Please direct all responses/queries to:

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Department of Climate Change, Energy, the Environment and Water
GPO Box 3090,
Canberra ACT 2601

Dear Sir or Madam

RE: Submission on the exposure draft of the Competition and Consumer (Gas Market Code) Regulations 2023 (the Code)

As per previous submissions related to the Government's Energy Price Relief Plan, Woodside acknowledges the cost-of-living challenges that exists across the economy. We continue to advocate for policies that incentivise future investment in supply that can meet the growing need for additional gas in the East Coast energy market. This additional gas is critical to support grid stability as coal-fired power generators are decommissioned, and to enable greater renewable energy penetration.

We refer to the exposure draft of the Code released on 26 April 2023. This submission aims to respond to the general policy objectives and current drafting of the Code, and to put forward constructive ways to address some of our areas of concern.

In summary, our view is that the Code is an improvement on earlier proposals of its principles, and we appreciate that it takes account of gas producer feedback on some key issues in the overall East Coast energy market. In particular, we consider that the move away from binding arbitration is appropriate. We also consider that it is appropriate that the Code only applies to the East Coast, recognising that the Western Australia gas market is fundamentally different to the East Coast, including with differing infrastructure constraints and demand profiles.

However, we consider that the present circumstances do not adequately make the case for the extension of a whole of industry producer price cap to 2025, given recent ACCC and Government announcements highlighting that there is already downward pressure on pricing.

The Code also imposes an onerous and unduly prescriptive timeline for gas producer Expressions of Interest (EOIs) and negotiations that may reduce market liquidity. If the Code comes into effect these can be a periods of up to 115 business days (or even longer as some periods are expressed as a minimum obligation). If we combine these periods with the time required to negotiate and finalise a final gas sale agreement, this can result in over six months where portfolio volumes must be quarantined by the producer for a buyer. This gives rise to supply risks at a time of urgent need.

Further, the Code does not apply to the sale of gas by buyers or other gas market intermediaries, despite recent reports indicating a significant gap is emerging between the price paid by gas buyers and the amount charged to consumers for that gas[1]. The Consultation Paper on the Code states that the Government may consider creating a new code covering retailer sales in a future process should evidence arise that retailers are not offering gas at efficient or competitive prices to users. This needs to be developed in parallel with the Code so consumers can obtain the benefit of the Code, and to achieve the policy objective of ensuring that domestic prices reflect reasonable levels governed by Australian market fundamentals.

Finally, the Code allows for significant Ministerial discretion in decision making, potentially making it difficult for producers to plan and execute long-term activities. It creates market, pricing and investment uncertainty. This is counterproductive to the objective of maintaining incentives for investment in supply sufficient to meet the ongoing demand.

Attachment 1 to this letter sets out our substantive comments on the Code in more detail.

[1] AGL gas prices: ACCC puts retailers on notice as AGL gas earnings leap 24pc (afr.com)

We reiterate that Woodside remains committed to working with the Government to address Australia’s domestic gas market challenges.

Yours faithfully

[redacted]

Executive Vice President Marketing and Trading

Attachment 1: Detailed Submissions on the Code

Matter	Submission
Gas EOIs	The Consultation Paper states that to maintain flexibility, the Code does not mandate that gas must be offered through EOI processes. Woodside agrees with this approach. However, the term 'gas EOI' is broadly defined in the Code as an *'an expression of interest for the purpose of ascertaining whether a person is interested in acquiring regulated gas*'. This drafting may capture and bring into the ambit of the Code almost any conversation or interaction with a potential buyer that is initiated by the supplier, and not just a formal EOI process. Woodside submits that the Code should make clear that parties are permitted to contract bilaterally outside the formal EOI process (that is, that suppliers may approach potential customers without that approach constituting the issue of a gas EOI), and that if they agree to do so (regardless of which party initiated the approach) they should not be bound by the mandated timelines in respect of gas initial offers and gas final offers. The alternative requires the producer to quarantine gas for the potential buyer from the time at which it enters into negotiations, which undermines the objective of flexibility and risks producers' ability to supply to the market at times of urgent need. As part of that change, the definition of gas EOI should be amended in line with industry usage of the term and to reflect that it is part of a formal offer process; being a non-binding expression of interest or invitation issued by a covered supplier to one or more potential buyers in the market for the purpose of ascertaining whether the potential buyers have an interest to buy regulated gas on the terms of the EOI.
Retrospective application (sections 7 and 8)	Woodside agrees that the Code should not apply retrospectively to EOIs, offers or agreements entered into prior to commencement. However, the Code doesn't adequately account for the complexities that will arise with any amendments or variations that are sought to pre-existing Gas Sale Agreements (GSA) or transactions entered into under Master GSAs, to the extent that price variations bring these into the ambit of the Code. A large number of potential variations may be held to determine price under a GSA. The reopening of old agreements is likely to contribute to uncertainty in the market and supply delays as the volume of agreements to be negotiated will increase.
Geographical application (section 9)	It is appropriate that the Code only applies to the East Coast, recognising that the WA gas market is fundamentally different to the East Coast, including with differing infrastructure constraints and demand profiles. A code of conduct that may be suitable in the East Coast will not be suitable in WA, and compliance may be costly, ineffective and deter investment in WA.
Negotiations (Part 3)	The timelines prescribed under Part 3 of the Code are onerous and incapable of implementation in a clear, workable way which provides certainty and allows for a functioning gas market. They do not achieve the objectives of affordability and reliability. As certain stages are triggered by notices given by the Buyer, producers will need to adhere to strict deadlines which differ in respect of each of their negotiations, with potential civil penalties where a date is missed. Further, a producer-led EOI process can run for up to 115 business days (or even longer as some periods are expressed as a minimum obligation). If we combine these periods with the time required to negotiate and finalise a GSA, this may result in over six months where portfolio volume must be quarantined on behalf of a buyer (who can withdraw from negotiations at any time). This lack of flexibility risks producers' ability to supply to the market at times of urgent need.

