



Treasury Laws Amendment (Energy Price Relief Plan) Act 2022

No. 96, 2022

**An Act to amend the *Competition and Consumer Act
2010*, and for other purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
Schedule 1—Gas market		3
Part 1—Main amendments		3
	<i>Competition and Consumer Act 2010</i>	3
Part 2—Other amendments		44
	<i>Competition and Consumer Act 2010</i>	44
Schedule 2—Temporary and targeted energy bill relief		51
	<i>Federal Financial Relations Act 2009</i>	51



Treasury Laws Amendment (Energy Price Relief Plan) Act 2022

No. 96, 2022

An Act to amend the *Competition and Consumer Act 2010*, and for other purposes

[Assented to 16 December 2022]

The Parliament of Australia enacts:

1 Short title

This Act is the *Treasury Laws Amendment (Energy Price Relief Plan) Act 2022*.

2 Commencement

- (1) Each provision of this Act 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 Act	The day after this Act receives the Royal Assent.	17 December 2022

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Gas market

Part 1—Main amendments

Competition and Consumer Act 2010

1 Subsection 4(1)

Insert:

civil penalty provision of a gas market instrument means a provision of a gas market instrument that is a civil penalty provision (within the meaning of the Regulatory Powers Act).

gas market code means regulations made for the purposes of section 53L.

gas market emergency price order means an order in force under section 53M.

gas market instrument means:

- (a) a gas market code; or
- (b) a gas market emergency price order.

gas market provision means any of the following provisions:

- (a) a provision of Part IVBB;
- (b) a provision of the regulations made for the purposes of a provision of Part IVBB (including a gas market code);
- (c) a provision of a gas market emergency price order;
- (d) another provision of this Act to the extent that it relates to a provision covered by paragraph (a), (b) or (c).

judicial power means the judicial power of the Commonwealth referred to in section 71 of the Constitution.

2 After Part IVBA

Insert:

Part IVBB—Gas market

Division 1—Preliminary

Subdivision A—Object and simplified outline

53 Object of this Part

The object of this Part is to enhance the welfare of Australians through:

- (a) the regulation of the Australian gas market; and
- (b) in particular, limitation of increases in gas prices.

53A Simplified outline

The regulations may prescribe rules (known as gas market codes) regulating conduct relating to supplying or acquiring gas.

Without limiting what may be included in a gas market code, a gas market code may include rules that:

- (a) regulate dealings between persons who supply or acquire gas, including negotiations and agreements between such persons; or
- (b) deal with resolving disputes between persons who supply or acquire gas.

The Minister may make orders (known as gas market emergency price orders) regulating the terms (including prices) on which gas is supplied or acquired.

Note: The terms on which gas is supplied or acquired may also be regulated by a gas market code.

A person must not enter into a scheme for the purpose of avoiding the application of a gas market code or a gas market emergency price order.

Consequences of contravening the gas market provisions include civil penalties, infringement notices, warning notices and orders under Part VI.

Subdivision B—Definitions

53B Definitions

In this Part:

agreement includes a contract.

Note: For the meaning of **contract**, see subsection 4(1).

Australia: see subsection 53E(2).

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

constitutional trade or commerce means any of the following:

- (a) trade or commerce among the States;
- (b) trade or commerce between Australia and places outside Australia;
- (c) trade or commerce within a Territory, between a State and a Territory, or between 2 Territories.

expression of interest means a non-binding expression of interest or invitation issued for the purpose of ascertaining whether a person is interested in acquiring or supplying a gas commodity.

gas includes gas in a liquid state.

gas commodity means:

- (a) gas; or
- (b) goods or services relating to supplying or acquiring gas.

gas exchange means an exchange or other trading system, platform or facility (including an electronic exchange, system, platform or facility) on which:

- (a) expressions of interest relating to supplying or acquiring gas commodities are issued, received or responded to; or
- (b) offers relating to supplying or acquiring gas commodities are made, received or responded to; or
- (c) agreements relating to supplying or acquiring gas commodities are entered into.

gas market conduct: see section 53C.

gas market matter:

- (a) subject to paragraph (b), means any of the following:
 - (i) gas market conduct;
 - (ii) the operation, application or administration of a gas market instrument;
 - (iii) compliance (including non-compliance) with a gas market instrument;
 - (iv) a failure to supply a gas commodity;
 - (v) a matter prescribed by the regulations for the purposes of this subparagraph; and
- (b) does not include a matter prescribed by the regulations for the purposes of this paragraph.

gas market participant: see section 53D.

offer includes:

- (a) a counter-offer; and
- (b) a bid on a gas exchange.

price includes price structure.

price dispute means a dispute between gas market participants arising because the gas market participants do not agree to the terms (including terms relating to price) on which they are to supply or acquire gas commodities to or from each other.

prohibited conduct: a person engages in **prohibited conduct** if the person engages in conduct that contravenes any of the following provisions:

- (a) section 53ZV;
- (b) subsection 53ZW(1);
- (c) a civil penalty provision of a gas market instrument.

regulating includes prohibiting.

related contravention: see subsection 53ZO(9).

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied; or

- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise; or
- (c) any combination of 2 or more things that are schemes because of paragraph (a) or (b).

53C Gas market conduct

- (1) For the purposes of this Part, **gas market conduct** is:
- (a) conduct relating to supplying or acquiring a gas commodity, or to the potential supply or acquisition of a gas commodity; or
 - (b) without limiting paragraph (a)—any of the following:
 - (i) supplying or acquiring a gas commodity;
 - (ii) issuing or receiving an expression of interest in relation to supplying or acquiring a gas commodity;
 - (iii) responding to an expression of interest in relation to supplying or acquiring a gas commodity;
 - (iv) offering to supply or acquire a gas commodity, or receiving such an offer;
 - (v) responding to an offer to supply or acquire a gas commodity;
 - (vi) agreeing to supply or acquire a gas commodity;
 - (vii) refusing to do anything mentioned in subparagraphs (i) to (vi);
 - (viii) operating a gas exchange;
 - (ix) conduct prescribed by the regulations for the purposes of this subparagraph.

Note: For the meaning of **conduct**, see subsection 4(2).

- (2) For the purposes of this Part, **gas market conduct** does not include any of the following:
- (a) conduct engaged in by the Minister, the Commission or a member of the Commission;
 - (b) exercising a power or performing a function conferred by a gas market provision;
 - (c) conduct engaged in by a mediator or arbiter of a dispute between gas market participants.
- (3) Subsection (1) has effect subject to subsection (2).

- (4) To avoid doubt, for the purposes of this section, it does not matter whether conduct occurs inside or outside Australia.

Note: See also section 53H (geographical application of the gas market provisions in relation to supplies and acquisitions).

53D Gas market participants

- (1) For the purposes of this Part, a gas market *participant* is any of the following:
- (a) a person who engages, or is capable of engaging, in gas market conduct;
 - (b) a person who has previously been a gas market participant under paragraph (a), (c) or (d);
 - (c) a body corporate that is related to a body corporate that is a gas market participant;
 - (d) any of the persons who carry on a joint venture, if:
 - (i) subparagraph 4J(a)(i) applies to the joint venture; and
 - (ii) the joint venture is, or includes, gas market conduct;
 - (e) a person or body prescribed by the regulations for the purposes of this paragraph.

Note: For the meaning of *related*, see section 4A.

- (2) For the purposes of this Part, a person or body prescribed by the regulations for the purposes of this subsection is not a gas market *participant*.
- (3) Subsection (1) has effect subject to subsection (2).

