

Consultation paper

Domestic Gas Market Security of Supply

September 2009

Introduction

How to respond to this consultation paper

The closing date for providing comment on this consultation paper is 15 October 2009.

Written submissions should be sent to:

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Public access to submissions

Please note that all submissions on the consultation paper will be treated as public documents unless marked "confidential". Any viewing or release of confidential submissions will be subject to the application of the Right to Information Act 2009.

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Background/ Problem definition

There are a range of estimates of gas within the Eastern Australian coal fields, and total recoverable reserves could be in the order 250,000 petajoules (PJ). A gas resource of this size would, in all likelihood, be sufficient to meet both domestic supply needs and the needs of a Liquefied Natural Gas (LNG) export industry for many decades.

However, there is a risk that the availability of gas in the ground may not translate into gas supplied to the Australian market in a timely manner to meet demand.

Despite the known availability of gas resources, it appears difficult for some domestic gas-fired electricity generators and other major gas users to secure long-term gas contracts. The lack of available gas on the market, or uncertainty about future supply, may hinder the development of gas-reliant projects which require certainty of supply before investment decisions are made. Potential supply constraints are particularly problematic because gas is the most likely interim fuel for electricity generation as the economy transitions to low emission power generation.

The Queensland Government must be sure there will be sufficient supply of affordable gas available to meet future electricity generation needs and to support the ongoing development of Queensland's industrial sector.

Current Queensland gas market conditions (contract availability and pricing) are being influenced by LNG project proponents' requirement to satisfy their Boards, bankers and LNG customers that they have security over sufficient gas supply to underwrite proposed LNG project investments.

Queensland industrial gas customers are reporting increasing difficulty obtaining medium to long-term gas contracts. The majority of these projects (e.g. fertiliser production, crude oil refining, alumina refining etc) involve large investments in assets which take many years to recover and require very competitive gas prices.

Substantially increased volumes of gas will be required for electricity generation until carbon capture and storage is commercially proven. Gas supply uncertainty will be factored into the price banks charge for finance for generation asset investments. It is possible that finance will not be able to be secured on the basis of short-term ramp-up gas alone. Gas price increases and finance risk will flow through to electricity prices.

Ramp-up gas will be produced prior to the first operation of the LNG facility and is an attribute of coal seam gas production where many hundreds of wells are required to meet LNG plant demand on the first day of the plant's operation. To achieve that level of production, many of the wells must be operational before LNG plant commencement and gas produced from these wells will be available as ramp up gas for the period prior to LNG plant commencement.

As pricing and availability is a critical risk for these businesses, investment decision makers seek a very high level of confidence/certainty around this issue. Gas supply uncertainty and price volatility impacts on business profitability for existing projects and undermines investment confidence in new projects.

This is in contrast to the situation in the early stages of development of the Coal Seam Gas (CSG) industry, when the industry was actively seeking contracts to underwrite further exploration and development. Many gas producers are not negotiating medium to long-term contracts until LNG investment decisions are finalised. Some producers appear to be willing to offer short-term contracts for gas that must be used before LNG plant is commissioned.

This could significantly shift the local gas market from a situation where CSG producers needed to make gas available on favourable terms in order to achieve market acceptance, to one where local users may need to rely on "ramp-up" gas that cannot be made available to LNG customers or pay higher prices in order to secure long-term contracts. Modelling around the actual dollar value of these prices is discussed in detail overleaf.

While the global financial crisis has resulted in near term global demand uncertainty, increasing global LNG demand over the medium to long-term, and economies of scale, provide incentive for the increasingly vertically integrated gas entities (with producers holding significant stakes in LNG plants) to develop LNG trains.

There remains uncertainty about how the Queensland gas market will evolve and when/if it will deliver the medium to long-term gas contracts required to underpin domestic market investment certainty and help mitigate energy price increases.

Gas availability modelling

Analysis undertaken by the Queensland Government, based on the McLennan Magasanik and Associates (MMA) study of the economics of an LNG industry, suggests that there should be sufficient supply to meet the requirements of the domestic (i.e. eastern Australian) market and a 40 million tonnes per annum LNG export industry in all but the most pessimistic scenarios. While this analysis demonstrates there is not a significant shortfall between gas resources and expected demand, this does not mean gas resources will necessarily be developed in a way that responds to domestic demand profiles.

