

MANDATORY CODE OF CONDUCT

12 MAY 2023

INTRODUCTION

The Energy Users' Association of Australia (EUAA) is the peak body representing Australian commercial and industrial energy users. Our membership covers a broad cross section of the Australian economy including significant retail, manufacturing, building materials and food processing industries. Combined our members employ over 1 million Australians, pay billions in energy bills every year and in many cases are exposed to the fluctuations and challenges of international trade. Our membership covers most of the major gas users in the east coast gas market who all rely on reliable and competitively priced gas for their business sustainability.

SUMMARY

The EUAA welcomes the Federal Government's decision to implement the Mandatory Gas Code. It is required because our first preference – a competitive domestic gas market - is not the case now and has not been the case for many years. This market failure has required Government intervention in the form of the Mandatory Code. Our members have had first-hand experience for many years of this market failure and the market behaviour the Code is designed to address – bargaining power imbalances, capricious behaviour by some producers and prices that have no relation to Australian market fundamentals. This suggests that gas producers have no interest in their domestic social licence.

This experience has been comprehensively documented in successive ACCC Gas Reports since 2016. We undertook lengthy good faith negotiations with gas producers to develop a Voluntary Code in 2021. We eventually withdrew from the process because we saw it achieving nothing for consumers in a market where producers could continue to exercise market power – limited good faith provisions, no effective price clause and no effective enforcement. It did nothing to further the development of a workably competitive market.

Gas producers exercise of market power reached its zenith in late 2022 when the only offer to supply some of our members received was at LNG netback when LNG netback was >\$60/GJ. That gas producers were surprised that the Government acted to implement a price cap and a mandatory code is surprising to us.

Our members see the Mandatory Code ('Draft Code' or 'Code') as an essential addition to the suite of Government policies along with the Australian Domestic Gas Security Mechanism (ADGSM), Heads of Agreement (HoA) and ACCC market monitoring and public reports. All four have to work hand in hand to ensure the two key objectives – being able to meet our international supply obligations and developing a workably competitive domestic market where there is sufficient supply of competitively priced gas for all domestic users.

The HoA commitments are only to 'offer', and, as we have seen, offers are often at prices well above what EUAA members can afford to pay and what the Code defines as a 'reasonable price'. This makes the HoA of very limited use in achieving the Government's aims and why the Code's obligation to 'supply' is so important.

We hope that all 'large' producers have made their 8th May submissions on the commitments they are prepared to make to get a conditional exemption and ensure the development of a workably competitive market. We hope that they see the commitment to the Code as part of their overall regulatory framework which also includes the recent changes to the PRRT and, in combination, these measures provide an incentive for offshore exploration to develop new domestic supply and for producers to regain their social licence. Nobody wants to get into a situation where the Government is forced to pull the trigger on the ADGSM to ensure domestic users get competitively priced gas in a country that has more than sufficient gas reserves to meet both international and domestic demand.

All stakeholders would agree that we need a regulatory framework that provides the right balance between prescription and discretion to provide appropriate incentives to develop new supply at a competitive price that our members need to have a future for their operations. The Draft Code goes a long way to achieving those objectives. We see the approach based on a 'reasonable price' anchor plus enforcement effectively through the reporting requirements to be a better model than the originally proposed reasonable price plus arbitration.

We very much appreciate the engagement we have had with the various Departments co-ordinating development of the Code. We understand and support the desire of the Government to have the Code in place by early June means that the consultation period is short which limits detailed consideration of some issues and the scope of application to just producers. It also means that there is a degree of uncertainty about how major parts will operate in practice.

This may result in the first 6-12 months of the Code's operation being a bit 'bumpy' in terms of parties coming to terms with what is expected of them. This is where transparency will be very important – around the Government's criteria for giving a conditional exemption, the commitments producers have made to the Government, information published on the producers' websites, the reporting requirements to the ACCC, the quarterly ACCC reports and the rights of buyers whether retailers or end consumers. Once this initial 'bedding down' period is completed we look to the proposed quarterly reports on Code activity by the ACCC to provide the means by which the Code's effectiveness is judged and required amendments are made in a timely manner following the proposed 2025 review.

Our comments on the Draft Code begin with what we understand are the major components of the Code, in particular how the incentive structure is designed to work. We may have misunderstood some parts and if so we look forward to the opportunity for further engagement with the various Commonwealth Departments as the Code is finalised.