Subdivision C—Geographical application

53E Extension to external Territories

- (1) The gas market provisions extend to every external Territory.
- (2) A reference in the gas market provisions to *Australia* is taken to include a reference to the external Territories.

53F Extraterritorial operation

The gas market provisions extend to acts, omissions, matters and things outside Australia.

53G Geographical application of offences

Division 14 (Standard geographical jurisdiction) of the *Criminal Code* does not apply in relation to an offence against the gas market provisions.

Note: The extended geographical application that section 53F gives to the gas market provisions applies to offences against the gas market provisions.

53H Geographical application—supplies and acquisitions

- (1) The gas market provisions apply in relation to supplying a gas commodity if the supply:
 - (a) occurs in Australia; or
 - (b) is:
 - (i) to a person in Australia, including by means of importing the gas commodity into Australia; or
 - (ii) by means of exporting the gas commodity from Australia.
- (2) The gas market provisions apply in relation to acquiring a gas commodity if the acquisition:
 - (a) occurs in Australia; or
 - (b) is the direct result of a supply mentioned in subsection (1).

Subdivision D—Application to government entities

53J Gas market provisions bind the Crown

- (1) The gas market provisions bind the Crown in each of its capacities.
- (2) However, the gas market provisions do not make the Crown:
 - (a) liable to a pecuniary penalty or to be prosecuted for an offence; or
 - (b) subject to a remedy under Part VI (about enforcement); or

(c) subject to Part XID (about search and seizure).

53K Application to government entities

- (1) The gas market provisions apply in relation to an entity covered by subsection (3) or (4):
- (a) if the entity is not a person—as if the entity were a person; and
 - (b) with the modifications (if any) prescribed by the regulations for the purposes of this paragraph.

Note: See also subsection 53ZZA(1), which provides that the gas market provisions apply in relation to gas market conduct only if it is carried out by certain persons, or in certain circumstances.

- (2) To avoid doubt, this section does not limit the ability of a gas market instrument to limit the application of:
- (a) the instrument; or
 - (b) a provision of the instrument; or
 - (c) a rule included in the instrument;
- in relation to an entity covered by subsection (3) or (4).

Commonwealth government entities

- (3) This subsection covers an entity that:
- (a) is part of the Commonwealth; or
 - (b) is a Commonwealth entity (within the meaning of the *Public Governance, Performance and Accountability Act 2013*); or
 - (c) is a body (whether or not incorporated) established for a public purpose by or under a law of the Commonwealth; or
 - (d) is:
 - (i) holding or performing the duties of an office established by or under a law of the Commonwealth; or
 - (ii) holding an appointment made under a law of the Commonwealth; or
 - (e) is prescribed by the regulations for the purposes of this paragraph.

State or Territory government entities

- (4) This subsection covers an entity that:

- (a) is part of a State or Territory; or
- (b) is a body (whether or not incorporated) established for a public purpose by or under a law of a State or Territory; or
- (c) is:
 - (i) holding or performing the duties of an office established by or under a law of a State or Territory; or
 - (ii) holding an appointment made under a law of a State or Territory; or
- (d) is prescribed by the regulations for the purposes of this paragraph.

Division 2—Gas market instruments

Subdivision A—Gas market instruments

53L Regulations may prescribe gas market codes

- (1) The regulations may prescribe matters required or permitted by this Act to be prescribed by a gas market code.

Note: For the matters that may be included in a gas market code, see Subdivisions B and D and subsection 53ZJ(1).

- (2) To avoid doubt, subsection (1) does not limit section 172 (power to make regulations).

53M Minister may make gas market emergency price orders

- (1) The Minister may, by legislative instrument, make an order prescribing matters required or permitted by this Act to be prescribed by a gas market emergency price order.

Note: For the matters that may be included in a gas market emergency price order, see Subdivisions C and D and subsection 53ZJ(1).

- (2) To avoid doubt, a gas market emergency price order may not do the following:
 - (a) create an offence;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;

- (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
 - (e) directly amend the text of this Act.
- (3) A gas market emergency price order that is inconsistent with the regulations has no effect to the extent of the inconsistency, but a gas market emergency price order is taken to be consistent with the regulations to the extent that the gas market emergency price order is capable of operating concurrently with the regulations.

Consultation before making gas market emergency price orders

- (4) Before the Minister makes a gas market emergency price order, the Minister must consult with the Commission.
- (5) To avoid doubt, subsection (4) does not limit section 17 of the *Legislation Act 2003*.

Sunsetting of gas market emergency price orders

- (6) The Minister must not make a gas market emergency price order at or after the time specified by subsection (8).
- (7) A gas market emergency price order is repealed by force of this subsection at the time specified by subsection (8), unless the gas market emergency price order is repealed earlier.
- (8) For the purposes of subsections (6) and (7), the time is the time occurring:
- (a) if any provision of any gas market emergency price order commences during the 12 months starting on the commencement of this section—12 months after the earliest time any provision of any gas market emergency price order commences; or
 - (b) otherwise—12 months after the commencement of this section.

53N Scope of gas market instruments

Gas commodities

- (1) A gas market instrument may limit the application of:
- (a) the instrument; or
 - (b) a specified provision of the instrument; or
 - (c) a specified rule included in the instrument;
- such that the instrument, the specified provision or the specified rule applies only in relation to supplying or acquiring specified gas commodities.

Geography

- (2) A gas market instrument may limit the application of:
- (a) the instrument; or
 - (b) a specified provision of the instrument; or
 - (c) a specified rule included in the instrument;
- such that the instrument, the specified provision or the specified rule applies:
- (d) only in relation to parts of Australia in relation to which specified requirements are met; or
 - (e) in relation to all parts of Australia other than parts of Australia in relation to which specified requirements are met.

Note: A gas market instrument may specify a requirement for the purposes of this subsection:

- (a) by reference to the Minister, the Commission or another person or body being satisfied that particular requirements are met; or
- (b) by providing for the Minister, the Commission or another person or body to make a legislative, notifiable or other instrument.

See sections 53ZB and 53ZD.

- (3) Subsection (2) is subject to section 53ZG.

Note: Section 53ZG provides that a gas market instrument must not give preference to one State or any part thereof.

Time

- (4) A gas market instrument may provide that:
- (a) the instrument; or

- (b) a specified provision of the instrument; or
- (c) a specified rule included in the instrument;

applies:

- (d) at a specified time; or
 - (e) during a specified period; or
 - (f) on an ongoing basis (subject to subsection 53M(7)).
- (5) Subsection (4) does not limit Part 4 of Chapter 3 of the *Legislation Act 2003*.

Note: Part 4 of Chapter 3 of the *Legislation Act 2003* is about sunseting of legislative instruments.

Interaction with Acts Interpretation Act 1901

- (6) This section does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Note: Under subsection 33(3A) of the *Acts Interpretation Act 1901*, a gas market instrument may make different provision with respect to different matters or different classes of matters.

Subdivision B—Matters that gas market codes may deal with

53P General

A gas market code may include rules regulating gas market conduct.

Note: The other provisions of this Subdivision and Subdivision D do not limit this section: see section 53ZF.

53Q Dealing with other gas market participants

A gas market code may include any of the following rules in relation to a gas market participant dealing with another gas market participant, if the dealing is or relates to gas market conduct:

- (a) rules about how a gas market participant deals with another gas market participant;
- (b) rules requiring a gas market participant to deal with another gas market participant in a specified manner, including in good faith;

- (c) rules about the matters that, for the purposes of a gas market code, must, may or must not be taken into account in determining whether a gas market participant is dealing with another gas market participant in good faith;
- (d) rules about the period within which a gas market participant does something in dealing with another gas market participant, including the period within which a gas market participant responds to a request made by another gas market participant.

