

Decision - Proposed amendments to the *Gas Marketing Code of Conduct*

31 October 2011

Economic Regulation Authority

WESTERN AUSTRALIA

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DECISION

Following its consideration of the Gas Marketing Code Consultative Committee (**GMCCC**) 2011 Final Review Report (**final report**), the Authority has decided to exercise its power under the *Energy Coordination Act 1994* (**Gas Act**) to make amendments to the Gas Marketing Code of Conduct (**Code**).

A copy of the proposed new Code is attached, with the first showing tracked changes (**Appendix 1**) and the second a clean version (**Appendix 2**).

INTRODUCTION AND OVERVIEW

Under section 11ZPM of the Gas Act, the Authority may, in consultation with the committee, approve a code of conduct to regulate and control the conduct of the holders of trading licences and gas marketing agents, with the object of protecting customers from undesirable marketing conduct and defining standards of conduct in the marketing of gas to customers.

Under section 11ZPO of the Gas Act, the Authority is required to establish a committee to advise it on matters relating to the Code. The committee is known as the Gas Marketing Code Consultative Committee (**GMCCC**).

Under section 11ZPV of the Gas Act, the GMCCC must carry out a review of the Code as soon as practicable after the first anniversary of its commencement and after the expiry of each 2 yearly interval after that anniversary.

The object of a review is to re-assess the suitability of the provisions of the Code for the purposes of section 11ZPM(2).

The GMCCC commenced its 2011 review of the Code in April 2011.

The Gas Act requires that the GMCCC undertake consultation with interested parties before it provides its findings to the Authority.

The GMCCC published their Draft Review Report (**draft report**) on 3 June 2011 and promoted the public consultation period via an email to those registered with the Authority as interested parties and an advertisement in *The West Australian*.

The closing date for submissions on the draft report was 22 July 2011.

Submissions were received from the following:

- Synergy
- WACOSS
- Alinta Sales
- Energy Ombudsman WA
- Department of Commerce

The submissions form appendices 5 – 9 of the final report, which is available on the Authority’s website.

Following receipt of submissions, the GMCCC met to consider the issues raised and subsequently approved the final report to the Authority.

The final report was delivered to the Authority on 19 September 2011.

RESPONSE TO GMCCC FINAL REVIEW REPORT

The GMCCC made nine recommendations to the Authority. Each recommendation and the Authority’s response is contained below:

Recommendation 1 – *The GMCCC proposes that the Authority amend the Code to remove duplication with the Australian Consumer Law (comprised of the Fair Trading Act 2010 (WA) and the Competition and Consumer Act 2010 (Cth)), Spam Act 2003, Spam Regulations 2004, Do Not Call Register Act 2006, Telecommunications Industry Standard 2007 and the Privacy Act 1988.*

The GMCCC recommended that provisions that duplicate or are inconsistent with those contained in other legislation and those regulated by regulators other than the Authority be removed from the Code.

A list of all of the amendments proposed by the GMCCC is contained in appendix 1 of the final report.

The Authority agrees that removing duplication improves consistency and potentially reduces compliance costs for licensees.

The Authority has accepted this recommendation with the following exceptions:

‘Solicited consumer agreement’ definition

The GMCCC has proposed a new definition of a ‘solicited consumer agreement’ to differentiate these agreements from the ‘unsolicited consumer agreements’ covered by the ACL.

The Authority proposes an alternative approach to this issue by clarifying which clauses throughout the Code do not apply to ‘unsolicited consumer agreements’ (as those are captured by the ACL and the term is defined in that legislation).

This approach involves the drafting of a new clause to be inserted at 2.2(5) to clarify that the clause does not apply to ‘unsolicited consumer agreements’ and reference to agreements that are not ‘unsolicited consumer agreements’ in clauses 2.3(2), 2.4(1) and 2.6(2)(a), which are the only other places the term was used in the GMCCC proposed amendments to the Code.

The Authority believes this approach is, from a legal drafting perspective, a clearer and simpler method of explaining the provisions that are being “carved out” due to the fact that they are covered by the ACL.

'Contact' definition

The GMCCC has proposed that the definition of 'contact' within the Code be amended to be consistent with the type of contact covered by the ACL, i.e. limited to face-to-face and telephone.

The current definition of 'contact' in the Code is:

'contact' means contact that is face-to-face, by telephone, or by post, facsimile or electronic.

The GMCCC proposes the definition be changed to:

'contact' means contact that is face-to-face or by telephone.

The Authority has rejected the proposed amendment for the reasons outlined below.

The ACL only deals with 'unsolicited consumer agreements' (agreements where the retailer / agent has sought to secure a contract with the customer). It does not deal with other types of agreements (e.g. where a customer approaches a retailer directly asking to sign up).

Clause 2.6 of the Code requires a retailer or agent who contacts a customer (regardless of whether the contact is solicited or unsolicited) to do certain things such as providing a complaints telephone number and an agent identification number. If the Authority were to accept the GMCCC recommendation, customers who were contacted or who initiated contact with a retailer / agent by means such as email, or the internet, would not be covered by this protection, whereas those who were contacted face-to-face or by telephone would be.

Clause 2.8 of the Code relates to the requirements for records to be kept regarding marketing complaints and the requirement to provide information to the ombudsman (regardless of whether the contact is solicited or unsolicited). As is stated above, under the GMCCC proposal, the requirement would not extend to contact such as email (which is increasingly used by retailers).

Recommendation 2 – The GMCCC proposes that the Authority add a sentence as a note in the Code that states: 'These are not the only compliance obligations in relation to marketing, other State and Federal laws apply to marketing activities'.

The Authority is proposing a significant number of amendments to the Code as a result of accepting recommendation 1.

The Authority has determined that there is merit in including such a notation to ensure that all parties are aware that other laws apply.

Recommendation 3 – The GMCCC proposes that the Authority amend clause 2.4(1) to read: ...must, at the time the contract is entered into, or as soon as possible thereafter, 'but no more than 28 days later', give or make available to the customer a copy of the contract'.

The Authority notes that the existing provision requires the action to be undertaken "as soon as possible" and that arguably this would be significantly sooner than 28 days. However, the Authority sees no harm in making this amendment as it would provide an upper limit on the number of days.

The Authority has accepted this recommendation and proposes amendments accordingly.