Limits (timing and size) on impact of LNG on domestic market

Given the known and projected availability of gas resources, and expected growth in demand for domestic markets, the size of the new LNG industry is very important – a smaller industry or one which develops more slowly than in the MMA modelling, will have less/more gradual impact.

Moreover, if there is a limited or deferred development of the LNG industry, there will be pressure on the holders of gas reserves not committed to LNG to monetise some of their reserves, which would mean entry to the local market.

On the other hand, a large scale LNG industry could arguably make it relatively simple to meet the requirements of the smaller domestic market, from ramp up gas and the mismatch between well capacity and LNG processing capacity. However, as discussed above, a lack of secure, long-term gas supply contracts could present significant problems for investment in gas-fired electricity generation and gas-reliant industrial projects.

Energy (gas and electricity) price impacts of an LNG industry

Creating an export capacity exposes the industry to the international market where gas prices are higher than current domestic prices. International demand for gas at prices higher than domestic prices could flow through to electricity market prices. However, the emergence of an LNG export industry is not expected to be the major driver of electricity price increases. Increased gas demand for gas-fired electricity generation due to the implementation of the proposed Commonwealth's Carbon Pollution Reduction Scheme, the increased generation costs under the Mandatory Renewable Energy Target, and increasing costs of energy delivery infrastructure, will all contribute to electricity price increases.

The introduction of an LNG Industry in Queensland is far from certain however, the government is aware that its successful development will deliver substantial state economic growth in excess of 1per cent of Gross State Product, driving employment growth and royalties. This must be balanced with the costs which may include rises in gas and electricity charges.

Options for addressing domestic gas contract uncertainty

Two options have been identified for providing additional certainty about the availability of gas to the domestic market, and its price, in the presence of the projected LNG developments.

- Option 1 – application of a reservation policy requiring a percentage of gas production to be supplied to the domestic market.
- Option 2 – development of a reserve of potential gas-producing land which may be released as required to ensure supply. Depending on supply constraints identified in regular market assessments, this land may be conditioned such that it is only available to the domestic market.

The second option is a more light handed adaptive approach to dealing with supply constraints. This option involves the enhancement of the existing tenure management framework, to ensure that gas exploration and production tenure is not “banked”, and the release of new tenure in light of the supply/demand balance including the conditioning of tenure, to require local supply if necessary.

The government has not identified a preferred option and encourages interested parties to provide submissions on the merits and consequences of both alternatives.

The phrase domestic gas (or domgas) is used throughout the discussion. This terminology incorporates all uses of gas within Australia i.e. including use by electricity generators, commercial, industrial users and residential users.

Analysis of options

Option 1: Gas reservation requirement

1. The reservation policy option has been constructed as follows:

- Implementation via an Act of Parliament.
- Requirement for petroleum lease (PL) holders to sell/make available a certain proportion of gas produced for the Australian gas market.
- It would be an offence for producers or gas buyers to seek or make available this gas for export.
- Producers would be able to aggregate obligations across all PLs held by the producer. This provides flexibility for producers to meet all of their obligations from one or several PLs without affecting the amount of gas provided under the obligation.
- A period of grace is proposed to allow producers to make appropriate contracting arrangements before the domgas obligations commence.
- Producers would be able to apply to the Minister for an extension to the period of grace in certain circumstances.
- A commercial viability test would be applied to the supply of gas.
- Producers would be able to apply to the Regulator for approval to average the amount of domgas sold/made available over a period of time.
- The obligations would be subject to audit and strict enforcement provisions.
- The *Petroleum and Gas (Production and Safety) Act 2004* would be amended to make compliance with the Gas (Security of Domestic Supply) Act a condition of PLs.

Attachment 1 contains detailed provisions for the Gas Reservation Policy proposed.

Comments are sought in relation to the following aspects of Option 1:

Nature of domgas requirement

- Should the requirement be to sell or make available the gas to buyers?

If the requirement is to make gas available, how would the terms of supply be set e.g. the duration of contracts?