53R Negotiations, expressions of interest and offers

Negotiations

- (1) A gas market code may include rules about negotiations relating to supplying or acquiring a gas commodity.

Expressions of interest

- (2) A gas market code may include rules about expressions of interest relating to supplying or acquiring a gas commodity, including:
 - (a) rules requiring a gas market participant to issue, or not to issue, an expression of interest in specified circumstances; or
 - (b) rules about any of the following matters:
 - (i) matters to which regard is had before issuing an expression of interest;
 - (ii) the manner in which an expression of interest is issued (for example, in writing);
 - (iii) information that is included in an expression of interest or made available in connection with an expression of interest (including the manner in which the information is made available);
 - (iv) the content of an expression of interest;
 - (v) the period during which an expression of interest is open;
 - (vi) responding to an expression of interest;
 - (vii) dealing with a response to an expression of interest, including by providing information, making an offer or entering into an agreement;

- (viii) withdrawing an expression of interest.

Offers

- (3) A gas market code may include rules about offers relating to supplying or acquiring a gas commodity, including:
 - (a) rules requiring a gas market participant to make, or not to make, an offer in specified circumstances; or
 - (b) rules about any of the following matters:
 - (i) matters to which regard is had before making an offer;
 - (ii) the manner in which an offer is made (for example, in writing);
 - (iii) information that is included in an offer, or made available in connection with an offer (including the manner in which the information is made available);
 - (iv) the content of an offer;
 - (v) the period during which an offer is open;
 - (vi) responding to an offer;
 - (vii) dealing with a response to an offer, including by providing information;
 - (viii) withdrawing an offer.

53S Agreements

- (1) A gas market code may include rules about agreements relating to supplying or acquiring a gas commodity, including:
 - (a) rules requiring a gas market participant to enter, or not to enter, into an agreement in specified circumstances; or
 - (b) rules about any of the following matters:
 - (i) the manner in which an agreement is made (for example, in writing);
 - (ii) matters dealt with in an agreement, including, in the case of an agreement to supply or acquire a gas commodity, the matters mentioned in subsection (2);
 - (iii) withdrawing from or ending an agreement.

Example: Rules requiring specified matters to be dealt with, or not dealt with, in an agreement.

- (2) For the purposes of subparagraph (1)(b)(ii), the matters are the following:
- (a) how much of the gas commodity is to be supplied or acquired;
 - (b) flexibility of the volume of the gas commodity to be supplied or acquired;
 - (c) where the gas commodity is to be supplied or acquired;
 - (d) when the gas commodity is to be supplied or acquired;
 - (e) payment terms;
 - (f) a communication protocol for major interruptions to the supply of the gas commodity;
 - (g) the period of the agreement;
 - (h) the consequences of a breach of the agreement;
 - (i) dispute resolution.

53T Terms on which gas commodities are supplied or acquired, including price

- (1) A gas market code may include rules about the terms on which a gas market participant offers to supply or acquire, agrees to supply or acquire or supplies or acquires a gas commodity, including rules about any of the following matters:
- (a) how such a term is expressed;
 - (b) fees payable in relation to such an offer, agreement, supply or acquisition;
 - (c) terms (including terms relating to price) specified in an expression of interest relating to supplying or acquiring a gas commodity.
- (2) A gas market code may include rules about the price at which a gas market participant offers to supply or acquire, agrees to supply or acquire or supplies or acquires a gas commodity, including the following:
- (a) rules setting a price;
 - (b) rules setting a maximum price;
 - (c) rules setting a minimum price;
 - (d) rules setting a maximum and a minimum price;
 - (e) rules requiring a price to be reasonable;

- (f) rules about the matters that, for the purposes of a gas market code, must, may or must not be taken into account in determining whether a price is reasonable;
- (g) rules about determining a price, including matters taken into account in determining a price;
- (h) rules about how a price is expressed.

Note 1: A gas market code may confer on the Minister, the Commission or any other person or body the function of setting a price: see section 53ZB.

Note 2: Rules of the kind mentioned in this subsection may:

- (a) refer to the prices of any gas commodity inside or outside Australia or any published information about any market; or
- (b) require a price to be equal to the amount worked out by using a specified formula or method.

See subsection 53ZE(3).

- (3) To avoid doubt, a gas market code may include rules requiring a gas market participant not to offer to supply or acquire, not to agree to supply or acquire or not to supply or acquire a gas commodity if rules of the kind mentioned in subsection (1) or (2) are not complied with in relation to the offer, agreement, supply or acquisition.

53U Gas exchanges

A gas market code may include rules regulating the operation of a gas exchange.

53V Dispute and complaint resolution

- (1) A gas market code may include rules about disputes between gas market participants relating to gas market conduct, including:
 - (a) disputes or complaints arising under, or in relation to, a gas market code; or
 - (b) disputes arising during negotiations between gas market participants, including any of the following:
 - (i) disputes relating to a prospective agreement between gas market participants;
 - (ii) price disputes.

- (2) A gas market code may include the following rules about disputes between gas market participants relating to gas market conduct:
 - (a) rules requiring a gas market participant to have internal or external dispute resolution processes;
 - (b) rules requiring those processes to meet specified criteria.
- (3) A gas market code may do any of the following:
 - (a) provide for a gas market participant to complain to the Minister or the Commission about:
 - (i) a contravention of a gas market code; or
 - (ii) a dispute between gas market participants relating to gas market conduct;
 - (b) include rules about any of the following matters:
 - (i) the manner in which such a complaint is made;
 - (ii) how the Minister or the Commission deals with such a complaint.

53W Mediation and arbitration

- (1) A gas market code may provide for the mediation of disputes between gas market participants relating to gas market conduct, including providing for any of the following matters:
 - (a) a process for appointing a mediator;
 - (b) the powers or functions of a mediator;
 - (c) a process for commencing mediation;
 - (d) the mediation process, including rules about any of the following matters:
 - (i) a party giving information to another party or to a mediator (including on request);
 - (ii) a mediator providing a party with an opportunity to be heard;
 - (iii) terminating a mediation;
 - (e) the extent (if any) to which mediation is compulsory;
 - (f) the consequences of not participating in mediation;
 - (g) reporting;
 - (h) generating and keeping records;
 - (i) confidentiality;
 - (j) the costs of mediation, including providing for:

- (i) determining the costs; or
 - (ii) who is liable to pay the costs.
- (2) A gas market code may provide for the arbitration (including compulsory arbitration) of disputes between gas market participants relating to gas market conduct, including providing for any of the following matters:
 - (a) establishing or maintaining a register of arbiters;
 - (b) a process for appointing an arbiter;
 - (c) the powers or functions of an arbiter;
 - (d) a process for commencing arbitration, including rules requiring a party to a dispute to take reasonable steps (such as mediation) to resolve a dispute before proceeding to arbitration;
 - (e) the arbitration process, including rules about any of the following matters:
 - (i) a party to a dispute giving information to another party or to an arbiter (including on request);
 - (ii) an arbiter providing a party with an opportunity to be heard;
 - (iii) terminating an arbitration;
 - (f) the extent (if any) to which arbitration is compulsory;
 - (g) the consequences of not participating in arbitration;
 - (h) decision-making by an arbiter, including processes an arbiter uses in decision-making;
 - (i) a power of an arbiter to decide that a party to a dispute must supply a gas commodity;
 - (j) a power of an arbiter to decide any of the following matters if an arbiter decides that a party to a dispute must supply a gas commodity:
 - (i) how much of the gas commodity is to be supplied;
 - (ii) where the gas commodity is to be supplied;
 - (iii) when the gas commodity is to be supplied;
 - (iv) the terms (including terms relating to price) on which the gas commodity is to be supplied;
 - (k) rules about how a decision of an arbiter binds a party to an arbitration;

- (l) the consequences of not complying with a decision of an arbiter;
 - (m) reporting;
 - (n) generating and keeping records;
 - (o) confidentiality;
 - (p) the costs of arbitration, including providing for:
 - (i) determining the costs; or
 - (ii) who is liable to pay the costs.
- (3) The powers or functions conferred on an arbiter by a gas market code must not involve the exercise of judicial power.