Even with large producers making the commitments the Government considers meet the objectives in CI 49 in the Draft Code, given many C&I customer purchase their gas through retailers, we look to the ACCC monitoring of retailer behaviour will ensure retailers comply with the spirit of the Code and the benefits retailers obtain under the Code are fully passed on to their customers.

Given the Code will not apply to spot markets, we look to the ACCC monitoring of spot markets to ensure producers are complying with the Code.

Finally, we are aware that the Government's options are limited by domestic and international legal constraints and obligations. Our recommendations below are based on our commercial experience and judgement. We are not lawyers and so leave it to the Government to decide if our recommendations are possible given the legal situation.

In summary the EUAA supports:

- the proposed approach to ‘good faith’ as it is combined with reasonable pricing obligation
- the requirements for producers to regularly publish their EOI schedule and the information to be included in that schedule
- the initial offer/final offer process that can be varied by mutual agreement between the parties with a recommendation for more pricing information to be provided in the initial offer
- close ACCC monitoring of the offer process, particularly for sales from a producer to an affiliate retailer
- more explicit provisions in the Code around Buyer EOIs and obligation on producers to respond
- more explicit language in the Code around the ability of parties to undertake bi-lateral negotiations
- greater transparency on the process for large producers to obtain a conditional exemption (including the definition of a workably competitive market), the details of any exemption given and the quarterly reports on market activity
- transitional arrangements to ensure the EOI schedule is published soon after the Government grants the exemption to enable buyers to start negotiations for 2024 supply
- strong ACCC monitoring of contracts entered into with retailers and the spot market that are both outside of the Code
- content and frequency of producer reporting obligations with transparency around the ACCC quarterly reports with timely information to the market
- the proposed penalty provisions
- clear definition of buyer rights e.g. around their ability to contact the ACCC during GSA negotiations if they feel the producer is not acting in good faith the timing and process of the review in 2025

OUR UNDERSTANDING OF THE CODE’S STRUCTURE AND OPERATION

- The previous model of a complex methodology for setting the reasonable price + arbitration is replaced by a model of a reasonable price based on a \$12/GJ price anchor + enforcement through the reporting obligations
- The structure will be regarded as a success if it results in a workably competitive market in the near future which is defined as a market that supports domestic pricing reflecting costs of production and a ‘reasonable profit’
- Large producers (above 100PJ/yr.) will be incentivised to apply for an exemption for an extended period which should provide them with certainty to develop new fields and enter into longer-term contracts (as well as eliminating the risk of the ADGSM being triggered)
 - These producers will be able to indicate the level of supply commitment they are willing to make over the term of the exemption sought
 - The objective will be that this volume commitment will be at the ‘anchor price’, though it seems that the Government may consider a tiered level of commitments e.g. XX PJ/yr. for Y years at \$12/GJ and additional commitments at a higher price; the commitment will also include a range of non-price terms
 - The exemptions will be producer specific
 - This \$12/GJ ‘anchor price’ will continue until at least the end of the initial ACCC Codes review that due to commence in the second half of 2025; up to that review it will not be adjusted for CPI
 - Those that do not have an exemption will be subject to a \$12/GJ price cap to 1 July 2025 and whatever it is post the ACCC review

- Producers have made submissions by 8th May on the commitments they are prepared to make
- The ACCC has discretion as to the level of information it publishes on large producer commitments, but will seek to publish as much as possible to assist buyer confidence in the Code
- Small producers who only supply the domestic market will be able to apply for an automatic exemption on an annual basis; this is expected to provide an incentive to develop new fields (and contribute to a workably competitive market) because they will have the ability to charge >\$12/GJ
 - However, it is expected that the price should not be much above \$12/GJ because they will be competing against large producers who will have to meet their supply obligation at or around the \$12/GJ anchor price
 - Small producers will lose their eligibility for an automatic exemption if, after the Code is in place, they sell to an LNG producer for export
- The information all producers provide on their websites on 1st January/1st July each year on uncontracted gas for the following 12 months will include two components:
 - the volume of gas required were their existing customers whose contracts end in the relevant 12-month period decide to renew at the same contract volume ('BAU' volume), plus
 - the volume of additional gas available to contract with new customers
- All sellers will have detailed quarterly reporting requirements to the ACCC on their market contracting activities
 - This will effectively provide the ACCC with the information to assess if producers have met their obligations under the Code
- Buyer EOIs can continue and once a buyer EOI reaches the stage of an offer from a producer then the Code provisions apply
- Buyers are subject to the good faith provisions of the Code but are not subject to any of the civil penalties set out in the Code
- The Code does not prevent buyers and large or small producers undertaking bilateral negotiations outside of an EOI process and reach agreement on whatever terms they wish; the provisions of the Code will apply to these negotiations
- The good faith provisions apply to all parties but there are no civil penalties applied to buyers whether through EOIs or direct negotiations
- While retailers are not covered, they:
 - will be able to benefit from buying gas from producers under the Code
 - will be closely monitored by the ACCC to ensure they are not undertaking activities that may be contrary to the Code's intent
- EUAA members will be able to meet with the ACCC to provide confidential information on their gas market experiences of both producers and retailers
- The ACCC will be providing the Government with quarterly reports on market activity following commencement of the Code
- The Government will draw on AEMO/ACCC data to decide on whether/how these commitments will lead to a workable competitive industry
 - If this is seen to occur then the Code may be suspended for a period rather than abolished to allow it to be quickly restored should the market subsequently be judged not to be workably competitive