Recommendation 4 – The GMCCC proposes that the Authority amend the definition of ‘marketing’ to read:

“marketing” includes engaging or attempting to engage in any of the following activities by any means, including door to door or by telephone or other electronic means –

- (a) *negotiations for, or dealings with a customer or potential customer, for the purpose of entering into or varying, a contract for the supply of gas to a customer; or*
- (b) *advertising, promotion, market research or public relations in relation to the supply of gas to customers.*

The Authority notes that the definition proposed by the GMCCC is different from the definition of ‘marketing’ contained in the Gas Act. The definition contained in the Gas Act is worded as follows:

“marketing” includes engaging or attempting to engage in any of the following activities by any means, including door to door or by telephone or other electronic means —

- (a) *negotiations for, or dealings in respect of, a contract for the supply of gas to a customer;*
- (b) *advertising, promotion, market research or public relations in relation to the supply of gas to customers.*

The GMCCC has proposed an amendment to sub-clause (a) which would restrict the matters covered to only relate to those relevant to the “entering into or varying” of a contract.

Some GMCCC members have argued that they interpret the current provision as requiring records to be kept of all interactions with a customer under the category of ‘marketing’ activities including routine contact (e.g. updating contact details).

The Authority has determined that it would be preferable to wait until the matter is dealt with in the superior legislation before proposing any amendment to the code definition.

The Authority rejects the recommendation.

Recommendation 5 – The GMCCC proposes that the Authority write to the Office of Energy to draw their attention to the lack of clarity within the definition of “marketing” in the Energy Coordination Act 1994 and the potential for the definition to be interpreted to capture all customer contact.

The Authority agrees that the current definition is ambiguous and could result in a retailer interpreting that all customer contact, regardless of how rudimentary, is required to be recorded as ‘marketing’ for the purposes of record keeping under the Code.

The Authority has determined that it will bring the issue to the attention of the Office of Energy.

The Authority accepts this recommendation and proposes amendments accordingly.

Recommendation 6 – *The GMCCC proposes that the Authority amend remaining provisions in the Code to achieve, where appropriate, consistency with the Code of Conduct for the Supply of Electricity to Small Use Customers.*

The Authority notes that this recommendation is consistent with previous action by the Authority to ensure consistency between electricity and gas customer protection provisions.

The Authority accepts this recommendation and proposes amendments accordingly.

Recommendation 7 - *The GMCCC proposes that the Authority writes to the Minister for Energy to alert the Minister to the fact that the Energy Coordination (Customer Contracts) Regulations 2004 (**contract regulations**) should be amended to remove reference to the Australian Gas Association Customer Service Code (**AGA Code**).*

The Authority notes that the AGA Code was written in 1998 under the administration of the Australian Gas Association (**AGA**) and that as the AGA relinquished its role as a standards writer in 2002 and Standards Australia does not currently keep record of the AGA Code, it is unclear whether the AGA Code remains of legal force and effect.

The Authority notes that there may be inconsistencies or duplication between provisions in the Code and those contained in the AGA Code.

The Authority has determined that it will seek action from the Minister for Energy to remove the reference to the AGA Code from the contract regulations.

The Authority accepts this recommendation.

Recommendation 8 - *The GMCCC proposes that the Authority notes that there is uncertainty in relation to the legality of the obligation to offer the standard form contract in gas and that as a result there is uncertainty in relation to clause 2.3(1)(a) of the Code.*

Clause 2.3(1)(a) requires that a marketing agent advise a customer that the customer is free to choose the standard form contract.

Regulation 6(4) of the *Energy Coordination (Gas Tariffs) Regulations 2000* (**tariff regulations**) states: 'When offering to supply gas to a new customer, a supplier is to offer to supply gas under an approved contract but at a capped tariff'.

The Authority notes that the way in which the Gas Act and the tariff regulations are drafted leaves legal uncertainty as to whether the contract referred to in the tariff regulations is the standard form contract approved by the Authority and whether the obligation to offer it is enforceable.

The Authority understands that the Office of Energy is currently in the process of addressing the issue.

The Authority has determined that it would be premature to propose amendment to the Code at this point.

The Authority notes this recommendation.

Recommendation 9 – *The GMCCC proposes that the Authority note the National Energy Customer Framework, which will apply in the National Energy Market from 1 July 2012,*

but does not propose that the Authority make any amendments to the Code to achieve consistency at this time.

The Ministerial Council on Energy (**MCE**) has developed the National Energy Customer Framework (**NECF**), which is due to be implemented on 1 July 2012. The NECF is a set of laws and rules that will govern retail and distribution non-price regulation in the National Energy Market.

Whilst the WA Government participates in the MCE, the Authority understands that the State Government has no intention of implementing the NECF in WA at this stage.

Given the fact that the NECF has not yet been implemented, the Authority supports the GMCCC finding that it would be premature to propose anything other than noting the NECF changes.

The Authority notes this recommendation.

PROPOSED AMENDMENTS TO THE CODE

The Gas Act clearly outlines the requirements of a Code review and the process that the Authority must follow if it seeks to amend the Code.

The Authority is required, under section 11ZPU of the Gas Act, to refer the proposed amendments to the GMCCC for advice.

The Authority has sent a letter to the GMCCC requesting that this advice be provided.

The Gas Act requires that the GMCCC provide interested parties with an opportunity to comment before providing its advice to the Authority.

Following receipt of the GMCCC advice, the Authority will consider the advice and make a final decision regarding the amendments.

LYNDON ROWE
CHAIRMAN

APPENDICES

Appendix 1 Proposed new Code (tracked)

Gas Marketing Code of Conduct 2011-2008

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Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 2011*.

1.2 Authority

This **Code** is made pursuant to Part 2C of the **Act**.

1.3 Commencement

The **Code** comes into operation upon the day prescribed by the **Authority**.

1.4 Interpretation

- (1) Headings and notes are for convenience or information only and do not affect the interpretation of the **Code** or of any term or condition set out in the **Code**.
 - (2) An expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa.
 - (3) A reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document or that provision of that document.
 - (4) A reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns.
 - (5) Other parts of speech and grammatical forms of a word or phrase defined in the **Code** have a corresponding meaning.
 - (6) A reference to a **gas marketing agent** **marketing representative** arranging a **contract** is to be read as a reference to a **gas marketing agent** **marketing representative** entering into the **contract** on the **retailer's** or **customer's marketer's** behalf, or arranging the **contract** on behalf of another person (whichever is relevant).
- (7) A reference to an act carried out on behalf of a **marketer** is a reference to that act being carried out by a **marketing representative** of the **marketer**.