Size of domgas requirement

- How should the proportion of gas to be sold/made available under this Act be determined?
- Should a domgas requirement be ramped up, e.g. set at 10 per cent for the first five years of the Act's operation, increasing to 15 or 20 per cent thereafter?

Queensland gas consumption is currently ~165 PJ per year. The Queensland to South Australia/New South Wales Link (QSN Link) pipeline currently provides approximately 90 PJ per year of gas produced in Queensland to the southern states and is likely to be expanded in the future. Total current Queensland demand and southern demand supplied by Queensland is approximately 256 PJ per year and is expected to grow considerably over the next 10 to 15 years.

Every million tonnes of LNG exported, will require the production of approximately 60 petajoules (PJ) of gas. A 3.5 million tonne per annum (Mtpa) LNG train will consume approximately 210 PJ of gas per year. A 10.5 Mtpa industry (3 x 3.5Mtpa trains) will consume 630 PJ of gas per year, 14 Mtpa = 840 PJ, 28 Mtpa = 1680 PJ.

The amount of gas flowing to local users as a direct result of this policy will depend on the size of the industry and the size of the domgas obligation. Table 1 sets out the amount of gas delivered under this policy in a range of domgas obligation and industry size scenarios.

Table 1

	10 % domgas requirement	15 % domgas requirement	20 % domgas requirement
1 Mtpa exports	6 PJ	9 PJ	12 PJ
3.5 Mtpa exports	21 PJ	31.5 PJ	42 PJ
10.5 Mtpa exports	63 PJ	94.5 PJ	126 PJ
14 Mtpa exports	84 PJ	126 PJ	168 PJ
28 Mtpa exports	168 PJ	252 PJ	336 PJ

As Table 1 illustrates, a 15 per cent requirement will almost entirely meet current demand when imposed on a very large export industry. A 20 per cent requirement will exceed demand once a very large export industry has emerged. However, the industry will take some time to grow and demand will also grow.

McLennan Magasanik Associates (MMA) have modelled the potential impact of a 28 Mtpa industry on gas prices with and without a domgas requirement. MMA’s findings are that gas prices will rise regardless of the emergence of an LNG industry due to other factors in the industry. MMA also found that a 28 Mtpa LNG industry would contribute to additional price rises and that a 15 per cent domgas reservation requirement would dampen these additional price rises somewhat. These findings are presented in more detail in Table 2.

Table 2 – End user gas prices (\$/GJ, real \$2008)

No LNG scenario			
	Residential	Small business	Large industrial
2008	\$41.56	\$19.05	\$3.65
2015	\$42.71	\$20.20	\$4.81
2025	\$42.80	\$20.28	\$4.89
Change from 2008 to 2025	2.98%	6.46%	33.97%

28 Mtpa LNG scenario – no reservation			
	Residential	Small business	Large industrial
2008	\$41.56	\$19.04	\$3.65
2015	\$43.84	\$21.32	\$5.93
2025	\$44.99	\$22.47	\$7.08
Change from 2008 to 2025	8.25%	18.01%	93.97%
Change from no LNG in 2025	5.12%	10.80%	44.79%

28 Mtpa + 15% reservation scenario			
	Residential	Small business	Large industrial
2008	\$41.56	\$19.05	\$3.65
2015	\$43.58	\$21.07	\$5.67
2025	\$44.00	\$21.48	\$6.09
Change from 2008 to 2025	5.87%	12.76%	66.85%
Change from no LNG in 2025	2.80%	5.92%	24.54%

Obligations on petroleum leaseholders

Petroleum leases are often held jointly by more than one party. A reference to a petroleum lease (PL) holder therefore includes a reference to all parties that hold that PL.

- Should the obligations of each joint PL holder referred to in Option 1, Item 1, be proportionate to their interest in the PL or joint and several?
- Should the project-based approach in Option 1, Item 2, be extended to apply to circumstances where companies hold various PLs, but hold them with different partners?

Transition to new arrangements – grace period

- What should be duration of this period of grace? Two to five years is considered reasonable but comment is sought on a specific duration.
- How should the grace period impact on any ramping up of domgas requirements, considered above?