Subdivision C—Matters that gas market emergency price orders may deal with

53X Terms on which gas commodities are supplied or acquired, including price

- (1) A gas market emergency price order may include rules about the terms on which a gas market participant offers to supply or acquire, agrees to supply or acquire or supplies or acquires a gas commodity, including rules about any of the following matters:
 - (a) how such a term is expressed;
 - (b) fees payable in relation to such an offer, agreement, supply or acquisition;
 - (c) terms (including terms relating to price) specified in an expression of interest relating to supplying or acquiring a gas commodity.
- (2) A gas market emergency price order may include rules about the price at which a gas market participant offers to supply or acquire, agrees to supply or acquire or supplies or acquires a gas commodity, including the following:
 - (a) rules setting a price;
 - (b) rules setting a maximum price;
 - (c) rules setting a minimum price;
 - (d) rules setting a maximum and a minimum price;
 - (e) rules requiring a price to be reasonable;

- (f) rules about the matters that, for the purposes of a gas market emergency price order, must, may or must not be taken into account in determining whether a price is reasonable;
- (g) rules about determining a price, including matters taken into account in determining a price;
- (h) rules about how a price is expressed.

Note 1: A gas market emergency price order may confer on the Minister, the Commission or any other person or body the function of setting a price: see section 53ZB.

Note 2: Rules of the kind mentioned in this subsection may:

- (a) refer to the prices of any gas commodity inside or outside Australia or any published information about any market; or
- (b) require a price to be equal to the amount worked out by using a specified formula or method.

See subsection 53ZE(3).

- (3) To avoid doubt, a gas market emergency price order may include rules requiring a gas market participant not to offer to supply or acquire, not to agree to supply or acquire or not to supply or acquire a gas commodity if rules of the kind mentioned in subsection (1) or (2) are not complied with in relation to the offer, agreement, supply or acquisition.

53Y Gas exchanges

A gas market emergency price order may include rules regulating the operation of a gas exchange.

Subdivision D—Incidental and other matters that gas market codes and gas market emergency price orders may deal with

53Z Transparency

- (1) A gas market instrument may include rules about a gas market participant, the Minister or the Commission publishing information that relates to a gas market matter, including rules about any of the following:
 - (a) the type of information that is published;
 - (b) the circumstances in which information is published;

(c) the manner in which information is published.

Example: A rule requiring information to be published at specified intervals.

- (2) A gas market instrument may include rules requiring a gas market participant to give to another gas market participant information or documents relevant to a gas market matter.

53ZA Reporting, records and auditing

- (1) A gas market instrument may include rules about:
- (a) reporting; or
 - (b) generating or keeping records (including financial records);
or
 - (c) auditing;
- relating to a gas market matter.
- (2) A gas market instrument may include rules requiring a gas market participant to give:
- (a) financial or other reports, records or documents; or
 - (b) information;
- relating to a gas market matter to the Minister or the Commission, including requiring such reports, records, documents or information to be given periodically or on request.
- (3) A gas market instrument may include rules requiring a gas market participant to do any of the following:
- (a) report to the Minister or the Commission the occurrence of a specified event relating to:
 - (i) a gas market matter; or
 - (ii) a price dispute;
 - (b) give to the Minister or the Commission specified information relating to such an event.

53ZB Conferral of powers and functions

- (1) A gas market instrument may confer on a person or body a power to do, or a function of doing, any of the following:
- (a) monitoring compliance with a gas market instrument;
 - (b) conducting investigations in relation to a gas market matter;

- (c) providing exemptions from:
 - (i) a gas market instrument; or
 - (ii) a specified provision of a gas market instrument; or
 - (iii) a specified rule included in a gas market instrument;
 - (d) reviewing, or reporting on:
 - (i) the operation, application or administration of a gas market instrument; or
 - (ii) activities under, or in relation to, a gas market instrument;
 - (e) reviewing a decision made under a gas market instrument, or in the exercise or performance of a power or function conferred by a gas market instrument.
- (2) A gas market code may confer on a person or body any of the following powers or functions:
- (a) a power to determine, or a function of determining, any matter that may be dealt with by a gas market code;
 - (b) a power or function relating to the operation, application or administration of a gas market code.
- (3) A gas market emergency price order may confer on a person or body any of the following powers or functions:
- (a) a power to determine, or a function of determining, any matter that may be dealt with by a gas market emergency price order;
 - (b) a power or function relating to the operation, application or administration of a gas market emergency price order.
- (4) If a gas market code confers on a person or body a power or function, a gas market code:
- (a) may provide that the power is to be exercised, or the function performed, by legislative instrument, notifiable instrument or another kind of written instrument; and
 - (b) may provide for the person or body to delegate the power or function.
- Note: For limitations relating to a power to make a legislative instrument, see section 53ZI.
- (5) If a gas market emergency price order confers on a person or body a power or function, a gas market instrument:

- (a) may provide that the power is to be exercised, or the function performed, by legislative instrument, notifiable instrument or another kind of written instrument; and
- (b) may provide for the person or body to delegate the power or function.

Note: For limitations relating to a power to make a legislative instrument, see section 53ZI.

53ZC Fees

- (1) A gas market instrument may provide for the charging of a fee for anything done by or in relation to the Commonwealth, the Commission or any other person or body in relation to a gas market instrument, including in the exercise of a power or the performance of a function conferred by a gas market instrument.
- (2) A gas market instrument that provides for the charging of a fee may deal with any of the following matters:
 - (a) the amount of the fee, including a method for working out the amount of the fee;
 - (b) who is liable to pay the fee;
 - (c) the consequences of not paying the fee;
 - (d) when the fee becomes due and payable;
 - (e) waiving a fee;
 - (f) refunding a fee.

53ZD Incidental or related matters

- (1) A gas market instrument may include any of the following:
 - (a) rules about the circumstances in which persons are, or may be, relieved from complying with requirements in a gas market instrument that that would otherwise apply to them;
 - (b) if a gas market instrument requires information or a document to be given or published—exceptions to that requirement, including exceptions that apply in any of the following circumstances:
 - (i) circumstances in which publishing the information would prejudice the commercial interests of a person;

- (ii) circumstances in which publishing the information is not in the public interest;
 - (iii) circumstances involving personal information;
- (c) rules about the use, disclosure or publication of information or a document by a person to whom the information or document is given under a gas market instrument;
- (d) rules about the manner or form in which persons or bodies:
 - (i) may exercise powers or perform functions conferred by a gas market instrument; or
 - (ii) must comply with requirements imposed by a gas market instrument;which could include requiring the use of a form approved by the Minister, the Commission or another person or body;
- (e) rules providing for any of the following in relation to a decision made under a gas market instrument, or in the exercise or performance of a power or function conferred by a gas market instrument:
 - (i) internal review of the decision;
 - (ii) review of the decision by the Australian Competition Tribunal;
 - (iii) the making of applications to the Administrative Appeals Tribunal for review of the decision;
- (f) rules requiring agents of a gas market participant to do or not to do specified things when:
 - (i) engaging in gas market conduct, on behalf of the gas market participant, within the agent's actual or apparent authority; or
 - (ii) otherwise acting on behalf of the gas market participant, in relation to gas market conduct, within the agent's actual or apparent authority;
- (g) rules providing that, in specified circumstances, a partner in a partnership is taken to contravene a specified provision of a gas market instrument if another partner in the partnership contravenes that provision;
- (h) rules providing that, in specified circumstances, a person who carries on a joint venture is taken to contravene a specified provision of a gas market instrument if another person who carries on the joint venture contravenes that provision.

