



Competition and Consumer (Gas Market Emergency Price) Order 2022

I, Katy Gallagher, Minister for Finance, make the following order.

Dated 22 December 2022

Katy Gallagher
Minister for Finance
for the Treasurer

Contents

Part 1—Preliminary	1
1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
5 Definition of <i>regulated gas producer</i>	2
Part 2—Application	3
6 Geographical application	3
7 Gas to which Part 3 of this instrument applies	3
Part 3—Price cap and exceptions	5
Division 1—Price cap	5
8 Price cap.....	5
9 Persons subject to price cap	5
10 Price cap—variations to agreements	6
Division 2—Exceptions to price cap	7
11 Exception for export	7
12 Exception for storage	7
13 Exception for subordinate contract or transaction notice not determining price	7
14 Exception for gas exchange transactions.....	7
15 Exception for gas trading exchange transactions	7
16 Exception for retailers.....	8
17 Exception for person covered by price cap exemption.....	9
Division 3—Ministerial price cap exemptions	10
18 Application for price cap exemption.....	10
19 Minister may grant price cap exemption	10
20 Contents of price cap exemption	10
21 Notice of decision	11
22 Variation or revocation of price cap exemption	11
23 Delegation.....	11

Part 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Gas Market Emergency Price) Order 2022*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	23 December 2022

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under section 53M of the *Competition and Consumer Act 2010*.

4 Definitions

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

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

- (1) In this instrument:

Act means the *Competition and Consumer Act 2010*.

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

affiliate of a regulated gas producer: see subsection 9(2).

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

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

Section 5

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

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

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

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

price cap means \$12 per gigajoule.

price cap exemption means a price cap exemption under subsection 19(1).

price cap period means the period of 12 months starting on the commencement of this instrument.

regulated gas means gas that:

- (a) is in a gaseous state at standard temperature and pressure; and
- (b) consists of naturally occurring hydrocarbons, or a naturally occurring mixture of hydrocarbons and non-hydrocarbons, the principal constituent of which is methane; and
- (c) is suitable for consumption; and
- (d) is not liquefied natural gas (within the meaning of the *National Greenhouse and Energy Reporting Regulations 2008*).

Note: Regulated gas is a gas commodity, and may be gas in a liquid state (see section 53B of the Act).

regulated gas producer: see section 5.

- (2) To avoid doubt, an expression used in this instrument has the same meaning as in Part IVBB of the Act.

5 Definition of *regulated gas producer*

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

Part 2—Application

6 Geographical application

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

7 Gas to which Part 3 of this instrument applies

- (1) For the purposes of subsection 53N(1) of the Act, Part 3 of this instrument only applies in relation to gas that:
 - (a) is regulated gas; and
 - (b) was recovered from an area or block (however described) in respect of which, immediately before the commencement of this instrument, any of the following was in force authorising the recovery or production (however described) of gas:
 - (i) a petroleum production licence (within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*);
 - (ii) a production lease (within the meaning of the *Petroleum (Onshore) Act 1991* (NSW));
 - (iii) a licence (within the meaning of the *Petroleum (Offshore) Act 1982* (NSW));
 - (iv) a production licence (within the meaning of the *Petroleum Act 1998* (Vic.));
 - (v) an offshore petroleum production licence (within the meaning of the *Petroleum Act 1998* (Vic.));
 - (vi) a petroleum lease (within the meaning of the *Petroleum and Gas (Production and Safety) Act 2004* (Qld));
 - (vii) a licence (within the meaning of the *Petroleum (Submerged Lands) Act 1982* (Qld));
 - (viii) a petroleum production licence (within the meaning of the *Petroleum and Geothermal Energy Resources Act 1967* (WA));

Section 7

- (ix) a licence (within the meaning of the *Petroleum (Submerged Lands) Act 1982* (WA));
 - (x) a petroleum production licence (within the meaning of the *Petroleum and Geothermal Energy Act 2000* (SA));
 - (xi) a licence (within the meaning of the *Petroleum (Submerged Lands) Act 1982* (SA));
 - (xii) a petroleum production licence (within the meaning of the *Mineral Resources Development Act 1995* (Tas.));
 - (xiii) a licence (within the meaning of the *Petroleum (Submerged Lands) Act 1982* (Tas.));
 - (xiv) a production licence (within the meaning of the *Petroleum Act 1984* (NT));
 - (xv) a licence (within the meaning of the *Petroleum (Submerged Lands) Act 1981* (NT)).
- (2) The condition in paragraph (1)(b) may be satisfied even if the gas, when it was recovered as mentioned in that paragraph, was not suitable for consumption.