Averaging domgas obligations

- What matters should the Regulator consider in determining whether averaging of domgas obligations (referred to in Item 12(a)) should be permitted and the period of time over which it should be permitted?
- What is an appropriate period of time over which domgas obligations should be able to be averaged?

Impacts of policy adoption

- What impact would a Reservation Policy have on the timing and viability of LNG projects?
- What impacts would a Reservation Policy have on domestic gas prices in the short/medium and long-terms?
- What impact would a Reservation Policy have on the future exploration and development of gas resources in Queensland?
- What impact would a Reservation Policy have on gas producers either exclusively focussed on the domestic market, or those who sold both domestically and had an export exposure?

Option 2 – Utilisation of a Prospective Gas Production Land Reserve

An alternative to a gas reservation policy, is a strategy which includes the state creating a reserve of land (which holds gas resources), and release of certain tenures that may be conditioned such that the gas produced on the tenure is used to supply the domestic market. This conditioning requirement would be known to apply to the land before the tenure was offered to the market.

The utilisation of the Prospective Gas Production Land Reserve (PGPLR) is one of three alternative interventions contained within Option 2.

It is proposed that the PGPLR could work in the following way:

- a. holding back from the market certain areas prospective for gas, in order to amalgamate/secure areas for orderly future use
- b. allocation to this reserve areas of land periodically relinquished by holders of ATPs or required to be released by other tenure holders, for example in response to unremedied breaches of tenure conditions
- c. stricter application of the requirement that applicants demonstrate, during the assessment of applications for a petroleum lease or a potential commercial area (both of which halt automatic relinquishment), the appropriateness of the area sought for the proposed activities
- d. the state considering the release of land in the reserve with a condition that it is to be used for domestic (Australian) gas supply (this will involve changes to the *Petroleum and Gas (Production and Safety) Act 2004*)
- e. basing decisions to release land and condition leases on regular estimation of gas supply and demand, combined with market soundings of the availability of gas.

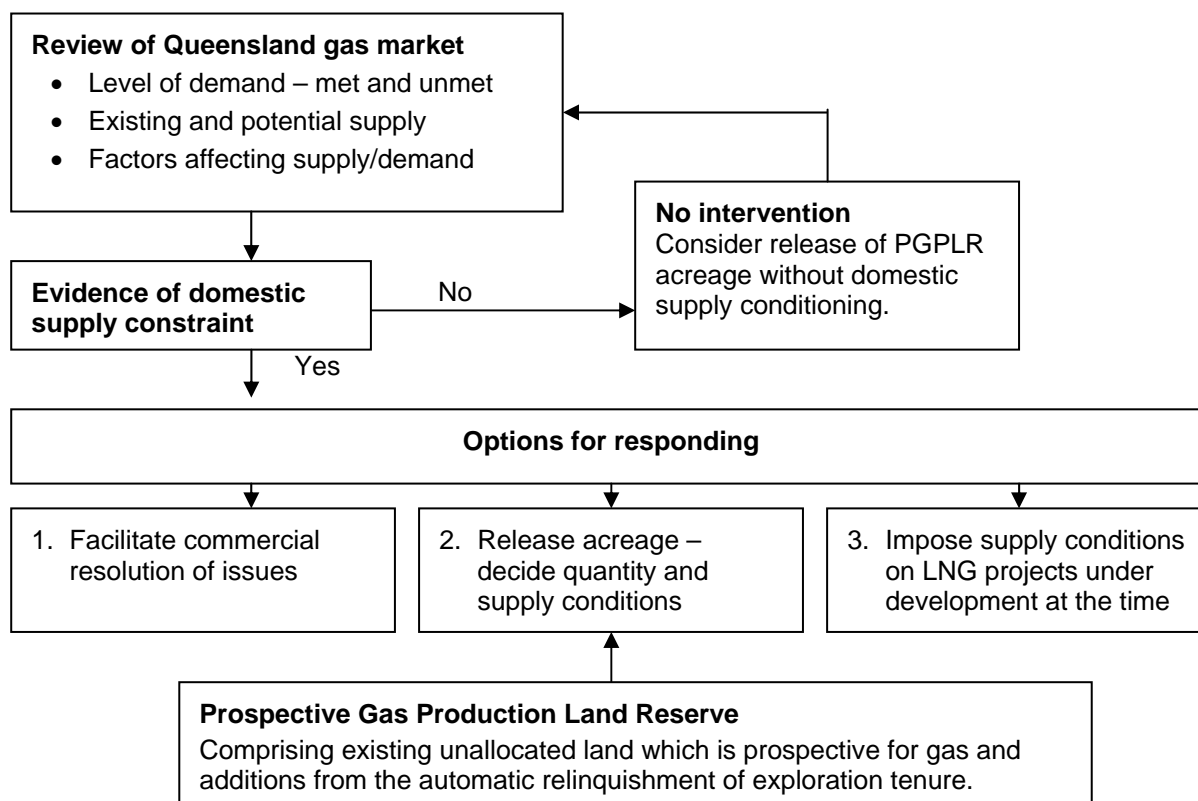
Option 2 provides for a framework that incorporates a lighter handed more adaptive approach for ensuring security of domestic supply.