The comments made in the body of this submission assume the above is a correct interpretation of the Draft Code.

COMMENTS

Good faith

We understand the approach of not prescriptively defining 'good faith, but using common law interpretation.

A key sticking point in negotiations on the Voluntary Code was the producer requirement that "acting in accordance with its legitimate commercial interests" would not mean that a Gas Supplier was in breach of their good faith obligations¹, when there was a very general pricing clause pointing to the role of LNG netback prices and effectively allowing gas supplier to continue to exercise their market power that ACCC GAS Reports had repeatedly highlighted.

In our view this provided a "get out of jail free" card for the producer and therefore, was a major contributor to the EUAA walking away from the Voluntary Code.

We would seek the Government's guarantee that Clause 31(4) in the Draft Code:

"Subsection (1) does not apply if the person is acting in the person's legitimate commercial interests.

does not act to allow producers to avoid the intent of the Code to ensure reasonable pricing under CI 27. Assuming this, we agree with the proposed approach on 'good faith' including the proposed factors which we believe are applicable to gas supply negotiations.

Expressions of Interest

We strongly support the requirement to provide details every six months on the EOIs the producer proposes to put out into the market for the following 12 months. This will allow our members to develop a negotiating strategy for their gas requirements. This transparency will give them options and hence increase their bargaining position. However, the level of improvement in a buyer's bargaining position is driven by the level of detail producers provide.

We think the proposed approach to what is required on the website strikes the right balance between prescription and flexibility. Given the publication of this schedule, we consider the proposed 'EOI response period' suitable with the caveat that business days should refer to the jurisdiction of the delivery point where the gas is being offered.

Given the good faith provisions apply to contracts of less than 12 months, we see no reason why the specific timelines and process steps for contracts of 12 months or more could not apply to contracts of less than 12 months. Negotiation for shorter term contracts are likely to take less time that what is required for longer term contracts and the Code has the flexibility for parties, acting in good faith, to vary the contracting process and timeline. We are prepared to consider the Code prescribing a similar process and civil penalties for buyer EOIs subject to the Code if our suggestions below on producer responses to buyer EOIs are incorporated into the Code.

¹ See CI 18 https://www.industry.gov.au/sites/default/files/2022-09/heads_of_agreement_the_australian_east_coast_domestic_gas_supply_commitment.pdf

Initial and final offers

We support the concept of initial and final offers as reflecting what normally happens in commercial negotiations as well as the flexibility, by mutual agreement, to go straight to a final offer.

Again, assuming the producer website information is transparent and comprehensive, and given the parties can mutually agree an extension, we think the proposed timeframes, process requirements and flexibility provisions for initial and final offers provide a suitable balance between prescription and flexibility in typical commercial negotiations. We would propose one addition relating to the interaction of price and non-price terms. If requested by the buyer, the initial offer should include prices for each of the flexibility terms requested by the buyer e.g. if the buyer requests details on how the price would change with different take of pay levels.

Large GSAs involve considerable due diligence by buyers and the proposed timetable for negotiations could be tight if there are gaps in the producer information provided e.g. representations and warranties around reserves and deliverability. Then there is the time taken to arrange transport from the producer's delivery point to the buyer's operations. Timing of these parallel negotiations will be critical, so we will closely watch these interactions (to the extent we can) to ensure the Code allows the time and flexibility required.

