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Daniel Walton National Secretary

THE AUSTRALIAN WORKERS' UNION **STRONGER TOGETHER**

ABN 28 853 022 982

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

To whom it may concern,

Re: Options to ensure the domestic wholesale gas market delivers for Australians

Thank you for the opportunity to make this submission on the issues raised in the Consultation Paper on options to ensure the domestic wholesale gas market delivers for Australians.

The Australian Workers' Union (AWU) represents around 70,000 members nationally in a diverse range of industries. Critically, we cover every stage of the gas supply chain – from extraction (both onshore and offshore, and for export and domestic use), through transmission and pipelines, to end users who rely on coal, gas and electricity to manufacture the products Australians use every day – steel, aluminium, cement, glass, fertilizers, food and more.

The AWU unequivocally supports the Government's strong action to cap energy prices and establish a fair market for energy producers and users.

The AWU has led calls for the Government to take action on gas prices for the last decade. As the export gas industry grew exponentially in the first half of the 2010s, the AWU foresaw the risks for domestic users of their energy prices being inextricably linked to international prices.

Issues with the operation of Australia's gas market are not new. In 2017, the Turnbull Government tasked the ACCC with its ongoing gas inquiry. In its very first report, the ACCC described the issues faced in the market:[1]

> Commercial and industrial (C&I) users are experiencing a very difficult contracting environment in 2017, with few suppliers offering gas at very high prices for supply in 2018 and beyond. …
>
> Industrial users that produce trade-exposed products have indicated that they have had to absorb the increased gas costs rather than pass costs on to their customers, which

[1] ACCC Gas Inquiry 2017-2020, interim report, September 2017, pp. 10, 52, 61.

> could result in their products becoming uncompetitive in the long term. ...
>
> The level of prices agreed under recent contracts in Queensland suggests that there may not have been effective competition between Queensland producers over this period.

These issues remain and have only gotten worse over time. Despite several failed light-touch policy interventions, the previous Government failed to take any meaningful action that reduced prices for gas users.

The AWU has consistently called for a domestic gas reservation as a solution that provides secure and affordable energy to local manufacturers, while facilitating a globally-competitive Australian gas export industry. The AWU has also consistently supported bringing new supply on board and removing unnecessary regulatory restrictions on new gas projects. All of these principles are part of the new Government's platform, and cannot be ignored in solving Australia's long-term energy needs.

This does not replace the need for immediate intervention. As gas spot prices spiked in May following the Russian invasion of Ukraine, it became clear that a reservation, or the existing Australian Domestic Gas Security Mechanism (ADGSM) alone, would not bring down prices quickly enough to guarantee the survival of Australia's manufacturing industry. The price spike in gas and coal, while production costs have not changed, have produced pure windfall profits for gas exporters. Protecting these profits over the livelihoods of Australia's 800,000 manufacturing workers remains untenable.

BOX 1: The AWU has led the charge for gas price measures

The AWU has championed a better deal for gas users for more than a decade, but the crisis came to a head in May this year when a number of supply factors – the Russian invasion of Ukraine, failures in electricity markets, and record-setting cold weather – saw many Australian manufacturers forced to pay spot prices of up to $800 a gigajoule.

Multinational gas exporters used the global situation to cream astronomical mega-profits from Australian gas while potentially forcing Australian factories, smelters and plants to the wall. Dozens of manufacturing businesses that had their gas contracts torn up and replaced with price increases of up to 300%. Coal companies simultaneously shorted the supply of coal to electricity generators, and in doing so pushed up electricity prices for households and industry."

In July, delegates at the AWU National Conference expressed their alarm at projected east coast gas shortfalls and passed a resolution recognising Australia faced a gas emergency. The resolution condemned the gas companies for "price-gouging Australian manufacturers and profiteering from the Russian invasion of Ukraine".

The conference also noted Australia was already in an energy crisis prior to this year's gas price spike, that the AWU had been calling for action since 2014 to ensure affordable gas was available for manufacturers and households, and that without urgent action thousands of manufacturing jobs were at immediate risk.