A regular assessment of the gas market would be undertaken to ascertain whether there was evidence that supply constraints existed or are likely to emerge in the short-term.

Should evidence indicate that this was likely to be the case, one of three actions could be undertaken. The first would be for the government to facilitate a commercial solution to the constraint or emerging constraint. The second would involve the release of land from the PGPLR that may be conditioned for domestic use only and the third option would be to impose supply conditions on LNG projects/extensions under development at the time.

Diagram A illustrates how this approach would work.

Diagram A



Assessing the market – components of review

Regular assessments of the market are anticipated to ensure that the domestic market is able to satisfy demand.

Comment is sought on the following:

- The factors and evidence that should be considered in these assessments.
- How regularly the assessments should be undertaken, noting that a potential outcome of the assessment may be to release land from the PGPLR. Current policy is to release tenure on an annual basis.
- Noting the time lag between release of land from the PGPLR and production from that land, what forecast time period should be considered as part of the market assessment?
- What would constitute “Evidence of Domestic Supply Constraint” to warrant the intervention outlined?
- Is it feasible to progress through each intervention option or will sufficient evidence of domestic supply constraint require the immediate adoption of a particular intervention?

Levels of Intervention

1. Facilitate commercial resolution of issues

The first, and arguably, most light-handed intervention is to facilitate a high-level meeting of a broad section of gas supply and gas demand in order to seek a facilitated resolution. The intention would be to achieve changed participant behaviour by agreement to address evidence of supply constraints.

2. Release land from the PGPLR

A more interventionist approach would be to release land from the PGPLR. The forecast of future supply/demand and the current market assessment will inform the rate of release of land from the PGPLR. Should forecasts indicate that additional supply is warranted, land will be released to the domestic market gas supply accordingly.

3. Impose supply conditions

The third option for responding to evidence of supply constraints is to impose supply conditions on LNG projects under development at the time. These could be entirely new LNG projects or expansions of existing projects.

The imposition of these supply conditions on new projects, raises a number of issues including how these conditions can be imposed upon the plant, and what form this requirement should take.

LNG plants may be operated by entities which do not control gas production. In this situation, plant operators may need to develop additional arrangements with gas suppliers as well as arrangements to deliver gas to customers. Regulatory mechanisms to enforce the sale/offer of this gas to local users would need to be put in place.

Consideration would need to be given to what form this requirement should take. In Western Australia, some LNG projects are subject to project agreements between the proponent and the state which are ratified by an Act of Parliament. While transparent, an Act of Parliament imposed upon individual projects has drawbacks including that it may require amendment every time the structure of the LNG venture changes. A development agreement which is not ratified by Parliament may be more difficult to enforce and, if kept confidential, would not be transparent to the public or competing projects.

An alternative approach would be to implement option 1 (Gas Reservation). However, this would mean that producers supplying existing LNG plants would be affected, which may disrupt existing LNG supply agreements.

Comments are sought in relation to the following aspects of Option 2:

- How local supply obligations could be imposed upon future LNG developments or expansions.
- What form this imposition should take e.g. development agreement or an approach similar to Option 1.