	Woodside submits that the producer-led EOI process under the Code should align with the process that was contained in the Voluntary Code, which was less administratively onerous on and more workable for producers, while still supporting negotiations between gas producers and buyers. Further, as noted above, in order to maintain flexibility, parties should be able to agree to enter into bilateral negotiations without being subject to the onerous procedural timing requirements set out in the Code.
Negotiations (Part 3) – Circumstances in which a covered supplier can withdraw	As noted above, buyers can withdraw from the negotiation process at any time, yet there are very limited circumstances in which a covered supplier can withdraw, as set out in sections 15, 19 and 21(2) of the Code. This may force producers to expend time and resources on, and quarantine gas for, a deal that is not appropriate to progress. To allow for a functioning gas market and to improve fairness and transparency, we consider that producers should be permitted to withdraw from negotiations in various additional circumstances, including: • for Buyer insolvency; • if the Buyer breaches its obligation to negotiate in good faith under section 30 of the Code; or • if the Buyer breaches an applicable law, which causes reputational risk to the supplier. Further, if a change in law or regulations imposes a compliance burden that impacts the supplier's ability to supply, this event may not technically be covered under sections 15, 19 or 21(2) as it would not reflect a material change in *the supplier's* circumstances, financial business or business structure. However, for reasons of fairness and transparency, such an event should still permit the supplier to withdraw from the negotiation process, particularly given the regulatory and market uncertainties related to the East Coast gas market. Sections 9 and 21 of the Code provide that the supplier can only withdraw if it has made reasonable efforts to make supply possible. This should not apply to a withdrawal in the circumstances set out above. Further, the Code should stipulate that this obligation does not require the supplier to incur additional costs.
Price Rules (Part 4 division 2)	The present circumstances do not adequately make the case for the extension of the price cap to 2025, given recent ACCC and Government announcements highlighting that there is already downward pressure on pricing. The price cap does not require intermediaries or retailers to flow through any reduction in price to their customers. As the underlying market demand-supply equation will not change, the price cap may not prevent intermediaries and retailers from taking advantage of the price cap to make supra-competitive profit when supply tightens. Further, the price cap is 'evergreen' and may only be amended every two years, unless there is a substantial change in market conditions. Any review by the ACCC is likely to take time. This means that prices will practically be slow to respond to changes in market conditions that may justify (or even demand) higher prices.
Deemed exemption for retailers (section 47)	As noted above, there is no obligation in the Code for retailers to flow through any reduction in price to their customers. This undermines the Code's stated objective to ensure that domestic gas prices are reasonable. It unfairly places the regulatory burden on producers, while prices could be opportunistically increased by retailers or non-producing wholesale gas traders who have the ability to on-sell gas at higher, uncapped prices. The Consultation Paper on the Code states that the Government may consider creating a new code covering retailer sales in a future process should evidence arise that retailers are not offering gas at efficient or competitive prices to users. Woodside considers that this should be developed in parallel with the current review

	in order to ensure that consumers can obtain the benefit of the Code, and to achieve the policy objective of ensuring that domestic prices reflect reasonable levels governed by Australian market fundamentals.
Conditional Ministerial Exemptions (Part 7 Division 2)	While Woodside supports the availability of conditional Ministerial exemptions for large producers, the current two-Minister process allows for significant Ministerial discretion in decision making, potentially making it difficult to plan and execute long-term activities; particularly if there is a divergence in views and priorities from separate portfolio Ministers. Woodside recommends either that one Minister be delegated this responsibility, or that more information be shared on the decision-making process. At this stage, the form of the application for a conditional Ministerial exemption has not been released, so the sorts of commitments that producers may be required to provide are unclear. As currently drafted, the exemptions only appear to relate to the pricing provisions in the Code, but Woodside considers that broader exemptions may be required; for example, if a prescriptive EOI and negotiations process is mandated, suppliers may require exemptions in order to effectively run EOI processes more than once per year.
Variation or revocation of Conditional Ministerial Exemptions (section 52)	As currently drafted, the Ministers have broad discretion to vary or revoke a conditional Ministerial exemption. Woodside recommends that, in order to ensure the Government's objective of providing producers with policy certainty to engage in long term investments is achieved, section 52 of the Code should be amended to ensure where a conditional Ministerial exemption is granted on the basis of a court enforceable undertaking under section 87B of the *Competition and Consumer Act 2010*, the exemption may only be varied or revoked if the Federal Court determines there has been a breach of a term of that enforceable undertaking or the producer requests that the undertaking is terminated.
Exemption for New Supply	In order to incentivise new investment, avoid distorting investment decisions and in recognition of new gas projects having higher costs of production; new gas production that is brought in to meet domestic demand (and that cannot be exported) should be excluded from the Code. Woodside submits that there should be an exemption similar to that in the Price Cap Order, which limited the price cap to regulated gas recovered from an area or block in respect of which, immediately before commencement of the instrument, there was a licence in force authorising the recovery or production of gas.