



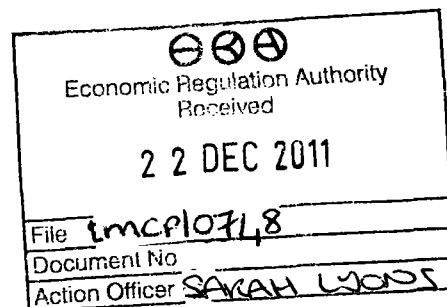
**GAS MARKETING CODE  
CONSULTATIVE COMMITTEE  
(GMCCC)**

Our Ref: D80391

Your Ref: D76783

22 December 2011

Mr Lyndon Rowe  
Chairman  
Economic Regulation Authority  
Level 6  
197 St Georges Terrace  
PERTH WA 6000



Dear Mr Rowe

**FINAL ADVICE ON ERA PROPOSED AMENDMENTS 2011**

Thank you for your letter dated 31 October 2011 requesting advice on the amendments to the Gas Marketing Code of Conduct proposed by the Economic Regulation Authority.

In accordance with section 11 ZPU of the *Energy Coordination Act 1994*, the Gas Marketing Code Consultative Committee has undertaken consultation with interested parties regarding the Authority's proposed changes to the Code.

The GMCCC provided a public consultation period between 4 November 2011 and 25 November 2011.

Submissions were received from the following interested parties:

- Alinta Sales Pty Ltd (Attachment 1)
- Energy Ombudsman WA (Attachment 2)
- Office of Energy (Attachment 3)

As a result of considering the amendments proposed by the Authority, and the submissions received, the GMCCC has the following advice to provide:

- 1) **The GMCCC supports the amendments proposed by the Authority with the following exception:**
  - a) **Notation regarding other legislation**

The Authority proposed that a notation be added to the Code to read:

These are not the only compliance obligations in relation to marketing, other State and Federal laws apply to marketing activities.

The majority of the GMCCC supports the Office of Energy submission which proposes that the notation should be expanded to read:

Note: This Code is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities, including but not limited to the Australian Consumer Law (WA), the Spam Act 2003, the Spam Regulations 2004, the Do Not Call Register Act, the Telecommunications Industry Standard 2007 and the Privacy Act 1988.

## 2) The “Marketing” definition

In the GMCCC Final Review Report, the GMCCC recommended that the Authority amend the definition of ‘marketing’ to read:

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.

In its Decision, the Authority rejected this recommendation on the basis that any amendment to the definition should occur in the superior legislation before amendment of the subsidiary legislation is considered.

The Alinta Sales submission expresses concern regarding the length of time that it is likely to take to amend the superior legislation and urges the Authority to progress the proposed changes to the definition.

The Authority did not ask for further advice regarding this recommendation (it only requested advice on the proposed Code amendments).

Some members of the ECCC wished to request that the Authority reconsider its decision regarding this matter. However, there was not a clear majority view on this issue and therefore no further recommendation has been made.

Yours sincerely



PAUL KELLY  
GMCCC CHAIRMAN

**Attachment 1 – Submission – Alinta Sales Pty Ltd**

25 November 2011

Mr Paul Kelly  
Chairman GMCCC  
PO Box 8469  
Perth BC WA 6849

By Email: gmccc@erawa.com.au



Alinta Sales Pty Ltd  
ABN 92 089 531 984

The Quadrant  
1 William Street  
Perth WA 6000  
Locked Bag 55  
Perth BC WA 6849

T 13 13 58  
F 08 9486 3346

[www.alinta.net.au](http://www.alinta.net.au)

Dear Mr Kelly

## **ECONOMIC REGULATION AUTHORITY PROPOSED AMENDMENTS TO THE GAS MARKETING CODE OF CONDUCT**

Alinta Sales Pty Ltd (Alinta) appreciates the opportunity to comment upon the proposed amendments to the *Gas Marketing Code of Conduct* (the Code) by the Economic Regulation Authority (the Authority).

Alinta is supportive of the Authority's proposed amendments in relation to the Code regarding:

- harmonisation of the Code in relation to the current Western Australian Electricity Code of Conduct; and
- removing those provisions in the Code that are now duplicated in the Australian Consumer Law.