Establishing and Maintaining the Prospective Gas Production Land Reserve

The PGPLR will comprise all currently unallocated prospective petroleum land and will be increased by way of land that is relinquished via provisions of the *Petroleum and Gas (Production and Safety) Act 2004*.

There appears to be sufficient prospective land that is unallocated to sustain releases to support the Prospective Gas Production Land Reserve. In addition, a significant proportion of the proven (2P) reserves of coal seam gas (7,520 PJ at 31 December 2008) are currently held under Authorities to Prospect (ATP).

ATP holders are obliged to surrender 33 per cent of their acreage every four years unless it is converted to a PL or are able to meet the requirements for a Potential Commercial Area (PCA) declaration. A PCA continues the ATP over the area and is granted in situations where production is not currently commercial, but is expected to become so in the future.

There is already a requirement in the P&G Act that proponents are required at the time of application for tenure, not subject to automatic relinquishment (PLs and PCAs), to demonstrate that the area sought is “appropriate for the authorised activities proposed to be carried out” and initial development plans are required to be submitted and approved. It is proposed that this requirement be strictly applied to ensure that only areas likely to come into production in the period of the lease are granted.

Should an initial development plan or a later development plan provide for a reduction in petroleum production, the legislation provides that the Minister may approve the change on the basis that the leaseholder relinquishes part of the area of the lease. Such relinquished land would be available for addition to the Prospective Gas Production Land Reserve.

Should a leaseholder not follow the initial development plan approved by the Minister at the time of grant, or a later development plan, which is also required to be approved, there is scope for a show cause process to be initiated which could result in requirements to surrender some of the area or for cancellation of the tenure. Land released in accordance with such decisions would become available for addition to the Prospective Gas Production Land Reserve.

If this approach was to be taken, the administration of the legislation would have strict regard to the above provisions, with the intention that the reserves held by the proponents under the various forms of tenure are not able to be excessively converted to “non-relinquishing” tenure, and/or are not able to be hoarded under such tenure.

Such an approach would force producers to bring forward planned exploration and development activities on an appropriate scale.

If this approach is chosen, a review will be undertaken of the provisions of the legislation to ensure that there is sufficient power, in addition to, or in conjunction with the provisions described above, to ensure that there is no hoarding of reserves (while recognising the legitimate need for LNG proponents to ensure they have access to sufficient gas to underpin the commercial viability of their LNG projects).

This approach would require changes be made to the P&G Act to allow the state to condition new petroleum leases so that gas produced from the tenure is used only for domestic (Australian) supply. This will ensure that the Prospective Gas Production Land Reserve will be able to be used to support the domestic market.

Comments are sought on the following impacts of policy adoption:

- What impact would a Prospective Gas Production Land Reserve policy have on the timing and viability of LNG projects?
- What impacts would a Prospective Gas Production Land Reserve Policy have on domestic gas prices in the short/medium and long-terms?
- What impact would a Prospective Gas Production Land Reserve Policy have on the future exploration and development of gas resources in Queensland?
- What impact would a Prospective Gas Production Land Reserve Policy have on gas producers either exclusively focussed on the domestic market, or those who sold both domestically and had an export exposure?

Conclusion

The options presented here would involve very different levels of intervention in the market. In Option 1, the government would intervene now to impose requirements on all existing and future gas tenure holders. Option 2 is a more adaptive, risk management approach which may involve subjecting future tenure holders or LNG proponents to similar requirements to option 1 but would not affect existing tenure holders.

In assessing the options, the government is mindful of the impact of each on the viability of LNG projects and the impact on security of supply for other gas users.

Comment is sought on the magnitude of these impacts and of the risks the options are aimed at addressing.