In a subsequent letter to Prime Minister Anthony Albanese, the AWU warned action was needed immediately:

> *If the Government does not act now, when closures occur it will not be able to say it was not warned or that its hands were tied. Manufacturers today are not bluffing. They know they will not be able to afford gas, which they use as an energy source and, often, as a feedstock. They need relief.*

In October, National Secretary Daniel Walton led a delegation of workers representing a range of energy-dependent industries to Canberra, to tell the Government how the energy crisis was affecting their employers and putting their jobs at risk. The delegation encouraged the Prime Minister and Cabinet ministers to act urgently, explaining that their employers could close if they are couldn't to get affordable long-term energy contracts.

Predictably, **the resources industry has mounted a histrionic attack on the Government for taking the side of manufacturing workers.** This attack is built on a number of false arguments about the proposed legislative and regulatory measures, dealt with fully below.

BOX 2: Myth-busting the gas industry's attack

Myth: The Government is imposing a permanent $12/GJ price cap

Fact: The Government's proposal implements two separate measures: an emergency *temporary* cap on wholesale gas prices, and a mandatory code of conduct to regulate market behaviour in the longer-term. Treasury has stated in the Consultation Paper that, given a price cap is a significant intervention, it must be constrained in time and scope to ensure a stable longer-term market. Spot prices will also be unaffected by the measure.

Myth: Requiring supply at 'reasonable pricing' is effectively nationalising the industry

Fact: Even without a globally significant war, the Government engages in price regulation across a range of sectors where a small number of market players can effectively set prices. Most directly relevant to gas is retail electricity pricing, where the ACCC sets a reference price cap. Contrary to claims of 'nationalisation', most Australian electricity infrastructure has been significantly liberalised over the past two decades. The Australian Government also sets limits on price increases for private health insurance, and even sets a minimum price to be paid for milk. The vast majority of gas will continue to be exported on market terms with international buyers – the domestic price cap is a limited form of regulation for a limited part of the market.

Myth: The Government's plan will stop new investment, prevent new supply coming on board and destroy Australia's gas industry

Fact: New sources of supply are exempt from the cap. Australia does not have a shortage of available gas – we export three times our domestic needs. The ACCC determined the reference price by considering capital expenditure and costs of production for affected gas sources and explicitly providing for a return to producers – not driving them out of business. One major gas producer reported its production cost was $3.50/GJ – offering them a 240% rate of return with the price cap in place. And just two days before the announcement of the policy subject to this consultation, Santos announced to the market that they would be targeting even higher shareholder returns in future. In Western Australia, where a gas reservation has been in place since 2006, a world-class LNG export industry operates while local gas users pay just $5-6/GJ.

Myth: This is an unjustified intervention on a competitive market

Fact: The gas market has long failed to operate on competitive terms. The ACCC has identified that 85% of gas is produced by just five firms that regularly operate in coordinated behaviour. [2] The opportunity for earlier regulatory intervention has been missed through the Turnbull and Morrison government's failed ADGSM, gas codes of conduct, heads of agreement and 'gas-fired recovery'. The Russian invasion of Ukraine sent a shock through global gas supply – and as Australia has protected its own interests with rationing and price caps in past wars, it must do so now.

Myth: There has been no consultation with the gas industry

Fact: In the Federal Budget, the Government tasked the ACCC with consulting with stakeholders to improve the gas code of conduct with a view to making it mandatory. The ACCC has overseen and engaged with market for a long time and warned of its concerns about supply in its August gas inquiry report. All major gas producers had established relationships with the ACCC and were engaged to provide feedback. Despite a price cap being publicly floated by ministers for weeks prior to any announcement, gas companies failed to propose any reasonable alternative policy that would have an immediate impact on

[2] ACCC Gas Inquiry 2017-2022, interim report, August 2022.

domestic prices.