1.5 Definitions

In the **Code**, unless the contrary intention appears –

“**Act**” means the *Energy Coordination Act 1994 (WA)*.

“**alternative tariff**” means a tariff other than the tariff under which the **customer** is currently supplied gas.

“Australian Consumer Law (WA)” means schedule 2 to the *Competition and Consumer Act 2010* (Cth) as modified by section 36 of the *Fair Trading Act (WA) 2010*.

“Authority” means the Economic Regulation Authority established under the *Economic Regulation Authority Act 2003*.

“basic living needs” includes –

- (a) rent or mortgage;
- (b) other utilities (e.g. electricity, phone and water);
- (c) food and groceries;
- (d) transport (including petrol and car expenses);
- (e) childcare and school fees;
- (f) clothing; and
- (g) medical and dental expenses.

“change in personal circumstances” includes –

- (a) sudden and unexpected disability, illness or injury to the **residential customer** or a dependant of the **residential customer**,
- (b) loss of or damage to property of the **residential customer**, or
- (c) other similar unforeseeable circumstances arising as a result of events beyond the control of the **residential customer**.

“Code” means this *Gas Marketing Code of Conduct 2011* as amended by the **Authority**.

“Compendium” means the Compendium of Gas Customer Licence Obligations.

“complaint” means an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.

“concession” means a concession, rebate, subsidy or grant related to the supply of gas, which is available to **residential customers only**.

“contact” means contact that is face to face, by **telephone** or by post, facsimile or electronic communication.

“contract” means a **standard form contract** or a **non-standard contract**.

“cooling-off period” ~~in relation to a door to door contract or non-standard contract~~ means the period of 10 days commencing on and including the day on which the contract is made.

“customer” means a customer who consumes less than 1 terajoule of gas per annum.

“contract” means a **standard form contract** or a **non-standard contract**.

“Customer Service Charter” means the customer service charter that the **retailer** is required to prepare as a condition of its trading licence.

“distributor” means a person who holds a distribution licence under Part 2A of the **Act**.

“Do Not Call Register Act” means the *Do Not Call Register Act 2006* (Cth).

“door to door marketing” means the *marketing* practice under which —

- (a) a ~~gas marketing agent~~ ~~marketing representative~~ goes from place to place
- (b) makes ~~telephone calls~~; or
- (c) uses ~~electronic means~~,

(a) seeking out persons who may be prepared to enter, as *customers*, into *contracts*; and

- (b) the ~~marketing representative~~ ~~gas marketing agent~~ or some other ~~marketing representative~~ ~~gas marketing agent~~ then or subsequently enters into negotiations with those prospective *customers* with a view to arranging *contracts* on behalf of, or for the benefit of, a *retailer* or party other than the *customer*.

(b) “*electronic means*” means the internet, email, facsimile or other similar means but does not include *telephone*.

“emergency” means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person, in Western Australia or which destroys or damages, or threatens to destroy or damage, any property in Western Australia.

“financial hardship” means a state of more than immediate financial disadvantage which results in a *residential customer* being unable to pay an outstanding amount as required by a *retailer* without affecting the ability to meet the *basic living needs* of the *residential customer* or a dependant of the *residential customer*.

“gas customer safety awareness programme” means a programme to communicate information to *customers* regarding safety in the use of gas and must address, at a minimum, provision of the following information to *customers* —

- (a) information on the properties of gas relevant to its use by *customers*;
- (b) a notice of the requirement for proper installation and use of approved appliances and equipment;
- (c) a notice of the requirement to use only qualified trade persons for gas connection and appliance and equipment installation;
- (d) the proper procedure for the reporting of gas leaks or appliance or equipment defects; and
- (e) safety procedures to be followed and the appropriate *telephone* number to call in case of *emergency*.

“gas marketing agent” means —

- (a) a person who acts on behalf of the holder of a trading licence —
 - (i) for the purpose of obtaining new *customers* for the licensee; or
 - (ii) in dealings with existing *customers* in relation to *contracts* for the supply of gas by the licensee; or
- (b) a person who acts —

- (i) ~~on behalf of one or more **customers**; or~~
- (ii) ~~as an intermediary between one or more **customers** and a licensee;~~
- (ii) ~~in respect of the supply of gas to the **customer** or **customers**; and~~
- (e)(b) ~~a representative, agent or employee of a person referred to in paragraph (a) or (b).~~
- (c) **is not a person who is a customer representative.**

“gas ombudsman” means the ombudsman appointed under the scheme approved by the **Authority** pursuant to section 11ZPZ of the **Act**.

[Note: The energy ombudsman Western Australia is the gas ombudsman appointed under the scheme approved by the Authority pursuant to section 11ZPZ of the Act.]

“marketeer” means—

- (a) ~~a retailer who engages in marketing; or~~
- (b) ~~a gas marketing agent, other than a marketing representative.~~

—“marketing” includes engaging or attempting to engage in any of the following activities by any means, including door to door or by telephone or other electronic means –

- (a) negotiations for, or dealings in respect of, a **contract** for the supply of gas to a **customer**; or
- (b) advertising, promotion, market research or public relations in relation to the supply of gas to **customers**.

“marketing identification number” means a unique number assigned by a **marketeer** ~~retailer or other party~~ to each ~~marketing representative~~ ~~gas marketing agent~~ acting on its behalf.

“marketing representative” means—

- (a) ~~a person who is referred to in paragraph (a) of the definition of gas marketing agent and who is an employee of a retailer, or~~
- (b) ~~a representative, agent or employee of a person in paragraph (a).~~

“non-standard contract” means a contract entered into between a **retailer** and a **customer**, or a class of **customers**, that is not a **standard form contract**.

“payment difficulties” means a state of immediate financial disadvantage that results in a **residential customer** being unable to pay an outstanding amount as required by a **retailer** by reason of a **change in personal circumstances**.

“permitted call times” are—

- (a) ~~for the purposes of telephone and personal contact other than at customers premises between—~~
 - (i) ~~9.00 a.m. and 8.00 p.m. Mondays to Fridays (other than public holidays); and~~
 - (ii) ~~9.00 a.m. and 5.00 p.m. Saturdays;~~
- (b) ~~for the purposes of contact at customers premises between—~~

~~(i) 9.00 a.m. and 7.00 p.m. Mondays to Fridays (other than public holidays); and~~

~~(ii) 9.00 a.m. and 5.00 p.m. Saturdays.~~

“**premises**” means premises owned or occupied by a new or existing **customer**.