Attachment 1

Operation of reservation policy option

Gas (Security of Domestic Supply) Act

Domgas obligations

1. A petroleum leaseholder (PL holder) and any “associated entity” would:
 - (a) be required to sell/make available a certain proportion of gas (domgas) produced from the petroleum lease (PL) in each financial year to the Australian domestic market
 - (b) be prohibited from selling, or making that proportion of domgas available, for export
 - (c) be required to ensure that every domgas sales contract it enters into contains conditions that:
 - identify that the gas is domgas or the proportion of the gas sold that is domgas;
 - state that the parties are bound by and must comply with the Gas (Security of Supply) Act
 - require the purchaser to ensure that the amount of domgas purchased is used in or supplied only to the Australian market and is not exported without the approval of the Regulator
 - require the purchaser, if it on-sells domgas, to only do so on terms that require that the amount of domgas sold must be used in or supplied only to the Australian market and must not be exported without the approval of the Regulator.
2. A project-based approach to meeting domgas obligations would be allowed. That is, the PL holder and associated entities would be able to:
 - (a) aggregate the domgas obligations from all affected PLs held by the PL holder in each financial year
 - (b) take into account the domgas supplied across all PLs held by the PL holder (regardless of when granted) in each financial year to meet their obligations under the Act
 - (c) if the amount of domgas used/supplied across all PLs held by the PL holder meets or exceeds their aggregated domgas obligations, then they would have met their obligations under the Act.
3. All obligations in relation to the sale or purchase of domgas would apply equally to the swapping of dogmas.

4. An “associated entity” of a PL holder would mean:
 - (a) where the PL holder is a member of a joint venture which may sell any gas produced from the PL:
 - a body corporate, partnership or other legal entity which is directly or indirectly controlled by the joint venture
 - a body corporate, partnership or other legal entity which directly or indirectly controls the joint venture
or
 - a body corporate, partnership or other legal entity which is directly or indirectly controlled by a body corporate, partnership or other legal entity which directly or indirectly controls the joint venture
 - (b) where the PL holder has entered into any other contractual arrangement which confers on another party the right to sell any gas produced from the PL, that other party.
5. These obligations would apply to all PL holders and associated entities where the PLs are granted after the announcement date (i.e. the date the government announces its Gas (Security of Domestic Supply) Policy). This date would be earlier than the commencement date for the Act.
6. New PL holders would be able to apply to the Minister to request that their obligations under the Act be deferred for a period of time by regulation:
 - (a) in circumstances where they have taken all reasonable steps possible to sell/make that amount of domgas available to the Australian market but it is not commercially viable to do so
or
 - (b) on the basis of other exceptional circumstances.
7. Existing PL holders would be given a period of grace before these obligations would apply to them.
8. Existing PL holders would also be able to apply to the Minister for an extension of that period of grace by regulation:
 - (a) in circumstances where they have taken all reasonable steps possible to sell/make that amount of domgas available to the Australian market but it is not commercially viable to do so
or
 - (b) on the basis of other exceptional circumstances.
9. For the applications referred to in paragraphs 6 and 8:
 - (a) they would need to justify that a deferral or extension should be granted and that the period sought is reasonable in all the circumstances
 - (b) they would need to prove they have used all reasonable endeavours to get themselves ready for regulation but have been unable to do so
 - (c) they would need to prove that taking a project-based approach would not assist them to meet their obligations
 - (d) they would need to prove that averaging their domgas obligations over a period of years (see paragraph 12) would not assist them to meet their obligations