Alinta does however have reservations about the Authority's rejection of the Gas Marketing Code Consultative Committee (GMCCC) recommendation to not alter the definition of marketing within the Code. While Alinta acknowledges that definitional inconsistencies will remain between the higher level legislation and the Code should the term 'marketing' be re-defined, Alinta is principally concerned about the level of obligations that the current definition imposes upon retailers. Retaining the current definition of marketing within the Code will continue to place unnecessary obligations upon retailers when engaging in routine contact with customers, outside of those activities that would be regarded as contract negotiation or variation. It is Alinta's view that Code was never intended to apply to those situations where a retailer is seeking clarification or minor information from a customer.

Alinta also notes that while the Authority's recommendation to change the *Energy Coordination Act 1994* is the optimal solution, this proposed solution may potentially face delay in navigating the legislative process. Alinta urges the Authority to progress changes to the definition of Marketing within the Code as recommended by the GMCCC, despite the short-term inconsistencies that this creates between the Code and the Act.



Should you wish to discuss Alinta's submission in further detail, please call Adam Lourey, Senior Regulatory Analyst on 08 9486 3406.

Yours sincerely

A handwritten signature in black ink, which has been partially obscured by a black rectangular redaction box.

**Shaun Ruddy**  
Manager National Retail Regulation  
Alinta Sales Pty Ltd

**Attachment 2 – Submission – Energy Ombudsman WA**

**From:** Wayne Mann  
**To:** gmccc  
**Subject:** Comments on Proposed Amendments to Gas Marketing Code  
**Date:** Wednesday, 23 November 2011 1:57:50 PM

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Attention: Mr Paul Kelly, Chairman Gas Marketing Code Consultative Committee

Dear Mr Kelly

We have examined the Authority's Decision concerning proposed amendments to the Gas Marketing Code of Conduct and considered the proposed amendments to the Code.

From the experience and perspective of the Energy Ombudsman Western Australia, the Decision appears appropriate and we have no further comments.

Yours sincerely

**Wayne Mann**  
**Director Energy Ombudsman**

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**Energy Ombudsman, Western Australia**  
*Free, independent and fair dispute resolution*  
Level 12, St Martins Tower  
44 St Georges Terrace  
Perth Western Australia 6000

Telephone (08) 9220 7511  
Facsimile (08) 9220 7599  
Email [wayne.mann@ombudsman.wa.gov.au](mailto:wayne.mann@ombudsman.wa.gov.au)  
Website [www.ombudsman.wa.gov.au/energy](http://www.ombudsman.wa.gov.au/energy)

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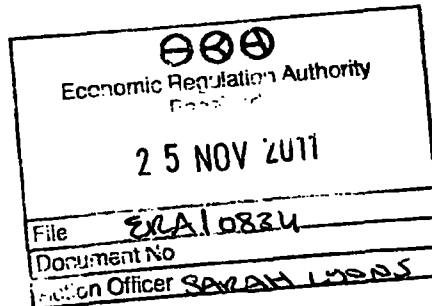
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**Attachment 3 – Submission – Office of Energy**





Government of Western Australia  
Office of Energy



Our ref: RCM/0589-03  
Enquiries: Sarah Woenne  
Telephone: 9420 5698

21 November 2011

Mr Paul Kelly  
Chairman GMCCC  
PO Box 8469  
PERTH BC WA 6849

Dear Mr Kelly

### PROPOSED AMENDMENTS TO THE GAS MARKETING CODE OF CONDUCT

Thank you for the opportunity to comment on the Economic Regulation Authority's (the Authority) proposed amendments to the Gas Marketing Code of Conduct (GMCC).

The Office of Energy (the Office) notes the Authority's decision on the recommendations of the Gas Marketing Code Consultative Committee (GMCCC), in particular the Authority's response to recommendations 5, 7 and 8 in relation to legislation administered by the Minister for Energy through the Office.

The Office generally supports the proposed amendments to the GMCC. However, in relation to recommendation 2, the Office also supports further clarification of where to find customer protection provisions in other legislation, in order to improve transparency both for retailers, distributors and gas marketing agents who must comply with the GMCC and for gas customers. The Office suggests additional detail is added to the Note to clause 1.7, for example:

**Note:** This Code is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities, including but not limited to the *Australian Consumer Law (WA)*, the *Spam Act 2003*, the *Spam Regulations 2004*, the *Do Not Call Register Act*, the *Telecommunications Industry Standard 2007* and the *Privacy Act 1988*.

Yours sincerely

PETER HAWKEN  
SENIOR MANAGER, REGULATORY FRAMEWORK