“**residential customer**” means a **customer** who consumes gas solely for domestic use.

“**retailer**” means a person who holds a trading licence under Part 2A of the **Act**.

~~“**solicited consumer agreement**” is an agreement other than an **unsolicited consumer agreement**.~~

“**standard form contract**” means a contract that is approved by the **Authority** under section 11WF of the **Act**.

“telemarketing calls” is defined in section 5 of the ***Do Not Call Register Act***.

“Telemarketing Industry Standard” means the ***Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007***.

“telephone” means a device which is used to transmit and receive voice frequency signals.

“**TTY**” means telephone typewriter.

“unsolicited consumer agreement” is defined in section 69 of the ***Australian Consumer Law (WA)***.

“**verifiable consent**” means consent that is given –

- (a) expressly;
- (b) in writing or orally;
- (c) after the ~~marketer retailer~~ or ~~retailer gas marketing agent~~ (~~as appropriate whichever is relevant~~) has in plain language appropriate to that **customer** disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used; and
- (d) by the **customer** or a nominated person competent to give consent on the **customer’s** behalf.

1.6 Application

The **Code** applies to –

- (a) **customers**;
- (b) **retailers**;
- (c) **distributors**; and
- (d) **gas marketing agents**.

1.7 Purpose

The **Code** regulates and controls the conduct of **gas marketing agents**, **retailers** and **distributors**.

[Note: ~~This Code is not the only compliance obligation~~ in relation to marketing. Other State and Federal laws apply to marketing activities.]

1.8 Objectives

The objectives of the **Code** are to –

- (a) define standards of conduct in the **marketing** of gas to **customers**; and
- (b) protect **customers** from undesirable **marketing** conduct.

1.9 Amendment &and Review

- (1) The **Code** will be amended in accordance with Part 2C of the **Act**.

Other

~~This Code is not the only compliance obligations in relation to marketing. Other State and Federal laws apply to marketing activities.~~

Part 2 Marketing

Division 1 – Obligations particular to ~~marketers~~retailers

- 2.1 ~~Marketers~~Retailers to ensure representatives comply with this Part
- A ~~marketer~~retailer must ensure that its ~~marketing representatives~~gas marketing agents comply with this Part.

Division 2 – Contracts

2.2 Entering into contracts

- (1) A ~~marketer~~gas marketing agent must, in the course of arranging a ~~standard form contract that is entered into as a result of door to door marketing or a non-standard contract that is a solicited consumer agreement~~, other than in accordance with subclause (2), ensure that the ~~contract~~ is signed by the ~~customer~~.

[Note: Under the *Electronic Transactions Act 2003*, any documents or signatures that must be provided under the Code may also be provided electronically (subject to the terms and conditions set out in the *Electronic Transactions Act 2003*).]

- (2) If a ~~customer~~ initiates a request to a ~~marketer or retailer or gas marketing agent by telephone or by electronic means~~ for a ~~non-standard contract that is a solicited consumer agreement~~, the contract need not be signed but the ~~marketer or retailer or gas marketing agent~~ must obtain and make a record of the ~~customer's verifiable consent~~ that the contract has been entered into.
- (3) A ~~standard form contract that is a solicited consumer agreement not entered into as a result of door to door marketing~~ need not be signed by the ~~customer~~ but the date of the ~~customer~~ entering into the ~~standard form contract~~ must be recorded by the ~~gas marketing agent~~marketing representative.
- (4) The terms and conditions of a ~~standard form contract that is a solicited consumer agreement not entered into as a result of door to door marketing~~ must be made available to the ~~customer~~ on request at no charge.
- (5) Clauses 2.2(1) to (4) inclusive do not apply in relation to contracts that are unsolicited consumer agreements.
- (5) A ~~contract is entered into as a result of door to door marketing if the following conditions are satisfied~~
- (a) ~~negotiations leading to the formation of the contract (whether or not they are the only negotiations that precede the formation of the contract) take place between the~~

- ~~marketing representative~~ and the ~~customer~~ in each other's presence in Western Australia at a place other than trade premises of the ~~marketeer~~, and
- (b) the ~~marketing representative~~ attends at that place—
 - (i) in the course of ~~door to door marketing~~, and
 - (ii) otherwise than at the unsolicited invitation of the ~~customer~~.

(6) For the purposes of subclause (5)(b), in determining whether an invitation is solicited or unsolicited—

- (a) any solicitation by way of advertisement addressed to the public or a substantial section of the public is to be disregarded; but
- (b) if an invitation arises from a communication initiated by the ~~marketing representative~~ (other than as described in paragraph (a)) the invitation is not to be regarded as unsolicited.

Division 3 — Information to be provided to customers

2.3 Information to be given before entering into a contract

- (1) Before arranging a ~~contract~~, a ~~gas marketing agent~~ ~~marketing representative~~ must give a ~~customer~~ the following information—
 - (a) that the ~~customer~~ is free to choose the ~~standard form contract~~ offered by the ~~retailer~~,
 - (b) the difference between a ~~standard form contract~~ and a ~~non-standard contract~~,
 - (c) how and when the terms of the ~~contract~~ will be given or made available to the ~~customer~~; and
 - (d) that the ~~customer~~ is entitled to a written copy of the ~~contract~~ when requested.
- (2) For a ~~standard form contract~~ that is ~~not an unsolicited consumer agreement~~ ~~not entered into as a result of door to door marketing~~ or ~~for a non-standard contract~~ in accordance with clause 2.2(2) above, the ~~gas marketing agent~~ ~~marketing representative~~ must obtain and make a record of the ~~customer's verifiable consent~~ that the information in subclause (1) has been given.
- (3) For a ~~standard form contract~~ that is ~~aan unsolicited consumer agreement entered into as a result of door to door marketing~~ or a ~~non-standard contract~~ other than in accordance with clause 2.2(2) above, the ~~gas marketing agent~~ ~~marketing representative~~ must obtain the ~~customer's~~ written acknowledgement that the information in subclause (1) has been given.

2.4 Information to be given at the time of or after entering into a contract

- (1) When a ~~customer~~ enters into a new ~~contract~~ ~~that is not an unsolicited consumer agreement~~ with a ~~retailer or gas marketing agent~~, a ~~retailer~~ or ~~gas marketing agent~~ ~~marketeer~~ must, at the time the ~~contract~~ is entered into, offer to give or make available to the ~~customer~~ a copy of the ~~contract~~.