Part 3—Price cap and exceptions

Division 1—Price cap

8 Price cap

- (1) A person contravenes this subsection if:
 - (a) the person is covered by section 9; and
 - (b) the person enters into an agreement for the supply of regulated gas; and
 - (c) the agreement is entered into in the price cap period; and
 - (d) under the agreement, the person is to supply regulated gas; and
 - (e) the price payable under the agreement, for regulated gas to be supplied by the person in the price cap period, could exceed the price cap.
- (2) A person contravenes this subsection if:
 - (a) the person is covered by section 9; and
 - (b) the person entered into an agreement for the supply of regulated gas; and
 - (c) the agreement was entered into in the price cap period; and
 - (d) the person supplies regulated gas under the agreement in the price cap period; and
 - (e) the price payable under the agreement, for that gas, exceeds the price cap.
- (3) A person contravenes this subsection if:
 - (a) the person is covered by section 9; and
 - (b) the person makes an offer on a gas trading exchange for the supply of regulated gas; and
 - (c) the offer is made in the price cap period; and
 - (d) the price under the offer, for that gas, exceeds the price cap.
- (4) Subsections (1), (2) and (3) are civil penalty provisions.
- (5) Subsection (1) applies only if entering into the agreement mentioned in paragraph (1)(b) is gas market conduct described in subsection 53ZZA(1) of the Act.
- (6) Subsection (2) applies only if the supply mentioned in paragraph (2)(d) is gas market conduct described in subsection 53ZZA(1) of the Act.
- (7) Subsection (3) applies only if making the offer mentioned in paragraph (3)(b) is gas market conduct described in subsection 53ZZA(1) of the Act.

9 Persons subject to price cap

- (1) A person is covered by this section if:
 - (a) the person is a regulated gas producer; or
 - (b) the person:
 - (i) is an affiliate of a regulated gas producer; and

Section 10

- (ii) has entered into an agreement for the supply of gas to the person by the regulated gas producer or another affiliate of the regulated gas producer.
- (2) A person is an **affiliate** of a regulated gas producer if any of the following conditions are satisfied:
 - (a) the person and the regulated gas producer are related to each other (as determined in accordance with section 4A of the Act);
 - (b) the person and the regulated gas producer are related entities (within the meaning of the *Corporations Act 2001*);
 - (c) there is a joint venture in which the person and the regulated gas producer are participants;
 - (d) there is:
 - (i) a joint venture in which the person and a third person are participants; and
 - (ii) another joint venture in which the regulated gas producer and the third person are participants;
 - (e) there is:
 - (i) a joint venture in which the person and a third person are participants; and
 - (ii) another joint venture in which the regulated gas producer and a related entity (within the meaning of the *Corporations Act 2001*) of the third person are participants;
 - (f) there is:
 - (i) a joint venture in which the regulated gas producer and a third person are participants; and
 - (ii) another joint venture in which the person and a related entity (within the meaning of the *Corporations Act 2001*) of the third person are participants.

10 Price cap—variations to agreements

- (1) This section applies if:
 - (a) a person is covered by section 9; and
 - (b) the person enters into an agreement for the supply of regulated gas; and
 - (c) the agreement is entered into before the start of the price cap period; and
 - (d) in the price cap period, the person enters into a variation of the agreement; and
 - (e) the variation includes a provision that determines the price of regulated gas to be supplied under the agreement.
- (2) For the purposes of subsections 8(1) and (2), treat the agreement, to the extent that it is varied under the variation, as being an agreement entered into at the time the variation is entered into.