Sales from a producer to an affiliate retailer

There needs to be a transparent process when there is a sale from a producer to an affiliate retailer. In particular there needs to be competitive process:

- the affiliate retailer has to compete in the producer EOI process (so the negotiations are reported to the ACCC), and
- where the affiliate retailer does complete a GSA with its affiliate producer, the details of all the retailer EOI, initial and final contract negotiations with customers for that gas is subject to reporting to the ACCC.

We want to avoid the following situations:

- where the producer meets its obligations in selling to the affiliate retailer, but the affiliate retailer is able to on-sell the gas at price and non-price terms that are not consistent with the terms on the producer/retailer GSA (we recognise that the retailer will need a margin to cover its costs)
- Where a retailer which does not have an affiliate producer is disadvantaged in the EOI process.

We also suggest that the ACCC be aware of the risk of a retailer using its larger buying power to limit the access of end use buyers to a direct deal with the producer. The end user is then forced to purchase through a retailer at a higher price. Consider the example where a large producer strikes an exemption based on commitment to supply at a particular price – will the producer be prevented from accepting an offer from a buyer at a higher price and still be compliant with the Code?

Buyer EOI process

Our members' experience with their EOIs in recent years is that they are sometimes lucky to get a response. Often a producer would say either they have no gas or the buyer needs to respond to the producer EOI. We strongly support incorporating the role of buyer EOIs into the Code.

We believe that, if allowed by law, the good faith obligation on producers should mean they would respond to a buyer EOI where the producer is showing on its website that it has uncontracted gas available for supply. This response would include a proposed price to supply. Were this to be the case then we are happy to consider that the buyer EOI should follow a similar process (e.g. time lines and information requirements) and have civil penalties the same as applying to producer EOIs.

Bilateral negotiations

The Consultation Paper notes (p.10) that

“The requirements around initial offers will also apply to bi-lateral negotiations instigated outside an EOI process – that is, the Code will require an offer that constitutes an initial offer (for supply for a period of 12 months or more whether or not it follows an EOI process) to comply with certain requirements.”

We know the Commonwealth has told producers that the Code does allow bi-lateral negotiations outside of the EOI process. Yet we have heard of a producer telling an EUAA member that this is not the case. There should be explicit language in the Code to refer to these bi-lateral negotiations being allowed under the Code and how the Code provisions apply.

Application of the price cap

Based on the ACCC advice, we consider the price cap will support the adequate supply of gas at least over the period to 2025. The impact beyond then depends on the outcome of the 2025 review. Those producers that are publicly listed provide evidence that full costs of production are in some cases substantially lower than \$12/GJ².

It is unclear how the cap will work, and indeed if large producers need to commit to supply all of their volume commitment at or below the price cap. We hope that is the case. Certainly, that is not the case for small producers who get an automatic exemption to price above the cap. If the Government expects \$12/GJ to be the cap for a conditional exemption, then it seems the Government expects large producers' commitments to provide competitive pressure on the price offered by small producers.

We are unclear what would happen if large producer(s) chose to:

- not apply for an exemption
- considerably reduce the volume of gas it offers to the domestic contract market given the \$12/GJ cap, and
- maximises its sales into the spot market at a level it judges does not lead to ACCC investigation for anti-avoidance

² Origin reports that its H1 FY 23 costs (capex + opex excluding purchases and including royalties at the breakeven oil price) were under \$4/GJ - see Slide 34 in its February 2023 presentation https://www.originenergy.com.au/wp-content/uploads/HY23_Investor-Pres_230216.pdf. The prices used to calculate uncontracted reserves in the ACCC January 2023 Gas Report indicate most producers have costs under \$12/GJ – see Appendix A pp143ff https://www.accc.gov.au/system/files/Gas%20Inquiry%20-%20January%202023%20interim%20report%20-%20FINAL_0.pdf

or, where some or all of producer commitments are at above \$12/GJ. Does either situation lead the Government to threaten an ADGSM trigger?

As to the review process, we think the proposed provisions for a review in 2025 are reasonable. We think that there will be a lot of ‘learning by doing’ in at least the first year of the Code as all parties seek to understand their obligations. The review should be done in the context of a good understanding of all parties on how the Code is working (or not working). The two years of code operation will also provide a more shared understanding of what a ‘workably competitive’ market means in practice. We provide some guidelines below.

Large producer conditional exemptions

The Consultation Paper provides little detail on many aspects of the process for applying for and then the Governments’ criteria for granting, a conditional exemption. It seems to be a case by case process. There needs to be transparency around how each exemption has been decided. This is an important input into understanding how the Government is going to define a ‘workably competitive’ market which we discuss further below.