If the **customer** accepts the offer, the **retailer** or **gas marketing agent marketer** must, at the time the **contract** is entered into, or as soon as possible thereafter, but no more than 28 days later, give or make available to the **customer** a copy of the **contract**.

- (2) A **retailer** or **gas marketing agent marketing representative** must give the following information to a **customer** –

(a) how the **customer** may obtain –

(a) (i) a copy of the **retailer's Customer Service Charter**,

(iii)(i) a copy of the **Code and the Compendium**; and

(iii)(ii) details on all relevant tariffs, fees, charges, **alternative tariffs** and service levels that may apply to the **customer**,

(b) the scope of the **Code**;

(c) that a **retailer**, **distributor**, **marketer** and **gas marketing agent marketing representative** must comply with the **Code**;

(d) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;

(e) with respect to a **residential customer**, the **concessions** that may apply to the **residential customer**,

(f) the **distributor's** 24 hour **telephone** number for faults and emergencies;

(g) with respect to a **residential customer**, how the **residential customer** may access the **retailer's** –:

(i) multi-lingual services (in languages reflective of the **retailer's customer** base); and

(ii) **TTY** services;

(h) how to make an enquiry of, or **complaint** to, the **retailer**;

(i) general information on the **retailer's gas customer safety awareness programme**; and

(j) for agreements that are not **unsolicited consumer agreements**, the details of any right the **customer** may have to rescind the **contract** during a **cooling-off period** and the charges that may apply if the **customer** rescinds the **contract**.

- (3) Subject to subclause (45), the information in subclause (2) must be given~~For a standard form contract that is not entered into as a result of door to door marketing~~:

(a) the information in subclause (1) must be given for a standard form contract, no later than with or on the **customer's** first bill; and

(b) for a non standard form contract or a standard form contract that is an unsolicited consumer agreement, before the **customer** has entered into the **contract** and the **gas marketing agent** must obtain the **customer's** written acknowledgement that the information in subclause (2) has been given if requested by the customer and, if the customer has not previously been provided a copy of the contract, a copy of the contract at no charge to the customer.

(4) For a ~~standard form contract~~ that is entered into as a result of ~~door to door marketing~~ or a ~~non-standard contract~~

(a) the information in subclause (1) and a copy of the contract must be given before the ~~customer~~ has entered into the ~~contract~~;

(b) the ~~marketing representative~~ must obtain the ~~customer's~~ written acknowledgement that the information in subclause (1) has been given.

(45) Despite subclause (3), the ~~retailer~~ is not obliged to provide the information in subclause (2) to a ~~customer~~ if –:

(a) the ~~retailer~~ has provided the information to that ~~customer~~ within the preceding 12 months; or

(b) when the ~~retailer~~ is obliged to provide the information to the ~~customer~~ pursuant to subclause (3), the ~~retailer~~ informs the ~~customer~~ how the ~~customer~~ may obtain the information in subclause (2) and, if requested, gives the information to the ~~customer~~.

Division 4 – Marketing ~~conduct~~conduct

2.5 Standards of ~~C~~conduct

(1) A ~~marketing representative~~ must not, when ~~marketing~~, engage in conduct that is misleading, deceptive or likely to mislead or deceive or that is unconscionable.

(2) ~~2.5 A marketing representative must not exert undue pressure on a customer, nor harass or coerce a customer.~~

(3) (1) A ~~marketing representative~~ ~~as marketing agent~~ must ensure that the inclusion of ~~concessions~~ is made clear to ~~residential customers~~ and any prices that exclude ~~concessions~~ are disclosed.

(4) (2) A ~~gas marketing agent~~ ~~marketing representative~~ must ensure that all ~~standard form contracts~~ that are entered into as a result of ~~door to door marketing~~ and all ~~non-standard contracts~~ that are not ~~unsolicited consumer agreements~~ are in writing.

(5) (3) A ~~marketeer retailer~~ ~~or other party~~ must ensure that a ~~customer~~ is able to contact the ~~marketeer retailer~~ ~~or other party~~ on the ~~marketeer's retailer's~~ or ~~other party's~~ telephone number during the normal business hours of the ~~marketeer retailer~~ ~~or other party~~ for the purposes of enquiries, verifications and ~~complaints~~.

2.6 Contact for the purposes of marketing

(1) A ~~marketing representative~~ who makes ~~contact~~ with a ~~customer~~ for the purposes of ~~marketing~~ (other than meeting with a ~~customer~~ face to face) must, as soon as practicable, tell the ~~customer~~

(a) his or her first name;

(b) the name of the ~~marketeer~~, and if different, of the ~~retailer~~ on whose behalf the ~~contact~~ is being made; and

- (c) the purpose of the contact;
- and, after having identified the purpose of the contact, if the contact is not by electronic means, ask if the customer wishes to proceed further.
- (2)(1) A gas marketing agent marketing representative who makes contact with a customer for the purposes of marketing must, on request by the customer –
- provide the customer with the complaints telephone number of the marketer and, if different, of the retailer or other party on whose behalf the contact is being made; and
 - provide the customer with the gas marketing agent's marketer's marketing identification number.
- (2) A gas marketing agent marketing representative who meets with a customer face to face for the purposes of marketing must –:
- when negotiating a contract that is not an unsolicited consumer agreement, as soon as practicable, tell the customer the purpose of the contact;
 - wear a clearly visible and legible identity card that shows –
 - his or her first name;
 - his or her photograph;
 - his or her marketing identification number; and
 - the name of the marketer retailer or other party and, if different, of the retailer on whose behalf the contact is being made; and
 - as soon as practicable, provide the customer, in writing –
 - his or her first name;
 - (ii) his or her marketing identification number,
 - (iii) the name of the marketer retailer and, if different, of the retailer or other party on whose behalf the contact is being made;
 - (iv) the complaints telephone number of the marketer and, if different, of the retailer or other party on whose behalf the contact is being made; and
 - (v) the marketer's business address and Australian Business or Company Number of the retailer or other party on whose behalf the contact is being made.
- (4) If, when a marketing representative makes contact with a customer for the purposes of marketing, the customer indicates that he or she wishes the contact to end, the marketing representative must –
- end the contact as soon as practicable; and
 - not attempt to contact the customer for the purposes of marketing for the next 30 days unless the customer agrees otherwise.