- (e) the sorts of things the Minister might consider when deciding whether to recommend the making of the regulation would include when their forward contracts were signed, the outcome of their negotiations with parties with whom they have contracted, the impact on their financial viability if the deferral/extension is not granted etc.
10. When assessing commercial viability, the factors the Minister might have regard to would include:
- (a) whether the commercial rates of return (including recovery of all capital and operating costs, taxes, royalties and other charges associated with the delivery of domgas (e.g. a reasonable allocation of costs in cases where costs are joint or common with export gas)), meet or exceed the minimum return considered acceptable for this type of project by a reasonable petroleum developer or by investors or lenders to this type of project;
 - (b) the prevailing market conditions, including market access, contract duration, prices, certainty and timing of market opportunities
 - (c) where commercial viability is dependent upon combining an applicant's development with other third party developments or accessing third party facilities or technology, it would not be considered commercially viable if, using all reasonable endeavours, the applicant is unable to complete an agreement with that third party on reasonable commercial terms that provide an acceptable rate of return.
11. Every purchaser (including every subsequent purchaser in the contractual chain) of domgas would:
- (a) be required to use or supply that amount of domgas only to the Australian market
 - (b) be prohibited from exporting that amount of domgas without the approval of the Regulator
 - (c) be required to ensure that every domgas sales contract it enters into contains express conditions that:
 - identify that the gas is domgas or the proportion of the gas sold that is domgas
 - state that the parties are bound by and must comply with the Act
 - require the purchaser to ensure that the amount of domgas purchased is used in or supplied only to the Australian market and is not exported without the approval of the Regulator
 - require the purchaser, if it on-sells domgas, to only do so on terms that require that the amount of domgas sold must be used in or supplied only to the Australian market and must not be exported without the approval of the Regulator.
12. A party that sells/purchases domgas would be able to apply to the Regulator:
- (a) for approval to average the amount of domgas sold/made available to the Australian market over a period of time (e.g. 2-5 years)
 - (b) for a reduction in its obligations to sell/make the amount of domgas available to the Australian market:
 - in circumstances where it has taken all reasonable steps possible to sell/make that amount of domgas available to the Australian market but it is not commercially viable to do so
 - in other exceptional circumstances.

13. See paragraph 10 re the factors that would be considered when assessing commercial viability.
14. The Regulator's decision would not be subject to appeal.

Keeping of records and audit process

15. A party that sells or purchases domestic gas would be required to:
 - (a) keep records as required under the Act
 - (b) appoint an auditor and notify the Regulator of that appointment
 - (c) have its records audited annually
 - (d) provide the signed original audit report for the last audit period to the Regulator
 - (e) allow its auditors full access to all relevant company records, including during unannounced visits.
16. Auditors would be required to:
 - (a) inspect and audit the party's records in relation to compliance with the Gas (Security of Domestic Supply Act)
 - (b) make an audit report for the audit period (e.g. 1 year)
 - (c) carry out one unannounced examination of the party's records per year
 - (d) immediately give written notice to the Regulator if the auditor:
 - can not report that a party's records have been satisfactorily kept under the Gas (Security of Supply Act)
 - when carrying out an unannounced examination, finds an irregularity that should be brought to the Regulator's notice
or
 - is unable to obtain the necessary records from the party despite request.
17. It would be an offence to contract out of compliance with the Act and any clause in any contract that purports to do this would be null and void.

Enforcement provisions

18. A party that fails to comply with its obligations under the Act would commit an offence. The maximum penalties for breaches of the Act would be significant.
19. The executive officers of a corporation would be required to ensure the corporation complies with the Act. "Executive officer" would mean a person who is a member of the governing body of the corporation or concerned with, or takes part in, the corporation's management, whatever the person's position is called and whether or not the person is a director of the corporation.

20. If a corporation commits an offence, each of the corporation's executive officers would commit an offence—the offence of failing to ensure the corporation complies with the provision. Evidence that the corporation has been convicted of an offence would be evidence that each of the executive officers committed the offence of failing to ensure the corporation complied with the provision. However, it would be a defence for an executive officer to prove:
- (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence—the officer exercised reasonable diligence to ensure the corporation complied with the provision
or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
21. Where a party has failed to comply with its obligations under the Act, the Regulator would be able to:
- (a) apply to the Supreme Court for an injunction prohibiting the non-complying conduct, including an interim injunction suspending the sale for export of the amount of domgas in dispute pending a final determination by the Court
 - (b) apply to the Supreme Court for a civil penalty
and/or
 - (c) take prosecution action.

Consequential amendments to other Acts

The *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* would be amended to make it clear that:

- (a) it is a condition of a PL that the leaseholder comply with the Gas (Security of Domestic Supply) Act
- (b) disciplinary action might be taken against a leaseholder for not complying with that Act
- (c) the disciplinary action that might be taken includes the termination of a PL and the imposition of a civil penalty
- (d) where a party is successfully prosecuted for a substantial breach (e.g. for a breach of the obligations set out in paragraph 1, Gas (Security of Domestic Supply) Act, the Minister would be entitled to terminate the PL without notice to the leaseholder.