- (2) A gas market code may deal with any of the following matters:
 - (a) matters incidental or related to any matter that is or may be included in, or dealt with by, a gas market code;
 - (b) matters of a transitional nature relating to:
 - (i) the making of a gas market code; or
 - (ii) a repeal of a gas market emergency price order by subsection 53M(7).
- (3) A gas market emergency price order may deal with any of the following matters:
 - (a) matters incidental or related to any matter that is or may be included in, or dealt with by, a gas market emergency price order;
 - (b) matters of a transitional nature relating to the making of a gas market emergency price order.
- (4) A gas market instrument may make provision in relation to a matter in a way that depends on a person being satisfied of one or more specified matters.

53ZE What gas market instruments may refer to

Gas market instruments may refer to other instruments

- (1) A gas market instrument may make provision in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in any other instrument or writing:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.
- (2) Subsection (1) has effect despite subsection 14(2) of the *Legislation Act 2003*.

Other matters

- (3) A gas market instrument may make provision in relation to a matter (including setting a price):
 - (a) by reference to:

- (i) the price of any gas commodity or other goods or services anywhere inside or outside Australia; or
 - (ii) any published information about any market (whether inside or outside Australia); or
- (b) by reference to, or by providing for, a formula or method.

Subdivision E—Miscellaneous matters

53ZF Provisions do not limit other provisions

- (1) A provision to which this section applies does not limit another provision to which this section applies.
- (2) This section applies to:
 - (a) subsection 53N(1); and
 - (b) subsection 53N(4); and
 - (c) each provision of Subdivision B; and
 - (d) each provision of Subdivision C; and
 - (e) each provision of Subdivision D; and
 - (f) subsection 53ZJ(1).

53ZG Constitution—gas market instruments must not give preference to States etc.

- (1) A gas market instrument must not give preference to one State or any part thereof within the meaning of section 99 of the Constitution.
- (2) A power or function conferred by a gas market instrument must not be exercised or performed in such a way as to give preference to one State or any part thereof within the meaning of section 99 of the Constitution.

53ZH Fees must not amount to taxation

A fee charged under a gas market instrument must not be such as to amount to taxation.

53ZI Powers to make legislative instruments

- (1) A gas market instrument must not confer a power to make a legislative instrument on a person or body other than:
 - (a) a Minister; or
 - (b) the Commission; or
 - (c) a member of the staff of the Commission; or
 - (d) an APS employee; or
 - (e) an entity covered by subsection 53K(3).
- (2) A gas market instrument must not confer a power to delegate a power to make a legislative instrument.

Division 3—Compliance with gas market instruments

Subdivision A—Civil penalty provisions of gas market instruments

53ZJ Civil penalty provisions of gas market instruments

- (1) A gas market instrument may:
 - (a) set out at the foot of a provision of the gas market instrument a pecuniary penalty, or penalties, indicated by the words “Civil penalty”; or
 - (b) provide that a specified provision of a gas market instrument is a civil penalty provision, or that a person is liable to a civil penalty if the person contravenes the provision;if the provision is of the kind mentioned in paragraph 79(2)(b) of the Regulatory Powers Act.

Note: Sections 76 to 77 of this Act deal with enforcing the civil penalty provisions.
- (2) If an act or thing is required under a civil penalty provision of a gas market instrument to be done:
 - (a) within a particular period; or
 - (b) before a particular time;then the obligation to do that act or thing continues until the act or thing is done (even if the period has expired or the time has passed).

- (3) A person who contravenes a civil penalty provision of a gas market instrument that requires an act or thing to be done:
- (a) within a particular period; or
 - (b) before a particular time;
- commits a separate contravention of that provision in respect of each day during which the contravention occurs (including the day the relevant order is made under subsection 76(1) or any later day).

Subdivision B—Infringement notices

53ZK Infringement notices

Object

- (1) The object of this section is for Division 5 of Part XI to apply to a provision to which this section applies in a corresponding way to the way that Division applies to a provision of Part 2-2 of the Australian Consumer Law.

Note: That Division is about infringement notices issued for alleged contraventions of provisions of the Australian Consumer Law.

- (2) This section applies to the following provisions:
- (a) subsection 53ZQ(1);
 - (b) subsection 53ZQ(2);
 - (c) subsection 53ZQ(3);
 - (d) section 53ZV;
 - (e) subsection 53ZW(1);
 - (f) a civil penalty provision of a gas market instrument, other than a provision that is a requirement for a gas market participant to deal with another gas market participant in good faith as mentioned in paragraph 53Q(b).

Extended application of Division 5 of Part XI etc.

- (3) Division 5 of Part XI, and any other provision of this Act that relates to that Division, also apply in relation to a provision to which this section applies as if:
- (a) the substitutions in the following table were made; and
 - (b) the following substitutions were made:

- (i) for a reference in item 1 of the table in section 134C to 60 penalty units, substitute a reference to 600 penalty units;
- (ii) for a reference in that item to 12 penalty units, substitute a reference to 60 penalty units.

Substitutions to be made

Item	Column 1 For a reference in Division 5 of Part XI to ...	Column 2 substitute a reference to ...
1	section 224 of the Australian Consumer Law	section 76 of this Act.
2	Chapter 4 or Part 5-2 of the Australian Consumer Law	Part VI of this Act.
3	a provision of Part 2-2 of the Australian Consumer Law	a provision to which section 53ZK of this Act applies.

- (4) To avoid doubt, Division 2 of Part XI does not limit the application of section 53ZZA (about constitutional basis) to the extended application of Division 5 of Part XI as described in this section.

Judicial power

- (5) Division 5 of Part XI, and any other provision of this Act that relates to that Division, have no effect to the extent to which they would otherwise:
 - (a) apply in relation to a provision to which this section applies; and
 - (b) purport to confer judicial power on the Commission.

Subdivision C—Public warning notices

53ZL Commission may give draft public warning notice

- (1) The Commission may give a person a notice in writing if the Commission reasonably believes that:
 - (a) any of the following conditions are satisfied:
 - (i) the person has engaged in prohibited conduct;
 - (ii) the person is engaging in prohibited conduct; and

- (b) one or more other persons has suffered, or is likely to suffer, detriment as a result of the prohibited conduct; and
 - (c) it is in the public interest to issue the notice.
- (2) The notice must:
- (a) state the day on which the notice is given; and
 - (b) identify:
 - (i) the person mentioned in paragraph (1)(a); and
 - (ii) the prohibited conduct mentioned in paragraph (1)(a); and
 - (c) explain the reasons why the Commission reasonably believes that the requirements in paragraphs (1)(a), (b) and (c) are met; and
 - (d) state that:
 - (i) the person may, within 21 days after being given the notice, make representations to the Commission regarding the matters mentioned in paragraphs (1)(a), (b) and (c); and
 - (ii) the Commission may issue a public warning notice under section 53ZM in relation to the prohibited conduct after those 21 days have passed.
- (3) A notice given under subsection (1) is not a legislative instrument.