- ~~(5) Unless requested by the customer, a marketing representative must not make contact with a customer for the purposes of marketing outside the permitted call times, unless the contact is by electronic means or the contact arises outside the customer's premises in circumstances where the customer initiates contact with the marketing representative.~~
- ~~(i)(6) A marketing representative must ensure that contact for the purposes of marketing does not continue for more than 15 minutes past the end of the permitted call times without the customer's verifiable consent unless the contact is by electronic means.~~
- (37) A ~~marketer~~ ~~retailer~~ or other party must keep the following records each time it initiates **contact** with a **customer** for the purposes of **marketing** -
- (a) the name of the **customer** and -
 - (i) if the **contact** was made by **telephone**, the **telephone** number;
 - (ii) if the **contact** was made at the **customer's premises**, the address of the **premises**; and
 - ~~(iii)~~(iii) If the contact was made at a place other than the **customer's** premises, the details and address of the location; and
 - ~~(iv)~~(iv) if the contact was made by electronic means, the email address or facsimile number of the customer;
 - (b) the name of the ~~gas marketing agent~~ **marketing representative** who made the **contact**; and
 - (c) the date and time of the **contact**.
- (48) Clause 2.6(37) does not apply where a ~~gas marketing agent~~ **marketer** contacts a **customer** in response to a **customer** request or query.

2.7 Conduct when a customer does not wish to be contacted

- ~~(1) If a **customer** who has been **contacted** by a **marketing representative** for the purposes of **marketing** requests not to be **contacted** again on behalf of the **marketer**, the **marketer** must ensure that the **customer** is not **contacted** on behalf of the **marketer** in relation to the supply of gas by the **retailer** for whom the **marketing** was carried out for the next 2 years unless:~~
- ~~(a) the **customer** requests **contact**, or~~
 - ~~(b) the **customer** has moved **premises**, or~~
 - ~~(c) a **marketer** has a legal obligation to **contact** the **customer**.~~
- ~~(2) A **marketer** must keep a record of each **customer** who has requested not to be **contacted** (as described in subclause (1)) that includes the name, address and **telephone** number of the **customer** at the time the **customer** made that request.~~
- ~~(3) A **marketer** must give a copy of the record to the **gas ombudsman** or the **Authority** on request.~~
- ~~(4) A **marketer** must provide the **customer** on request with written confirmation that the **customer** will not be **contacted** by or on behalf of the **marketer** in~~

~~relation to the supply of gas by the **retailer** for whom the **marketing** was carried out for the next 2 years.~~

~~(5) When engaging in **door to door marketing**, a **marketing representative** must, to the extent practicable, comply with a notice on or near a **premises** indicating that the **customer** does not wish to receive unsolicited mail or other **marketing** information.~~

Division 5 – Miscellaneous

2.8 Collection and use of personal information

~~A **retailer** and a **gas marketing agent marketer** must comply with the National Privacy Principles as set out in the *Privacy Act 1998* in relation to information collected under this Part.~~

2.9 NOT USED

2.10 2.7 Presumption of authority

A person who carries out any **marketing** activity in the name of or for the benefit of ~~—~~

- (a) a **retailer**, or
- ~~(a)~~ (b) a **gas marketing agent**,

is to be taken, unless the contrary is proved, to have been employed or authorised by the **retailer** or **gas marketing agent** to carry out that activity.

2.11 2.8 Marketer-Gas marketing agent complaints

- (1) A **gas marketing agent marketer** must ~~—~~
 - (a) keep a record of each **complaint** made by a **customer**, or person **contacted** for the purposes of **marketing**, about the **marketing** carried out by or on behalf of the **gas marketing agent marketer**, and
 - (b) on request by the **gas ombudsman** in relation to a particular **complaint**, give to the **gas ombudsman** ~~within 28 days of receiving the request~~, all information that the **gas marketing agent marketer** has relating to the **complaint**.
- (2) A record or other information that a **gas marketing agent marketer** is required by this **Code** to keep must be kept for at least 2 years after the last time the person to whom the information relates was **contacted** by or on behalf of the **gas marketing agent marketer**.

Appendix 2 Proposed new Code (clean)

Gas Marketing Code of Conduct 2011

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Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 2011*.

1.2 Authority

This **Code** is made pursuant to Part 2C of the **Act**.

1.3 Commencement

The **Code** comes into operation upon the day prescribed by the **Authority**.

1.4 Interpretation

- (1) Headings and notes are for convenience or information only and do not affect the interpretation of the **Code** or of any term or condition set out in the **Code**.
- (2) An expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa.
- (3) A reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document or that provision of that document.
- (4) A reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns.
- (5) Other parts of speech and grammatical forms of a word or phrase defined in the **Code** have a corresponding meaning.
- (6) A reference to a **gas marketing agent** arranging a **contract** is to be read as a reference to a **gas marketing agent** entering into the **contract** on the **retailer's** or **customer's** behalf, or arranging the **contract** on behalf of another person (whichever is relevant).

1.5 Definitions

In the **Code**, unless the contrary intention appears –

“**Act**” means the *Energy Coordination Act 1994*.

“**alternative tariff**” means a tariff other than the tariff under which the **customer** is currently supplied gas.

“**Australian Consumer Law (WA)**” means schedule 2 to the *Competition and Consumer Act 2010* (Cth) as modified by section 36 of the *Fair Trading Act (WA) 2010*.

“Authority” means the Economic Regulation Authority established under the *Economic Regulation Authority Act 2003*.

“basic living needs” includes –

- (a) rent or mortgage;
- (b) other utilities (e.g. electricity, phone and water);
- (c) food and groceries;
- (d) transport (including petrol and car expenses);
- (e) childcare and school fees;
- (f) clothing; and
- (g) medical and dental expenses.

“change in personal circumstances” includes –

- (a) sudden and unexpected disability, illness of or injury to the **residential customer** or a dependant of the **residential customer**,
- (b) loss of or damage to property of the **residential customer**, or
- (c) other similar unforeseeable circumstances arising as a result of events beyond the control of the **residential customer**.

“Code” means this *Gas Marketing Code of Conduct 2011* as amended by the **Authority**.

“Compendium” means the Compendium of Gas Customer Licence Obligations.

“complaint” means an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.

“concession” means a concession, rebate, subsidy or grant related to the supply of gas, which is available to **residential customers** only.

“contact” means contact that is face to face, by **telephone** or by post, facsimile or electronic communication.

“contract” means a **standard form contract** or a **non-standard contract**.

“cooling-off period” means the period of 10 days commencing on and including the day on which the contract is made.

