%2012%20August%202022.docx

3. A way forward

AFMA considers that this review presents a good opportunity to fundamentally review the current gas supply regulatory framework and to implement revised arrangements that can give long-term certainty to investors while providing confidence that the east coast gas supply will be adequate. We consider that the Government should look to implement a framework that supports the market to make investment decisions that will ensure adequate gas supplies.

We think key features of the new framework should be:

a) Stable regulatory settings that support both domestic and export contracting, with little or no ministerial decision making
b) Clarity that the objective of the arrangements is to ensure adequate supply, not to determine price
c) Ensure regulatory settings are proportionate, particularly for small scale domestically orientated suppliers
d) Remove government from the relationship between buyers and sellers
e) Implement efficient market transparency arrangements
f) Support the development of facilitated gas markets and the financial market

The rapid introduction of the current regulatory arrangements was a major contributor to them being so disruptive to the gas market; therefore, while our members are keen to see reform, we think that it should be considered and implemented in a way that minimises its impact on the market. We are therefore proposing a series of reforms that could be implemented in the short-term to alleviate some of the more problematic elements of the current framework, the medium-term to when changes to administrative arrangements are required and longer-term recommendations which we think should only be implemented following a more considered review.

3.1. Short-term fixes

AFMA considers that the most urgent reform priority should be to improve market confidence and remove barriers to transacting. We think these changes can be implemented quickly and bring tangible improvements to the market with minimal disruption. To improve market confidence, we think the Government should publish a reform roadmap setting out the proposed trajectory of the reforms and make a number of immediate changes to improve regulatory certainty.

To help improve regulatory certainty we propose the following changes to the ADGSM. It should be moved back to an annual trigger to give participants more confidence that ministers will not intervene in the market and the process for resolving inconsistency between ACCC and AEMO gas supply forecasts should be clarified (discussed further in section 3.2. In consultation with producers, the Government should consider extending all current exemptions to provide certainty through the transition to the long-term supply framework. Additionally, there should be greater clarity about how producers' previous commitments to supply the domestic market, including under exemptions, would be consider if the ADGSM were triggered. Lastly, after accounting for existing contributions, it should be equitable in its application. Currently the ADGSM penalises the LNG producers that have excess uncontracted gas volumes and thus creates a disincentive for increasing supply.

To promote long-term transacting in the gas market, we think the EOI provisions of the Gas Market Code should be amended to facilitate buyers and sellers to contract freely by streamlining the process for final offers and contracting and by amending the exemption in section 46 of the Code to make it clear that the Code does not limit bilateral contracting and that bilateral discussions and the resulting contracts will be not considered attempts at avoiding the Code's requirements. We also note that section 19 of the HoA, which largely replicates the Code's EOI obligations, would also need to be amended.

The consultation paper suggests that standardising Gas Supply Agreement (GSA) terms might facilitate contracting. While AFMA supports industry led contract standardisation to reduce transaction costs and had led the development of standardised contracts for the Australian energy financial market, we caution that standardisation is generally not successful in operationally complex physical markets such as the gas market. As a result, we think that mandating standard GSA terms is unlikely to be successful and may limit contracting, as seen with the EOI process, where parties are unable to include terms that meet their commercial and operational needs.

To promote the development of the facilitated markets, we think all trades on the GSH should be exempt from the Gas Market Code and rule changes should be submitted to the AEMC to implement the improvements to the GSH and gas market prudential arrangements agreed to by ministers in 2022.

AFMA Short-Term Recommendations

i. Publish a reform roadmap

ii. The ADGSM should revert to an annual trigger

iii. The process for triggering the ADGSM and determining producers supply obligations should be clarified

iv. The EOI process in the Code and the HoA should be amended to streamline the requirements process for final offers and contracting

v. The section 46 exemption should be amended to make it clear that the Code does not limit bilateral contracting

vi. Gas Code exemptions should be extended, in consultation with exemption holders

vii. Governments should not require standardised GSAs

viii. All GSH trades should be exempt from the Gas Market Code

ix. Initiate rule changes to allow anonymous trading on the GSH and to streamline gas prudential arrangements

3.2. Medium-term improvements

AFMA considers that there is significant potential to improve the gas market transparency arrangements by implementing a strategic transparency framework that; minimises duplication, ensures information is collected by the body best placed to collect it and facilitates effective data sharing. We recognise that making the necessary administrative changes will take some time but consider that these changes could be implemented faster than more fundamental long-term changes to the gas supply arrangement.

The ACCC’s gas pricing inquiry should end. Pricing inquiries are intended to be short term investigations of a particular market, the gas inquiry (and the related electricity inquiry) have continued for much longer than typical inquiries and it is unclear what role they will play now that the AER has been given an ongoing market monitoring function. Ending the inquiry would remove the current duplication between the AER and ACCC’s functions and allow the AER to properly develop its function and avoid an unnecessary burden on the market.

As discussed above, AFMA considers that the current arrangements for collecting gas market data are inefficient and that there is substantial scope to improve the framework by taking a strategic approach to; determining what information should be collected, ensuring it is collected by the body best placed to collect it and that effective data sharing arrangements are in place between the market bodies. Some options AFMA thinks should be considered are:

- AEMO as the repository of physical market data – utilise AEMO's technical capability, existing data sets and existing relationships with market participants
- Financial market data – OTC derivative data should be sourced from ASIC who already collect it under the Corporations Act, futures data should be sourced directly from the exchanges rather than participants
- AER's role – the AER should take over the ACCC's current role preparing reports with insights into the market but, recognising its limited technical capability, it should not be responsible for collecting large volumes of gas transaction data which are better collected by other bodies.

Additionally, our members consider that having both the ACCC and AEMO publishing gas supply forecasts is unnecessary and on occasion has been unhelpful when the forecasts diverge. We consider AEMO, not the ACCC, should be the body responsible for forecasting and note recent changes to its powers to facilitate this.

AFMA Medium-Term Recommendations

x. The ACCC's Gas Pricing Inquiry should end

xi. There should be a strategic review of gas data collection to minimise duplication and ensure that data is collected by the body best placed to collect it

xii. Effective information sharing arrangements should be implemented

xiii. The ACCC should stop preparing gas supply forecasts separately from AEMO

3.3. Long-term certainty

Building an appropriate framework to ensure long-term gas security is a complicated task that should be done in a considered manner. AFMA considers that the Commonwealth should work with stakeholders to develop an appropriate new framework that can replace the existing arrangements. The new framework should be designed to allow the market to ensure adequate supply both for the domestic and export markets and should promote participation in both facilitated physical markets and financial markets.

AFMA Long-Term Recommendations

xiv. There should be a further review to develop an appropriate gas supply mechanism to replace the existing arrangements

xv. The new framework should:

a) focus on ensuring supply and remove price regulation

b) provide producers confidence to invest to supply both domestic and international customers

c) promote participation in facilitated physical markets and the financial market

xvi. Changes should be made in an orderly and transparent manner that respects existing contracts

AFMA would welcome the opportunity to discuss this submission further and would be pleased to provide further information or clarity as required. Please contact me at lgamble@afma.com.au or 02 9776 7994.

Yours sincerely,

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