Division 2—Exceptions to price cap

11 Exception for export

Subsections 8(1) and (2) do not apply if, at the time the agreement is entered into, the person to whom the regulated gas is to be supplied under the agreement intends to export from Australia the regulated gas in a liquid state.

12 Exception for storage

Subsections 8(1) and (2) do not apply if the agreement is for the storage of regulated gas.

13 Exception for subordinate contract or transaction notice not determining price

Subsections 8(1) and (2) do not apply if all of the following conditions are satisfied:

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

14 Exception for gas exchange transactions

Subsections 8(1) and (2) do not apply if the agreement results directly from a transaction on a gas exchange that is:

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

15 Exception for gas trading exchange transactions

- (1) Subsections 8(1) and (2) do not apply if all of the following conditions are met:
 - (a) the agreement results directly from a transaction on a gas trading exchange;
 - (b) the transaction is not any of the following:
 - (i) a Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
 - (ii) a Broker Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange).
- (2) Subsections 8(1) and (2) do not apply if all of the following conditions are met:
 - (a) the agreement results directly from a transaction on a gas trading exchange;

Section 16

- (b) the transaction is any of the following:
 - (i) a Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
 - (ii) a Broker Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
 - (c) under the agreement mentioned in paragraph (a), all of the regulated gas to be supplied under that agreement is to be so supplied no later than the end of the period that:
 - (i) starts at the time when that agreement is entered into; and
 - (ii) ends at the end of the third gas day starting after that time;
 - (d) all of the regulated gas to be supplied under that agreement is so supplied before the end of that period.
- (3) Subsection 8(3) does not apply if all of the following conditions are met:
- (a) under the offer made on the gas trading exchange, all of the regulated gas to be supplied in accordance with the offer is to be so supplied no later than the end of the period that:
 - (i) starts at the time when the offer is made; and
 - (ii) ends at the end of the third gas day starting after that time;
 - (b) all of the regulated gas to be supplied in accordance with the offer is so supplied before the end of that period.
- (4) Subsection 8(3) does not apply if the offer is for a transaction that is any of the following:
- (a) a Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange);
 - (b) a Broker Pre-matched Trade (within the meaning of the gas trading exchange agreement for the gas trading exchange).

16 Exception for retailers

Subsections 8(1), (2) and (3) do not apply if all of the following conditions are met:

- (a) at the time this instrument commenced, the person mentioned in those subsections:
 - (i) held a retailer authorisation (within the meaning of the National Energy Retail Law as it applies in a State or a Territory); or
 - (ii) was a retailer (within the meaning of the *Electricity Industry Act 2000* (Vic.)); or
 - (iii) held a licence authorising the person to sell gas by retail under the *Gas Industry Act 2001* (Vic.);
- (b) any of the following subparagraphs apply:
 - (i) the person did not exist on 1 July 2021;
 - (ii) no more than 50 per cent of the annual turnover of the person during the financial year starting on 1 July 2021, to the extent that it is attributable to business operations related to the production, supply and acquisition of gas, is attributable to a business of producing regulated gas carried on by the person.

17 Exception for person covered by price cap exemption

- (1) Subsection 8(1) does not apply if all of the following conditions are met:
 - (a) the person mentioned in that subsection is:
 - (i) specified in a price cap exemption; or
 - (ii) an affiliate of a regulated gas producer, if the regulated gas producer is specified in a price cap exemption;
 - (b) the price cap exemption states that it applies in relation to subsection 8(1);
 - (c) the price cap exemption is in force on the day on which the person enters into the agreement for the supply of regulated gas as mentioned in paragraph 8(1)(b);
 - (d) if subparagraph (a)(ii) of this subsection applies—the agreement provides that the person will acquire the regulated gas to be supplied under the agreement from the regulated gas producer.
- (2) Subsection 8(2) does not apply if all of the following conditions are met:
 - (a) the person mentioned in that subsection is:
 - (i) specified in a price cap exemption; or
 - (ii) an affiliate of a regulated gas producer, if the regulated gas producer is specified in a price cap exemption;
 - (b) the price cap exemption states that it applies in relation to subsection 8(2);
 - (c) the price cap exemption is in force on the day on which the person supplies regulated gas under the agreement as mentioned in paragraph 8(2)(d);
 - (d) if subparagraph (a)(ii) of this subsection applies—the person acquired the regulated gas supplied under the agreement from the regulated gas producer.
- (3) Subsection 8(3) does not apply if all of the following conditions are met:
 - (a) the person mentioned in that subsection is specified in a price cap exemption;
 - (b) the price cap exemption states that it applies in relation to subsection 8(3);
 - (c) the price cap exemption is in force on the day on which the person makes the offer on a gas trading exchange for the supply of regulated gas as mentioned in paragraph 8(3)(b).