“customer” means a customer who consumes less than 1 terajoule of gas per annum.

“distributor” means a person who holds a distribution licence under Part 2A of the **Act**.

“Do Not Call Register Act” means the *Do Not Call Register Act 2006 (Cth)*.

“door to door marketing” means the **marketing** practice under which –

- (a) a **gas marketing agent** goes from place to place seeking out persons who may be prepared to enter, as **customers**, into **contracts**; and
- (b) the **gas marketing agent** or some other **gas marketing agent** then or subsequently enters into negotiations with those prospective **customers** with a view to arranging **contracts** on behalf of, or for the benefit of, a **retailer** or party other than the **customer**.

“emergency” means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person, in Western Australia or which destroys or damages, or threatens to destroy or damage, any property in Western Australia.

“financial hardship” means a state of more than immediate financial disadvantage which results in a **residential customer** being unable to pay an outstanding amount as required by a **retailer** without affecting the ability to meet the **basic living needs** of the **residential customer** or a dependant of the **residential customer**.

“gas customer safety awareness program” means a program to communicate information to **customers** regarding safety in the use of gas and must address, at a minimum, provision of the following information to **customers** –

- (a) information on the properties of gas relevant to its use by **customers**;
- (b) a notice of the requirement for proper installation and use of approved appliances and equipment;
- (c) a notice of the requirement to use only qualified trade persons for gas connection and appliance and equipment installation;
- (d) the proper procedure for the reporting of gas leaks or appliance or equipment defects; and
- (e) safety procedures to be followed and the appropriate **telephone** number to call in case of **emergency**.

“gas marketing agent” means –

- (a) a person who acts on behalf of the holder of a trading licence –
 - (i) for the purpose of obtaining new **customers** for the licensee; or
 - (ii) in dealings with existing **customers** in relation to **contracts** for the supply of gas by the licensee; or
- (b) a representative, agent or employee of a person referred to in paragraph (a).
- (c) not a person who is a customer representative.

“gas ombudsman” means the ombudsman appointed under the scheme approved by the **Authority** pursuant to section 11ZPZ of the **Act**.

[Note: The energy ombudsman Western Australia is the gas ombudsman appointed under the scheme approved by the Authority pursuant to section 11ZPZ of the Act.]

“marketing” includes engaging or attempting to engage in any of the following activities by any means, including door to door or by telephone or other electronic means –

- (a) negotiations for, or dealings in respect of, a **contract** for the supply of gas to a **customer**; or
- (b) advertising, promotion, market research or public relations in relation to the supply of gas to **customers**.

“marketing identification number” means a unique number assigned by a **retailer** or other party to each **gas marketing agent** acting on its behalf.

“non-standard contract” means a contract entered into between a **retailer** and a **customer**, or a class of **customers**, that is not a **standard form contract**.

“payment difficulties” means a state of immediate financial disadvantage that results in a **residential customer** being unable to pay an outstanding amount as required by a **retailer** by reason of a **change in personal circumstances**.

“premises” means premises owned or occupied by a new or existing **customer**.

“residential customer” means a **customer** who consumes gas solely for domestic use.

“retailer” means a person who holds a trading licence under Part 2A of the **Act**.

“standard form contract” means a contract that is approved by the **Authority** under section 11WF of the **Act**.

“telemarketing calls” is defined in section 5 of the **Do Not Call Register Act**.

“Telemarketing Industry Standard” means the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*.

“telephone” means a device which is used to transmit and receive voice frequency signals.

“TTY” means telephone typewriter.

“unsolicited consumer agreement” is defined in section 69 of the **Australian Consumer Law (WA)**.

“verifiable consent” means consent that is given –

- (a) expressly;
- (b) in writing or orally;
- (c) after the **retailer** or **gas marketing agent** (whichever is relevant) has in plain language appropriate to that **customer** disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used; and
- (d) by the **customer** or a nominated person competent to give consent on the **customer’s** behalf.

1.6 Application

The **Code** applies to –

- (a) **customers**;
- (b) **retailers**;
- (c) **distributors**; and
- (d) **gas marketing agents**.

1.7 Purpose

The **Code** regulates and controls the conduct of **gas marketing agents**, **retailers** and **distributors**.

[Note: This **Code** is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities.]

1.8 Objectives

The objectives of the **Code** are to –

- (a) define standards of conduct in the **marketing** of gas to **customers**; and
- (b) protect **customers** from undesirable **marketing** conduct.

1.9 Amendment and Review

The **Code** will be amended in accordance with Part 2C of the **Act**.

Part 2 Marketing

Division 1 – Obligations particular to retailers

2.1 Retailers to ensure representatives comply with this Part

A **retailer** must ensure that its **gas marketing agents** comply with this Part.

Division 2 – Contracts

2.2 Entering into contracts

- (1) A **gas marketing agent** must, in the course of arranging a **non-standard contract**, other than in accordance with subclause (2), ensure that the **contract** is signed by the **customer**.

[Note: Under the *Electronic Transactions Act 2003*, any documents or signatures that must be provided under the Code may also be provided electronically (subject to the terms and conditions set out in the *Electronic Transactions Act 2003*).]
- (2) If a **customer** initiates a request to a **retailer** or **gas marketing agent** for a **non-standard contract** the contract need not be signed but the **retailer** or **gas marketing agent** must obtain and make a record of the **customer's verifiable consent** that the contract has been entered into.
- (3) A **standard form contract** need not be signed by the **customer** but the date of the **customer** entering into the **standard form contract** must be recorded by the **gas marketing agent**.
- (4) The terms and conditions of a **standard form contract** must be made available to the **customer** on request at no charge.
- (5) Clauses 2.2(1) to (4) inclusive do not apply in relation to contracts that are **unsolicited consumer agreements**.

Division 3 – Information to be provided to customers

2.3 Information to be given before entering into a contract

- (1) Before arranging a **contract**, a **gas marketing agent** must give a **customer** the following information –
 - (a) that the **customer** is free to choose the **standard form contract** offered by the **retailer**,
 - (b) the difference between a **standard form contract** and a **non-standard contract**;

- (c) how and when the terms of the **contract** will be given or made available to the **customer**; and
 - (d) that the **customer** is entitled to a written copy of the **contract** when requested.
- (2) For a **standard form contract** that is not an **unsolicited consumer agreement** or for a **non-standard contract** in accordance with clause 2.2(2) above, the **gas marketing agent** must obtain and make a record of the **customer's verifiable consent** that the information in subclause (1) has been given.
- (3) For a **standard form contract** that is an **unsolicited consumer agreement** or a **non-standard contract** other than in accordance with clause 2.2(2) above, the **gas marketing agent** must obtain the **customer's** written acknowledgement that the information in subclause (1) has been given.