53ZM Commission may issue public warning notice

- (1) This section applies if:
- (a) the Commission gave a person a notice under section 53ZL in relation to prohibited conduct; and
 - (b) at least 21 days have passed since the Commission gave the person the notice; and
 - (c) no more than 90 days have passed since the Commission gave the person the notice; and
 - (d) the Commission reasonably believes that any of the following conditions are satisfied:
 - (i) the person has engaged in the prohibited conduct;
 - (ii) the person is engaging in the prohibited conduct; and

- (e) the Commission reasonably believes that one or more other persons has suffered, or is likely to suffer, detriment as a result of the prohibited conduct.
- (2) This section also applies if the Commission reasonably believes that:
 - (a) any of the following conditions are satisfied:
 - (i) a person has engaged in prohibited conduct;
 - (ii) a person is engaging in prohibited conduct; and
 - (b) there is a significant risk of imminent, serious harm to the welfare of Australians as a result of the prohibited conduct; and
 - (c) issuing a notice under this section in relation to the prohibited conduct, without first giving a notice under section 53ZL in relation to the prohibited conduct, is reasonably necessary to:
 - (i) prevent that harm or reduce that risk; or
 - (ii) reduce the seriousness of that harm.
- (3) The Commission may issue to the public a written notice containing a warning about the prohibited conduct if the Commission reasonably believes that it is in the public interest to issue the notice.
- (4) The notice must:
 - (a) state the day on which the notice is issued; and
 - (b) identify:
 - (i) the person mentioned in paragraph (1)(a) or (2)(a); and
 - (ii) the prohibited conduct mentioned in that paragraph.
- (5) A notice issued under subsection (3) is not a legislative instrument.

53ZN Proceedings for defamation not to lie

- (1) If the Commission issues a notice under section 53ZM, no action or proceeding for defamation lies against the Commonwealth, the Commission or a member of the staff of the Commission in relation to the issuing of the notice.
- (2) This section does not limit subsection 53J(2).

Subdivision D—Orders to redress loss or damage suffered by non-parties etc.

53ZO Orders to redress loss or damage suffered by non-parties etc.

Orders

- (1) If:
- (a) a person engaged in conduct (the ***contravening conduct***) that constituted a contravention or a related contravention of a civil penalty provision of a gas market instrument; and
 - (b) the contravening conduct caused, or is likely to cause, a class of persons to suffer loss or damage; and
 - (c) the class includes persons (***non-parties***) who are not, or have not been, parties to a proceeding (an ***enforcement proceeding***) instituted under Part VI in relation to the contravening conduct;

any court having jurisdiction in the matter may, on the application of the Commission, make such order or orders (other than an award of damages) as the court thinks appropriate against a person referred to in subsection (2).

Note: The orders that the court may make include all or any of the orders set out in section 53ZP.

- (2) An order under subsection (1) may be made against:
- (a) the person mentioned in paragraph (1)(a); or
 - (b) a person involved in the contravening conduct.
- (3) A court must not make an order under subsection (1) unless the court considers that the order will:
- (a) redress, in whole or in part, the loss or damage suffered by the non-parties in relation to the contravening conduct; or
 - (b) prevent or reduce the loss or damage suffered, or likely to be suffered, by the non-parties in relation to the contravening conduct.

Application for orders

- (4) An application may be made under subsection (1) even if an enforcement proceeding in relation to the contravening conduct has not been instituted.
- (5) An application under subsection (1) may be made at any time within 6 years after the day on which the cause of action that relates to the contravening conduct accrues.

Determining whether to make an order

- (6) In determining whether to make an order under subsection (1) against a person referred to in subsection (2), a court may have regard to the conduct of:
 - (a) the person; and
 - (b) the non-parties;in relation to the contravening conduct, since the contravention occurred.
- (7) In determining whether to make an order under subsection (1), a court need not make a finding about either of the following matters:
 - (a) which persons are non-parties in relation to the contravening conduct;
 - (b) the nature of the loss or damage suffered, or likely to be suffered, by such persons.

When a non-party is bound by an order etc.

- (8) If:
 - (a) an order is made under subsection (1) against a person; and
 - (b) the loss or damage suffered, or likely to be suffered, by a non-party in relation to the contravening conduct to which the order relates has been redressed, prevented or reduced in accordance with the order; and
 - (c) the non-party has accepted the redress, prevention or reduction;then:
 - (d) the non-party is bound by the order; and

- (e) any other order made under subsection (1) that relates to that loss or damage has no effect in relation to the non-party; and
- (f) despite any other provision of this Act or any other law of the Commonwealth, or a State or Territory, no claim, action or demand may be made or taken against the person by the non-party in relation to that loss or damage.

Meaning of related contravention

- (9) For the purposes of this Part, a person engages in conduct that constitutes a **related contravention** of a civil penalty provision of a gas market instrument if the person:
 - (a) aids, abets, counsels or procures another person to contravene the provision; or
 - (b) induces, whether by threats or promises or otherwise, another person to contravene the provision; or
 - (c) is in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of the provision by another person; or
 - (d) conspires with others to effect a contravention of the provision.

53ZP Kinds of orders that may be made to redress loss or damage suffered by non-parties etc.

Without limiting subsection 53ZO(1), the orders that a court may make under that subsection against a person (the **respondent**) include all or any of the following:

- (a) an order declaring the whole or any part of a contract made between the respondent and a non-party referred to in that subsection, or a collateral arrangement relating to such a contract:
 - (i) to be void; and
 - (ii) if the court thinks fit—to have been void ab initio or void at all times on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (b) an order:

- (i) varying such a contract or arrangement in such manner as is specified in the order; and
- (ii) if the court thinks fit—declaring the contract or arrangement to have had effect as so varied on and after such date as is specified in the order (which may be a date that is before the date on which the order is made);
- (c) an order refusing to enforce any or all of the provisions of such a contract or arrangement;
- (d) an order directing the respondent to refund money or return property to a non-party referred to in that subsection;
- (e) an order directing the respondent, at the respondent's own expense, to supply specified services to a non-party referred to in that subsection.

Subdivision E—Avoidance schemes

53ZQ Schemes for avoidance purposes

General prohibition

- (1) A person contravenes this subsection if:
 - (a) the person, either alone or with others, engages in any of the following conduct:
 - (i) enters into a scheme;
 - (ii) begins to carry out a scheme;
 - (iii) carries out a scheme; and
 - (b) having regard to any matters as required under subsection 53ZR(1), it would be reasonable to conclude that the purpose of the person engaging in that conduct was to avoid the application of a civil penalty provision of a gas market instrument.

Note 1: For enforcement, see section 53ZK and Part VI.

Note 2: See section 4F (references to purpose).

Constitutional corporations

- (2) A constitutional corporation contravenes this subsection if:
 - (a) the corporation, either alone or with other persons, engages in any of the following conduct:

- (i) enters into a scheme;
- (ii) begins to carry out a scheme;
- (iii) carries out a scheme; and
- (b) having regard to any matters as required under subsection 53ZR(1), it would be reasonable to conclude that the purpose of the corporation engaging in that conduct was to avoid the application of a civil penalty provision of a gas market instrument.

Note: For enforcement, see section 53ZK and Part VI.