Division 3—Ministerial price cap exemptions

18 Application for price cap exemption

- (1) The following may apply to the Minister for a price cap exemption:
 - (a) a regulated gas producer;
 - (b) an affiliate of a regulated gas producer.
- (2) The application must:
 - (a) be in writing; and
 - (b) be in a form approved by the Minister in writing.

19 Minister may grant price cap exemption

- (1) The Minister may, in writing, grant a price cap exemption, in relation to a person, from any or all of subsections 8(1), (2) and (3) if:
 - (a) the Minister receives an application under section 18 from the person; and
 - (b) the Minister is satisfied that it is appropriate to grant the price cap exemption, having regard to the matters mentioned in subsection (2) of this section.
- (2) For the purposes of paragraph (1)(b), the matters are as follows:
 - (a) if the person is a regulated gas producer—the volume of regulated gas produced by the person;
 - (b) if the person is a regulated gas producer—the proportion of the business operations of the person represented by the business of producing regulated gas that it carries on;
 - (c) any material change in the person's circumstances since the commencement of this instrument;
 - (d) the object of Part IVBB of the Act;
 - (e) any other matter that the Minister considers to be relevant.

20 Contents of price cap exemption

- (1) A price cap exemption granted in relation to a person must:
 - (a) specify the person; and
 - (b) state that it applies in relation to one or more of the following provisions:
 - (i) subsection 8(1);
 - (ii) subsection 8(2);
 - (iii) subsection 8(3); and
 - (c) state the period during which it is in force (which must start on or after the day on which the decision to grant the price cap exemption is made); and
 - (d) state the conditions (if any) to which the price cap exemption is subject (see subsection (2)).
- (2) A price cap exemption may specify that it is subject to conditions, if the Minister is satisfied that the conditions are appropriate, having regard to the matters mentioned in subsection 19(2).

- (3) A person contravenes this subsection if:
 - (a) the person is specified in a price cap exemption; and
 - (b) the person engages in conduct at a time when the price cap exemption is in force; and
 - (c) the conduct contravenes a condition specified in the price cap exemption.

Civil penalty:

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

21 Notice of decision

- (1) This section applies if:
 - (a) the Minister receives an application under section 18 from a person for a price cap exemption; and
 - (b) the Minister decides to grant, or not to grant, the price cap exemption.
- (2) The Minister must give the person notice of the decision as soon as practicable.
- (3) The notice must:
 - (a) be in writing; and
 - (b) if the decision is to grant the price cap exemption—include a copy of the price cap exemption; and
 - (c) state the reasons for the decision.

22 Variation or revocation of price cap exemption

- (1) The Minister may, in writing, vary or revoke a price cap exemption granted in relation to a person if the Minister is satisfied that it is appropriate to do so, having regard to the matters mentioned in subsection 19(2).
- (2) The Minister must give the person notice of the variation or revocation as soon as practicable.
- (3) The notice must:
 - (a) be in writing; and
 - (b) include a copy of the variation or revocation; and
 - (c) state the reasons for the variation or revocation.

23 Delegation

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

Part 3 Price cap and exceptions

Division 3 Ministerial price cap exemptions

Section 23

- (c) a member of the staff of the Commission who is an SES employee or an acting SES employee.
- (3) In exercising a power or performing a function under a delegation under this section, the delegate must comply with any written directions of the Minister.