2.4 Information to be given at the time of or after entering into a contract

- (1) When a **customer** enters into a new **contract** that is not an **unsolicited consumer agreement** with a **retailer or gas marketing agent**, a **retailer** or **gas marketing agent** must, at the time the **contract** is entered into, offer to give or make available to the **customer** a copy of the **contract**. If the **customer** accepts the offer, the **retailer** or **gas marketing agent** must, at the time the **contract** is entered into, or as soon as possible thereafter, but no more than 28 days later, give or make available to the **customer** a copy of the **contract**.
- (2) A **retailer** or **gas marketing agent** must give the following information to a **customer** –
 - (a) how the **customer** may obtain –
 - (i) a copy of the **Code** and the **Compendium**; and
 - (ii) details on all relevant tariffs, fees, charges, **alternative tariffs** and service levels that may apply to the **customer**,
 - (b) the scope of the **Code**;
 - (c) that a **retailer**, **distributor** and **gas marketing agent** must comply with the **Code**;
 - (d) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
 - (e) with respect to a **residential customer**, the **concessions** that may apply to the **residential customer**,
 - (f) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (g) with respect to a **residential customer**, how the **residential customer** may access the **retailer's** –
 - (i) multi-lingual services (in languages reflective of the **retailer's** **customer** base); and
 - (ii) **TTY** services;
 - (h) how to make an enquiry of, or **complaint** to, the **retailer**,

- (i) general information on the **retailer's gas customer safety awareness program**; and
 - (j) for agreements that are not **unsolicited consumer agreements**, the details of any right the **customer** may have to rescind the **contract** during a **cooling-off period** and the charges that may apply if the **customer** rescinds the **contract**.
- (3) Subject to subclause (4), the information in subclause (2) must be given –
- (a) for a **standard form contract**, no later than with or on the **customer's** first bill; and
 - (b) for a **non standard form contract** or a **standard form contract** that is an **unsolicited consumer agreement**, before the **customer** has entered into the **contract** and the **gas marketing agent** must obtain the **customer's** written acknowledgement that the information in subclause (2) has been given.
- (4) Despite subclause (3), the **retailer** is not obliged to provide the information in subclause (2) to a **customer** if –
- (a) the **retailer** has provided the information to that **customer** within the preceding 12 months; or
 - (b) when the **retailer** is obliged to provide the information to the **customer** pursuant to subclause (3), the **retailer** informs the **customer** how the **customer** may obtain the information in subclause (2) and, if requested, gives the information to the **customer**.

Division 4 – Marketing conduct

2.5 Standards of conduct

- (1) A **gas marketing agent** must ensure that the inclusion of **concessions** is made clear to **residential customers** and any prices that exclude **concessions** are disclosed.
- (2) A **gas marketing agent** must ensure that all **non-standard contracts** that are not **unsolicited consumer agreements** are in writing.
- (3) A **retailer** or other party must ensure that a **customer** is able to **contact** the **retailer** or other party on the **retailer's** or other party's **telephone** number during the normal business hours of the **retailer** or other party for the purposes of enquiries, verifications and **complaints**.

2.6 Contact for the purposes of marketing

- (1) A **gas marketing agent** who makes **contact** with a **customer** for the purposes of **marketing** must, on request by the **customer** –
 - (a) provide the **customer** with the complaints **telephone** number of the **retailer** or other party on whose behalf the **contact** is being made; and
 - (b) provide the **customer** with the **gas marketing agent's marketing identification number**.

- (2) A **gas marketing agent** who meets with a **customer** face to face for the purposes of **marketing** must –
- (a) when negotiating a contract that is not an **unsolicited consumer agreement**, as soon as practicable, tell the **customer** the purpose of the **contact**,
 - (b) wear a clearly visible and legible identity card that shows –
 - (i) his or her first name;
 - (ii) his or her photograph;
 - (iii) his or her marketing identification number; and
 - (iv) the name of the **retailer** or other party on whose behalf the **contact** is being made; and
 - (c) as soon as practicable, provide the **customer**, in writing –
 - (i) his or her first name;
 - (ii) his or her **marketing identification number**,
 - (iii) the name of the **retailer** or other party on whose behalf the **contact** is being made;
 - (iv) the complaints **telephone** number of the **retailer** or other party on whose behalf the **contact** is being made; and
 - (v) the business address and Australian Business or Company Number of the retailer or other party on whose behalf the contact is being made.
- (3) A **retailer** or other party must keep the following records each time it initiates **contact** with a **customer** for the purposes of **marketing** –
- (a) the name of the **customer** and –
 - (i) if the **contact** was made by **telephone**, the **telephone** number;
 - (ii) if the **contact** was made at the **customer's premises**, the address of the **premises**; and
 - (iii) If the contact was made at a place other than the **customer's** premises, the details and address of the location;
 - (b) the name of the **gas marketing agent** who made the **contact**, and
 - (c) the date and time of the **contact**.
- (4) Clause 2.6(3) does not apply where a **gas marketing agent contacts** a **customer** in response to a **customer** request or query.

Division 5 – Miscellaneous

2.7 Presumption of authority

A person who carries out any **marketing** activity in the name of or for the benefit of –

- (a) a **retailer**, or
- (b) a **gas marketing agent**,

is to be taken, unless the contrary is proved, to have been employed or authorised by the ***retailer*** or ***gas marketing agent*** to carry out that activity.

2.8 Gas marketing agent complaints

- (1) A ***gas marketing agent*** must –
 - (a) keep a record of each ***complaint*** made by a ***customer***, or person ***contacted*** for the purposes of ***marketing***, about the ***marketing*** carried out by or on behalf of the ***gas marketing agent***; and
 - (b) on request by the ***gas ombudsman*** in relation to a particular ***complaint***, give to the ***gas ombudsman*** within 28 days of receiving the request, all information that the ***gas marketing agent*** has relating to the ***complaint***.
- (2) A record or other information that a ***gas marketing agent*** is required by this ***Code*** to keep must be kept for at least 2 years after the last time the person to whom the information relates was ***contacted*** by or on behalf of the ***gas marketing agent***.