The Code says a conditional exemption can be granted to a ‘regulated gas producer’ or ‘an affiliate of a regulated gas producer’ (CI 48). While this gives the benefit of significant discretion to the Minister to decide whether the commitment would promote a range of objectives e.g. a workably competitive market, affordability and availability of gas on the east coast, sufficient gas supply to meet demand and impact on gas exports ³ no further details are given.

This makes it difficult to comment on in this submission, but we offer the following suggestions for the approval process:

- there should be a commitment to supply volume at a diverse range of east coast delivery points – it is not a workably competitive market if all Queensland producers only offer gas at Wallumbilla; some members have only had offers at a gas hub a considerable distance from their closet gas hub. This is seen as an anti-competitive measure as it requires the buyer to manage complex transport arrangements that they are not experienced in doing. The cost of delivery from the production ATP to the nominated delivery point would be in addition to any agreed offer price negotiated as part of a conditional exemption.

The Draft Code proposes that the information on the producer website should include (p.21):

“...if known, where the gas that will be offered will be produced (i.e. the location, this may be a specific field etc.)”

which would be consistent with a delivery point obligation.

- Consideration be given for the ability of producers to get a conditional exemption for specific future fields that are dedicated to supply domestic customers.

The Consultation Paper makes no mention of LNG import terminals. In our earlier submission on this matter, we argued:

³ See CI 49(3)

“We support a more expansive view of ‘producer’ to include a supplier of gas that offers gas in the east coast market other than as a retailer. If a current producer introduces an LNG import terminal, that gas must be considered as from the producer. If supplied as a retailer, it should be captured accordingly. It may turn on the final structure of LNG terminals. What is important is that there is no gap left open before an LNG import terminal is a real option.

Given LNG import terminals are built on the expectation that there will be shortage of gas for the domestic market, we do not want a situation where a terminal is built because of a lack of development of domestic reserves and then supplies the domestic market at an LNG netback price. A key objective of the Code is to explicitly delink domestic prices from LNG prices. LNG import terminal should be treated as a producer, not a retailer.

The ACCC should be as transparent as possible in what exemption information it publishes. The greater the level of information provided the more confidence consumers will have around the Code.

Automatic exemptions for small gas producers

We agree with the proposed arrangements for small producer exemptions. It is a simple process to give effectively an evergreen exemption combined with a positive and ongoing obligation on the producer to inform the ACCC if they enter into an agreement to export gas under an agreement entered into after the Code comes into effect.

Transitional arrangements

We understand that the requirement for producers to make their submissions by 8th May on the commitments they are prepared to make to obtain a conditional exemption is to enable these exemptions to be quickly processed so that gas supply negotiations can start soon after the anticipated start of the Code in June. However, the requirements for producers to publish this EOI information does not start until 1st January 2024.

We would propose that where a conditional or automatic exemption is provided at least 30 business days prior to the 1st January 2024, that there is an obligation on producers to publish the EOI information within 7 business days of that exemption being granted. Then updates of that information would follow the 1st January/1st July timetable from 2024. This is required to ensure buyers, whether they purchase directly from producers or through retailers, have a reasonable time, and a range of supply options, to source their 2024 gas.

Many of our members have traditionally bought from retailers and we are concerned that any delay in retailers being able to source gas under the Code will have a flow-on impact on end users not being able to contract for 2024 gas with their retailer. A common retailer response in the last six months is ‘we do not have any uncontracted gas because we are unable to source new gas supply from producers given uncertainty around the price cap and Code’.

Reporting obligations

We strongly support the proposed comprehensive reporting and recordkeeping requirements – both in their content and frequency. This is essential for the ACCC to fulfil its compliance monitoring and enforcement activities. We understand that producers will be required to report quarterly on EOI, initial offer and final offer activity irrespective of whether a GSA was signed. The ACCC will in turn be reporting quarterly to the Government on Code

matters and this report should be made public in the manner of the regular ACCC Gas Reports, protecting commercial in confidence matters.

While we are a strong supporter of the existing six-monthly cycle of ACCC Gas Reports, the information gathering powers under the Competition and Consumer Act (CCA) mean that the data the ACCC is reporting on is some months old e.g. the most recent report published on 27th January had market price offer data up until August 2022. We would like to understand what changes, if any, are required to the information buyers and seller provide under the CCA (e.g. Clause 95ZK) and how these will be reflected in the Guidelines⁴.