Constitutional trade and commerce

- (3) A person contravenes this subsection if:
 - (a) in the course of constitutional trade or commerce, the person, either alone or with others, engages in any of the following conduct:
 - (i) enters into a scheme;
 - (ii) begins to carry out a scheme;
 - (iii) carries out a scheme; and
 - (b) having regard to any matters as required under subsection 53ZR(1), it would be reasonable to conclude that the purpose of the person engaging in that conduct was to avoid the application of a civil penalty provision of a gas market instrument.

Note: For enforcement, see section 53ZK and Part VI.

Prohibitions independent of each other

- (4) To avoid doubt, subsections (1), (2) and (3) are independent from and do not limit each other.

Note: However, a person can be ordered to pay a pecuniary penalty under only one of those subsections in relation to the same conduct: see subsection 76(3).

53ZR Whether it is reasonable to draw conclusion as to purpose

- (1) Regard must be had to any matters prescribed by the regulations for the purposes of this subsection in determining, for the purposes of section 53ZQ, whether it would be reasonable to conclude that the purpose of a person entering into or carrying out (to any extent)

a scheme was to avoid the application of a civil penalty provision of a gas market instrument.

- (2) Subsection (1) does not limit the matters to which regard may be had in making a determination described in that subsection.

53ZS This Subdivision does not limit Division 2

This Subdivision does not limit a provision of Division 2.

Division 4—Investigation powers

53ZT Commission may require person to provide information

- (1) This section applies if a person is required to keep, to generate or to publish information or a document under a gas market instrument.
- (2) The Commission may give the person a written notice that requires the person to give the information, or to produce the document, to the Commission within a specified period and in a specified manner.
- (3) The notice must:
 - (a) name the person to which it is given; and
 - (b) specify:
 - (i) the information or document to which it relates; and
 - (ii) the provisions of the gas market instrument which require the person to keep, to generate or to publish the information or document; and
 - (c) explain the effect of sections 53ZU, 53ZV and 53ZW.
- (4) The notice may relate to more than one piece of information or more than one document.

53ZU Extending periods for complying with notices

- (1) A person who has been given a notice under section 53ZT may, at any time within the period within which the person must comply with the notice (as extended under any previous application of

subsection (2) of this section), apply in writing to the Commission for an extension of the period for complying with the notice.

- (2) A member of the Commission may, by written notice given to the person, extend the period within which the person must comply with the notice.
- (3) Subsection (2) does not affect any operation that subsection 33(3) of the *Acts Interpretation Act 1901* has in relation to a notice under section 53ZT of this Act.

Delegation

- (4) A member of the Commission may, by writing, delegate the member's powers under subsection (2) to a member of the staff of the Commission who is an SES employee or an acting SES employee.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (5) In exercising a power under a delegation, the delegate must comply with any directions of the member.

53ZV Compliance with notices

A person that is given a notice under section 53ZT must comply with it within:

- (a) the period specified in the notice; or
- (b) if the period for complying with the notice has been extended under section 53ZU—the period as so extended.

Note: For enforcement, see section 53ZK and Part VI.

53ZW False or misleading information etc.

- (1) A person must not, in compliance or purported compliance with a notice given under section 53ZT:
 - (a) give to the Commission false or misleading information; or
 - (b) produce to the Commission documents that contain false or misleading information.

Note: For enforcement, see section 53ZK and Part VI.

- (2) This section does not apply to:
- (a) information that the person could not have known was false or misleading; or
 - (b) the production to the Commission of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.

53ZX This Division does not limit other provisions

This Division does not limit:

- (a) a provision of Division 2; or
- (b) section 155 (which is about the general information-gathering powers of the Commission).

Division 5—Other matters

53ZY Certain provisions of this Act do not limit other provisions

- (1) A provision to which subsection (3) applies does not limit the gas market provisions.
- (2) The gas market provisions do not limit a provision to which subsection (3) applies.
- (3) This subsection applies to:
 - (a) Part IIIAA; and
 - (b) Part IIIA; and
 - (c) Part IVB; and
 - (d) Part V; and
 - (e) Part VIIA; and
 - (f) Part XICA.

53ZZ Concurrent operation of State and Territory laws

- (1) Subject to subsection (2), the gas market provisions are not intended to exclude or limit the operation of a law of a State or Territory that is capable of operating concurrently with the gas market provisions.

- (2) A gas market instrument may provide that a gas market instrument, or a specified provision of a gas market instrument, excludes or limits the operation of a law of a State or Territory.

53ZZA Constitution—application of gas market provisions

- (1) The gas market provisions (other than Subdivision E of Division 3 of this Part) apply in relation to gas market conduct if the conduct:
- (a) is engaged in by a constitutional corporation; or
 - (b) is engaged in, by a person who is not a constitutional corporation, in a way that affects, is capable of affecting or is taken with intent to affect the activities, functions, relationships or business of a constitutional corporation; or
 - (c) occurs in the course of, or in relation to, constitutional trade or commerce; or
 - (d) is engaged in by an entity covered by subsection 53K(3).

Note: Subsection 53K(3) covers Commonwealth government entities.

- (2) Section 6 (about the application of this Act to persons who are not corporations) does not apply in relation to the gas market provisions.

53ZZB Constitution—acquisition of property

The gas market provisions have no effect to the extent (if any) to which their operation would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) otherwise than on just terms (within the meaning of that paragraph).

53ZZC Regulations referring to other instruments

- (1) Regulations (other than a gas market code) made for the purposes of a provision of this Part may make provision in relation to a matter by applying, adopting or incorporating (with or without modification) any matter contained in any other instrument or writing:
- (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time.

Note: For a gas market code, see subsection 53ZE(1).

(2) Subsection (1) has effect despite subsection 14(2) of the
Legislation Act 2003.

3 Application of Part IVBB in relation to agreements

For the purposes of Part IVBB of the *Competition and Consumer Act 2010*, as inserted by this Part, it does not matter whether an agreement was entered into before, on or after the commencement of this item.

Part 2—Other amendments

Competition and Consumer Act 2010

4 Section 4L

After “section 51ADB”, insert “, 53ZO”.

5 Subsections 8A(4) and 19(1) and (7)

Before “or the consumer data rules”, insert “a gas market instrument”.

6 Subsection 25(1)

Before “the consumer data rules”, insert “a gas market instrument,”.

7 Paragraph 29(1A)(a)

After “IVBA”, insert “, IVBB”.

8 Subsection 75B(1)

After “IVBA”, insert “, IVBB”.

9 Subsection 75B(1)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

10 After subparagraph 76(1)(a)(iaa)

Insert:

- (iab) subsection 53ZQ(1), (2) or (3), section 53ZV, subsection 53ZW(1) or a civil penalty provision of a gas market instrument; or

11 Subsection 76(1A) (after table item 7)

Insert:

7A	subsection 53ZQ(1), (2) or (3)	the greater of the amounts mentioned in subsection (1B)	\$2,500,000
7B	section 53ZV or subsection	3,000 penalty units	600 penalty units

53ZW(1)			
7C	a civil penalty provision of a gas market instrument not covered by item 7D of this table	the greater of the amounts mentioned in subsection (1B)	\$2,500,000
7D	a civil penalty provision of a gas market instrument that sets out at its foot a pecuniary penalty indicated by the words “Civil penalty”	the lesser of: (a) the amount of the pecuniary penalty for a body corporate set out at the foot of the provision; and (b) the greater of the amounts mentioned in subsection (1B)	the lesser of: (a) the amount of the pecuniary penalty for a person other than a body corporate set out at the foot of the provision; and (b) \$2,500,000

12 Subsection 76(1B)

After “items 1, 3, 6”, insert “, 7A, 7C, 7D”.

