

13 December 2022

Gas Market Consultation  
Labour Market, Environment, Industry and Infrastructure Division  
The Treasury  
Langton Crescent  
PARKES ACT 2600

By email: [GasMarketConsultation@treasury.gov.au](mailto:GasMarketConsultation@treasury.gov.au)

Dear Sir or Madam,

**Consultation on the draft Competition and Consumer Amendment (Gas Market) Bill 2022**

1. The Competition and Consumer Law Committee of the Business Law Section of the Law Council of Australia (the **Committee**) welcomes the opportunity to comment on Treasury's exposure draft for the *Competition and Consumer Amendment (Gas Market) Bill 2022* (the **Bill**), and in particular the proposal to extend subsection 155(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to allow for service of section 155 notices on persons outside Australia.
2. The Committee notes that the invitation for consultation on the Bill and an associated Consultation Paper titled *Options to ensure the domestic wholesale gas market delivers for Australians* was released on Friday, 9 December 2022 and that consultation on aspects of the government's reform package close today, Tuesday, 13 December 2022 (being a two business day period).
3. The Committee understands that the draft Bill seeks to introduce two kinds of regulatory instruments in a new Part IVBB of the CCA:
  - (a) a new legislative framework to enable the making of mandatory codes to regulate a broad range of gas market conduct and gas market participants; and
  - (b) as an emergency measure, a power for the Minister to make gas market price instruments, by which it is intended that the Minister can make orders including temporary price caps or other gas market emergency price orders which may stay in effect for 12 months.
4. Importantly, the Bill would also extend the existing information gathering powers of the ACCC under section 155 of the CCA in a number of respects as reflected in Items 48 to 51 of the Bill. Items 49 to 51 are clearly linked to the ACCC's ability to investigate compliance with instruments made under the proposed Part IVBB, and the Committee makes no comment on those proposed amendments.

5. Item 48, however, is unrestricted in its effect. If passed, the amendment would enable the ACCC to serve section 155 notices to persons or entities outside Australia. This change is not limited to the gas market instruments, but would apply to all of the matters in relation to which the ACCC can currently issue section 155 notices. No explanation is provided in the Explanatory Materials as to why this amendment is necessary or appropriate (see [1.186]).
6. The Committee recognises that section 155 of the CCA provides the ACCC with a power of investigation that is fundamental to its ability to monitor for and enforce compliance with the CCA and related legislation. An extension of the powers provided by section 155 to allow for issuance of notices to persons outside Australia may raise concerns in relation to both constitutional power and Australia's obligations under international law. In the time available, the Committee has not had the opportunity to investigate these concerns. However, they require further consideration.
7. The reforms reflected in the Bill and the associated Consultation paper published by Treasury are significant both in range and complexity, and give rise to many substantial considerations. Despite this, consultation on the Bill – including the amendments to section 155, has been truncated to two days, thereby severely restricting the ability for stakeholders, and the Parliament itself, to consider the Bill, and specifically item 48, in detail. The limited consultation period has constrained the Section's ability to engage at a detailed level with the legislative and explanatory materials. This is most unfortunate, given the significance of the proposed reforms and, for this Committee in particular, the reforms to section 155 as contained in Item 48 of the Bill. This truncated process is highly problematic from the perspective of broader public scrutiny of the making of Australia's laws, as part of a democratic process.
8. The Committee urges Treasury to remove Item 48 from the form of legislation to be proposed to Parliament and to extend consultation on this reform to align with the timing for the more fulsome reforms that are being consulted on in relation to gas market reform, with submissions due 7 February 2023. The Committee does not make any comment in relation to the other provisions provided for in the Bill.
9. The Committee would be pleased to discuss this submission with Treasury.
10. Please contact the Chair of the Committee, Lisa Huett, at [Lisa.Huett@au.kwm.com](mailto:Lisa.Huett@au.kwm.com) or Deputy Chair, Peta Stevenson at [Peta.Stevenson@au.kwm.com](mailto:Peta.Stevenson@au.kwm.com) if you would like to do so.

Yours faithfully



**Philip Argy**  
**Chairman**  
**Business Law Section**