Myth: Prices could come down without regulatory intervention

Fact: Governments have tinkered at the edges of the gas market for over 5 years with no impact on prices – through introducing the ADGSM, the Heads of Agreement, new supply initiatives, and a voluntary code of conduct. Despite all of these policies, gas prices are regularly above what Australia's export customers are paying. No currently-legislated policy measures are directly impacting prices, and the gas industry has failed to propose lighter-touch options to achieve price relief.

Myth: This is an anti-gas policy

Fact: The AWU and the Government recognise that affordable and secure energy – including gas and thermal coal – is critical for Australia's manufacturing industries to operate. While anti-fossil fuel activists push to destroy demand by making gas and coal unaffordable, the Government's measures instead ensure that energy is available to those who need it. Australia cannot have a green manufacturing industry if it does not have a manufacturing industry at all.

Responses to consultation questions

The AWU provides the following responses to the consultation questions proposed on the temporary gas price cap. The AWU will make further submissions on the mandatory code of conduct provisions prior to the close of that consultation.

Is $12 per gigajoule the appropriate level for a cap on wholesale contracts offered by producers, for supply from existing fields?

The AWU has campaigned for the use of historical average gas prices – below $10/GJ – as the reference point for a price cap. However, the AWU also understands the ACCC's analysis underlying the setting of a $12 price point:

> *The ACCC advised that a $12 per gigajoule price cap would be an appropriate level to set a temporary, emergency price cap on the wholesale gas contracts described above. This recommendation is supported by analysis of offers made in 2021 for supply in 2023, prior to international prices increases, and of the estimated costs of gas production of the east coast's proven reserves. Of the 289 domestic offers made over this period, 96 per cent were below $12 per gigajoule, and the average offer was $9.20 per gigajoule.*

The AWU supports a "cost plus return" model to setting prices, and is not seeking to make existing gas projects marginal. These gas projects were established on the basis of prevailing prices prior to international price increases and support healthy profits for the gas industry as a reward for an uncertain investment. The gas industry, by contrast, would prefer to export their entire production at record-high prices to maximise profits.

The AWU does not support the proposed price cap being set as an average over the course of a contract. Manufacturers have invested millions of dollars in their plant and equipment, and operate every single day to maximise their production. Any leeway created in the terms of the price cap will provide avenues for gas producers to use their competitive advantage to manipulate their contract terms to their advantage.

What gas sales need to be covered to make the price cap effective?

The AWU supports the application of the price cap to wholesale contracts negotiated between parties or through the Gas Supply Hub. Spot markets such as the STTM and Victorian Declared Wholesale Gas Market have declared caps at which the Government sets a maximum price, and it will remain important to have flexibility in obtaining immediate supply through spot markets alongside negotiated contracts.

How might the impacts of this policy differ across key segments of the gas market?

The imposition of a price cap is clearly a significant intervention with impacts on producers, direct gas users, and electricity users. However, a fundamental transformation is required to deal with years of neglect and the essentially unlimited opportunity to set prices and profit available to the gas industry presently. It is important that price caps apply equally to electricity generators and direct gas users, as competition between the two has resulted in supply shortages and exacerbation of price hikes. This is currently not the case with the Government's proposed coal cap, which is not the subject of this consultation process. However, failure to act on both coal and gas for all users runs the risk of exacerbating distortions across energy markets.

Does the proposed model appropriately mitigate the risks associated with market intervention?

The avoidance of market intervention at all costs despite clear market failures is the cause of this crisis. Governments have tinkered at the edges of the gas market for over 5 years with no impact on prices – through introducing the ADGSM, the Heads of Agreement, new supply initiatives, and a voluntary code of conduct. Despite all of these policies, gas prices are regularly above what Australia's export customers are paying. No currently-legislated policy measures are directly impacting prices, and the gas industry has failed to propose lighter-touch options to achieve price relief. The AWU believes that the "cost plus return" approach, co-regulation of coal prices, and initiatives to encourage new supply will adequately mitigate the risks of market intervention in this case.

The AWU has been at the forefront of the debate over gas for years and is willing to provide our experience and expertise to the Government throughout any further consultation on this critical measure.

Kind regards,

Daniel Walton
NATIONAL SECRETARY