13 Paragraph 76(1B)(c)

Omit “or 6”, substitute “, 6, 7A, 7C or 7D”.

14 Subsection 76(3)

After “45AG),”, insert “or two or more provisions of section 53ZQ,”.

15 Paragraph 79B(a)

Before “or the consumer data rules”, insert “, a gas market instrument”.

16 After subparagraph 80(1)(a)(iiaa)

Insert:

(iiab) subsection 53ZQ(1), (2) or (3), section 53ZV, subsection 53ZW(1) or a civil penalty provision of a gas market instrument;

17 Paragraph 82(1)(a)

After “IVBA”, insert “, IVBB”.

18 Before paragraph 82(1)(d)

Insert:

(ca) a civil penalty provision of a gas market instrument; or

19 Subsection 83(1)

After “51ADB(1)”, insert “, 53ZO(1)”.

20 Subparagraph 83(1)(b)(i)

After “IVBA”, insert “, IVBB”.

21 Before subparagraph 83(1)(b)(iii)

Insert:

(ia) a civil penalty provision of a gas market instrument; or

22 Paragraph 84(1)(b)

After “IVBA”, insert “, IVBB”.

23 Paragraph 84(1)(b)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

24 Subsection 84(2)

Before “and the consumer data rules”, insert “, a gas market instrument”.

25 Paragraph 84(3)(b)

After “IVBA”, insert “, IVBB”.

26 Paragraph 84(3)(b)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

27 Subsection 84(4)

Before “and the consumer data rules”, insert “, a gas market instrument”.

28 Subsection 86(1)

Before “or the consumer data rules”, insert “, a gas market instrument”.

29 Subsection 86(1A)

After “IVB”, insert “or IVBB”.

30 Subsection 86(1A)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

31 Subsection 86(2)

After “IVB”, insert “or IVBB”.

32 Subsection 86(2)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

33 Paragraph 86A(1)(b)

After “IVB”, insert “or IVBB”.

34 Paragraph 86A(1)(b)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

35 Subsection 86C(4) (paragraph (a) of the definition of *contravening conduct*)

After “IVBA”, insert “, IVBB”.

36 Subsection 86C(4) (paragraph (a) of the definition of *contravening conduct*)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

37 Paragraph 86E(1)(a)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

38 Subsections 86F(1) and (3)

Before “or the consumer data rules”, insert “, a gas market instrument”.

39 Subsection 87(1)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

40 Subsection 87(1A)

After “51ADB”, insert “, 53ZO”.

41 Paragraph 87(1A)(a)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

42 Paragraphs 87(1A)(b) and (baa)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

43 Subsection 87(1C)

Before “or a civil penalty provision of the consumer data rules”, insert “, a civil penalty provision of a gas market instrument”.

44 Subsection 87B(1)

Before “or the consumer data rules”, insert “, a gas market instrument”.

45 Section 154

Before “or the consumer data rules”, insert “, a gas market instrument”.

46 Section 154A (paragraph (a) of the definition of *evidential material*)

Before “or the consumer data rules”, insert “, a gas market instrument”.

47 Paragraph 154V(2)(a)

Before “or the consumer data rules”, insert “, a gas market instrument”.

48 Subsection 155(1)

After “served on that person”, insert “(whether in Australia or outside Australia)”.

49 Before subparagraph 155(2)(a)(iv)

Insert:

(iiia) a gas market instrument; or

50 Before subparagraph 155(2)(b)(ia)

Insert:

(iaa) a gas market instrument matter (as defined by subsection (9AAA) of this section); or

51 Before subsection 155(9AA)

Insert:

(9AAA) A reference in this section to a *gas market instrument matter* is a reference to the performance of a function, or the exercise of a power, conferred on the Commission by or under:

- (a) Part IVBB; or
- (b) regulations made under this Act for the purposes of that Part (including a gas market code); or
- (c) a gas market emergency price order.

52 Subsection 155AAA(21) (paragraph (a) of the definition of core statutory provision)

Before “IVD”, insert “IVBB,”.

53 Subsection 155AAA(21) (paragraph (a) of the definition of core statutory provision)

Before “or of the consumer data rules”, insert “, of a gas market instrument”.

54 Paragraph 157(1)(d)

Omit “, subsection 51ADB(1)”, substitute “subsection 51ADB(1) or 53ZO(1)”.

55 Subsection 157A(1)

After “this Act”, insert “or a gas market instrument”.

56 Subsection 163A(1)

Before “or the consumer data rules” (first occurring), insert “, a gas market instrument”.

57 Paragraphs 163A(1)(a) and (aa)

Before “or the consumer data rules”, insert “, a gas market instrument”.

58 Subsection 163A(3)

Before “or the consumer data rules”, insert “, a gas market instrument”.

59 Paragraph 163A(4)(a)

Before “or the consumer data rules”, insert “, a gas market instrument”.

Schedule 2—Temporary and targeted energy bill relief

Federal Financial Relations Act 2009

1 Section 3

Omit “The object”, substitute “(1) The main object”.

2 At the end of section 3

Add:

- (2) Another object of this Act is to provide financial support for the delivery by the States of temporary and targeted relief from high energy bills for households and small businesses.

3 Section 4

Insert:

temporary energy bill relief agreement means an agreement that:

- (a) is entered into between the Commonwealth and one or more States; and
- (b) relates to the delivery by the State or States of temporary relief from high energy bills for households and small businesses; and
- (c) provides that the State or States must not deliver that relief to a household or small business unless criteria specified in the agreement in relation to the household or small business are met; and
- (d) is expressed to be a temporary energy bill relief agreement for the purposes of this Act; and
- (e) is entered into on or after 9 December 2022.

4 After Part 3B

Insert:

Part 3C—Temporary energy bill relief

15E Payments relating to temporary energy bill relief

Scope

- (1) This section applies to a State in relation to a financial year if:
 - (a) the State is a party to a temporary energy bill relief agreement; and
 - (b) the financial year is the 2022-23 or 2023-24 financial year.

Determination

- (2) The Minister must determine that an amount specified in the determination is to be paid to the State for the purpose of making a grant of financial assistance for the financial year for the purpose of expenditure in accordance with the temporary energy bill relief agreement.
- (3) A determination under subsection (2) is a legislative instrument, but section 42 (disallowance) of the *Legislation Act 2003* does not apply to the determination.

Terms and conditions

- (4) Financial assistance is payable to the State under this section for the financial year on condition that the financial assistance is spent in accordance with the temporary energy bill relief agreement.
- (5) Financial assistance payable to the State under this section is subject to such additional terms and conditions (if any) as are set out in the temporary energy bill relief agreement.

15F Amount of financial assistance

Subject to the temporary energy bill relief agreements, the amount of financial assistance payable under this Part to the States is \$1.5 billion.

5 Paragraphs 17(b) and 18(1)(b) and (2)(b)

Omit “or 3B”, substitute “, 3B or 3C”.

6 After paragraph 21(ac)

Insert:

(ad) if:

- (i) the determination relates to financial assistance to a State under section 15E; and
 - (ii) the State is a party to a temporary energy bill relief agreement;
- the temporary energy bill relief agreement; and

7 Section 22

After “Part 3B”, insert “, Part 3C”.

*[Minister’s second reading speech made in—
House of Representatives on 15 December 2022
Senate on 15 December 2022]*

(147/22)