We would also like to understand the scope of information gathering the ACCC will undertake with retailers to ensure they are abiding by the spirit of the Code given they are excluded from it. In particular we would suggest specific provisions where there is a sale from a producer to an affiliate retailer. As recommended above, this monitoring should particularly cover the situation where a retailer purchases gas from an affiliate producer and then on-sells to end use customers.

Finally, it would be helpful if the market were to have information on how the ACCC might apply the anti-avoidance provisions under the Code to the level of spot market sales. Given spot market sales are not covered by the Code, a producer may well seek to expand their spot market sales to avoid the Code provisions.

Penalties

We support the proposed penalties including the allocation of provisions among the three penalty tiers.

The definition of a workably competitive market

We would recommend that the Government provide some detail on how it is going to define a workable competitive market and how that is going to apply to determining conditional exemptions for large producers. This is needed to give the market guidance on what has to occur before the Code is suspended and to give confidence to buyers that the aims of the Code have been achieved. It seems the Minister will implicitly be taking a view on that when a conditional exemption is given to a large producer – will the total of large producer commitments be enough to produce a workably competitive market at some specified period in the future? Or, will further commitments be required?

We would see the following characteristics as the minimum requirement for a workably competitive market for the sale of gas (without considering pipeline regulation):

- all market participants have access to comprehensive and timely information on uncontracted reserves and prices achieved
- there are sufficient uncontracted reserves available from a range of LNG and non-LNG producers so no one supplier or group of similar suppliers (e.g. LNG producers) are able to exercise market power – this would be indicated by a significant reduction in the proportion of uncontracted reserves held by LNG producers below the current 90% identified by the ACCC

⁴ <https://www.accc.gov.au/system/files/Guidelines%20on%20section%2095ZN%20claims%20in%20price%20inquiries.pdf>

- Buyers have the option to respond to multiple producer EOIs and buyers get multiple responses to their EOIs – the aim of the exemption process and publication of forthcoming EOIs on producer websites
- There is an increasing prevalence of longer-term contracts (>3 years) being completed
- There is stronger use it or lose it provisions on the allocation of ATPs (acknowledging this is a State matter for onshore gas)

Buyer rights need to be more clearly defined

We would like to see a clear expression of the rights that buyers have e.g. when they consider a producer is not acting in good faith, where a producer has withdrawn an offer claiming a 'material change in circumstances', or a retailer is not acting in spirit of the Code e.g.

- Who should they contact at the ACCC?
- What information should they provide? The existence of a Confidentiality Deed between producer and buyer should not be a barrier to the buyer providing information to the ACCC

While producers will be providing information on a quarterly basis to the ACCC on which the ACCC can make a judgement on Code compliance, we are concerned about the situation where that report comes to the ACCC after a GSA has been signed with the buyer and the terms and conditions of the GSA might not be consistent with the producer's conditional exemption.

We support the ability of a buyer to make representations to the ACCC during the period of initial and final offers if the buyer feels that the producer is not abiding by the Code. Once this representation is made, the time limit for consideration of the initial and final offers should temporarily stop while the ACCC decides the matter and makes a ruling if required.

It also needs to be clearer what would happen in the following situation – a GSA is completed but subsequent reporting by the producer to the ACCC leads the ACCC to decide there is a breach of the Code for that contract. Does that mean the contract terms are to be re-negotiated and, if no agreement, then the GSA is cancelled? How are the parties to determine what the Code compliant terms should be?

Review mechanism

We agree with the conduct provisions of the Code being enduring. Given the speed at which the Code has been developed, it is inevitable that there will be the need for clarification and amendment as we experience the Code in practice.

We support the timing of the first review in 2025 – it should allow sufficient time to see what is working and what is not and where amendments might be required to ensure the Government's objectives are achieved. Conditions that would warrant an earlier review would include whether ACCC monitoring indicated producers are not meeting their obligations under the Code and this cannot be addressed through the penalty provisions.

The review needs to be a public process with enough time to fully consider all stakeholders interests. We would recommend adopting the default AEMC two stage process for rule changes:

- Invitation to make submissions on an Issues Paper
- Consideration of those submissions and publication of a draft revised Code that is then subject to submissions

- Final revised Code published.

and that there is a specific timing for the review to be completed and the revised code to apply no later than the 1st January 2026.

Do not hesitate to get in contact should you have any questions.

Sincerely,



Andrew Richards
Chief Executive Officer