

# Decision on proposed amendments to the Gas Marketing Code of Conduct

27 September 2013

**Economic Regulation Authority**

WESTERN AUSTRALIA

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## Decision

1. Following consideration of the Gas Marketing Code Consultative Committee's 2013 Final Review Report, the Economic Regulation Authority (**Authority**) proposes to amend the Gas Marketing Code of Conduct (**Code**).
2. A copy of the proposed new Code, both with tracked changes (**Appendix 1**) and without tracked changes (**Appendix 2**), is attached to this Decision.

## Background

3. The Code regulates and controls the conduct of the holders of trading licences (**gas retailers**) 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. The initial Code was approved by the Minister for Energy in 2004 after which responsibility for the Code transferred to the Authority.
4. Under section 11ZPO of the *Energy Coordination Act 1994* (**Gas Act**), the Authority is required to establish a committee to advise it on matters relating to the Code. This committee is known as the Gas Marketing Code Consultative Committee (**GMCCC**).
5. 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).
6. The GMCCC commenced its 2013 review of the Code in April 2013.
7. The Gas Act requires that the GMCCC undertake consultation with interested parties before it provides its advice to the Authority. The GMCCC published its Draft Review Report (**draft report**) on 14 June 2013 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 8 July 2013.
8. Submissions were received from the following:
  - Synergy
  - Western Australian Council of Social Service Inc (WACOSS)
  - Alinta Sales Pty Ltd (t/a Alinta Energy)
9. The submissions form appendices 4 – 6 of the GMCCC's 2013 Final Review Report (**final report**), which is available on the Authority's website.
10. Following receipt of the submissions, the GMCCC met to consider the issues raised and subsequently approved the final report to the Authority. The final report was provided to the Authority on 13 September 2013.

## Response to the GMCCC's Final Review Report

11. The GMCCC made 23 recommendations to the Authority. Each recommendation and the Authority's response to the recommendation is contained below:

**Recommendation 1 – That the Authority deletes the definition of 'Do Not Call Register Act' from clause 1.5 of the Code.**

**Recommendation 2 – That the Authority replaces reference to 'Do Not Call Register Act' in the explanatory note under clause 1.7 of the Code with 'Do Not Call Register Act 2006 (Cth)'.**

12. The Authority notes that the definition of 'Do Not Call Register Act' is only used in the explanatory note under clause 1.7 of the Code.

13. The Authority accepts these recommendations and proposes amendments accordingly.

**Recommendation 3 – That the Authority deletes the definition of 'telemarketing calls' from clause 1.5 of the Code.**

14. The Authority notes that the definition of 'telemarketing calls' is not used in the Code.

15. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 4 – That the Authority deletes the definition of 'Telemarketing Industry Standard' from clause 1.5 of the Code.**

**Recommendation 5 – That the Authority replaces reference to 'Telemarketing Industry Standard' in the explanatory note under clause 1.7 of the Code with 'Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth)'.**

16. The Authority notes that the definition of 'Telemarketing Industry Standard' is only used in the explanatory note under clause 1.7 of the Code.

17. The Authority accepts these recommendations and proposes amendments accordingly.

**Recommendation 6 – That the Authority amends the definition of 'TTY' in clause 1.5 of the Code to read 'teletypewriter'.**

18. The Authority notes that the new definition of 'TTY' as proposed by the GMCCC is consistent with the definition of 'TTY' included in the *Code of Conduct for the Supply of Electricity to Small Use Customers*.

19. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 7 – That the Authority renumbers clause 2.8(2) to become a separate clause (clause 2.9).**

**Recommendation 8 – That the Authority inserts the heading ‘Records to be kept’ in new clause 2.9.**

**Recommendation 9 – That the Authority inserts the following explanatory note under new clause 2.9:**

[Note: Clause 13.1(1) of the *Compendium* sets out the record keeping obligations that apply to *retailers* in relation to records to be kept under this *Code*.]

20. The Authority notes that clause 2.8(2) of the Code contains a general record keeping obligation for all records – not only those related to complaints.
21. The Authority has determined that there is merit in making clause 2.8(2) a stand-alone clause and including an explanatory note to clarify that record keeping obligations for retailers are contained within the *Compendium of Gas Customer Licence Obligations* – not the Code.
22. The Authority accepts these recommendations and proposes amendments accordingly.

**Recommendation 10 – That the Authority amends the definition of ‘cooling-off period’ in clause 1.5 as follows:**

means the period specified in the *contract* as the cooling-off period.

23. The Authority notes that the definition currently provides for a 10 day ‘cooling-off period’ consistent with the ‘cooling off period’ provided for under the *Energy Coordination (Customer Contracts) Regulations 2004*. The amendment proposed by the GMCCC will ensure that the definition captures both this ‘cooling off period’ and the 10 business day ‘cooling-off period’ provided for under the Australian Consumer Law.
24. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 11 – That the Authority inserts the following new clause (clause 2.6):**

**No canvassing or advertising signs**

**A retailer or gas marketing agent who visits a person’s premises for the purposes of marketing must comply with any clearly visible signs at a person’s premises indicating –**

**(a) canvassing is not permitted at the premises; or**

**(b) no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at, or associated with, the premises.**

25. The GMCCC has recommended that the Authority insert a new clause which requires a retailer to comply with any clearly visible signs at a customer’s premises indicating that canvassing is not permitted at the premises, or that no advertising or similar material is to be left at the premises.
26. The Authority recognises that the ACL, the *Do Not Call Register Act 2006* and the *Spam Act 2003* do not include specific provisions regarding canvassing or leaving advertising material at a customer’s premises.
27. The Authority considers that the recent entry of a second retailer in the domestic gas market may result in an increase in door to door marketing activity. As the

costs involved in complying with the new requirement proposed by the GMCCC are likely to be minimal, the Authority considers there to be merit in including this new obligation within the Code.

28. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 12 – That the Authority develops a new webpage regarding the use of do-not-knock stickers.**

29. The GMCCC has recommended that the Authority develop a new webpage regarding the use of do-not-knock stickers. The webpage should have information on how a customer can obtain a do-not-knock sticker, what the use of the sticker means for the customer and where the customer should place the sticker.
30. The Authority has determined there is merit in the Authority developing a webpage (within the Authority's existing, publicly available, internet website) which assists the public in obtaining and understanding the use of "do-not-knock" stickers.
31. The Authority accepts this recommendation and proposes to develop a website accordingly.

**Recommendation 13 – That the Authority writes to all gas retailers advising them that:**

- (i) the GMCCC saw merit in the development of standardised energy price fact sheets;**
  - (ii) the GMCCC at this time did not make a recommendation to make the development of energy price fact sheets mandatory but will reconsider the need for mandatory fact sheets as part of the next Code review;**
  - (iii) the Authority encourages gas retailers to prepare pricing information in accordance with the AER's Retail Pricing Information Guideline; and**
  - (iv) the Authority encourages gas retailers to make this information available to customers before they enter into a new contract.**
32. Under the National Energy Retail Law, a retailer must submit to the Australian Energy Regulator (**AER**) pricing information for all its market and standing offers in a standard format ('Energy Price Fact Sheets'). The AER has produced the *AER Retail Pricing Information Guideline* which specifies what information must be included in an Energy Price Fact Sheet and the manner and form in which this information must be presented. Energy Price Fact Sheets aim to make it easier for customers to compare different offers from the same or different retailers.
33. Although the GMCCC saw merit in the development of standardised Energy Price Fact Sheets, it agreed not to make a recommendation to make them mandatory at this stage. The GMCCC did agree to reconsider the need for mandatory Energy Price Fact Sheets as part of the next Code review.
34. The GMCCC has recommended that the Authority, in the interim, write to all gas retailers advising them of the GMCCC's considerations and encouraging them to voluntarily prepare their pricing information in accordance with the *AER Retail Pricing Information Guideline*.
35. The Authority notes the GMCCC's considerations and has determined there is merit in promoting the development of standardised pricing information and not make this a mandatory requirement at this stage.

36. The Authority accepts this recommendation and proposes to write to gas retailers accordingly.

**Recommendation 14 – That the Authority deletes clauses 2.2, 2.3 and 2.4 from the Code and inserts instead the following new clauses:**

**2.2 Entering into a standard form contract**

(1) When entering into a *standard form contract* that is not an *unsolicited consumer agreement*, a *retailer or gas marketing agent* must –

- (a) record the date the *standard form contract* was entered into;
- (b) give, or make available to the *customer* at no charge, a copy of the *standard form contract*

- - (i) at the time the *standard form contract* is entered into, if the *standard form contract* was not entered into over the *telephone*; or
  - (ii) as soon as possible, but not more than 5 *business days* after the *customer's* the *standard form contract* was entered into, if the *standard form contract* was entered into over the *telephone*.

(2) Subject to subclause (3), a *retailer or gas marketing agent* must give the following information to a *customer* no later than on or with the *customer's* first bill –

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

(3) For the purposes of subclause (2), a *retailer or gas marketing agent* is taken to have given the *customer* the required information if –

- (a) the *retailer or gas marketing agent* has provided the information to that *customer* within the preceding 12 months; or
- (b) the *retailer or gas marketing agent* has informed the *customer* how the *customer* may obtain the information, unless the *customer* requests to receive the information.

**2.3 Entering into a non-standard contract**

(1) When entering into a *non-standard contract* that is not an *unsolicited consumer agreement*, a *retailer or gas marketing agent* must –

- (a) obtain and make a record of the *customer's verifiable consent* that the *non-standard contract* has been entered into, and
- (b) give, or make available to the *customer* at no charge, a copy of the *non-standard contract*

- - (i) at the time the *non-standard contract* is entered into, if the *non-standard contract* was not entered into over the *telephone*; or
  - (ii) as soon as possible, but not more than 5 *business days* after the *non-standard contract* was entered into, if the *non-standard contract* was entered into over the *telephone*.

(2) Before entering into a *non-standard contract*, a *retailer or gas marketing agent* must give the *customer* the following information –

- (a) that the *customer* is able to choose the *standard form contract* offered by the *retailer*;
- (b) the difference between the *non-standard contract* and the *standard form contract*;
- (c) details of any right the *customer* may have to rescind the *non-standard contract* during a *cooling-off period* and the charges that may apply if the *customer* rescinds the *non-standard contract*;
- (d) 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*;
- (e) the scope of the *Code*;



- (f) that a *retailer* and *gas marketing agent* must comply with the Code;
  - (g) how the *retailer* may assist if the *customer* is experiencing *payment difficulties* or *financial hardship*;
  - (h) with respect to a *residential customer*, the *concessions* that may apply to the *residential customer*;
  - (i) the *distributor's* 24 hour *telephone* number for faults and emergencies;
  - (j) 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;
  - (k) how to make an enquiry of, or *complaint* to, the *retailer*; and
  - (l) general information on the *retailer's gas customer safety awareness program*.
- (3) For the purposes of subclauses (2)(d)-(l), a *retailer* or *gas marketing agent* is taken to have given the *customer* the required information if –
- (a) the *retailer* or *gas marketing agent* has provided the information to that *customer* within the preceding 12 months; or
  - (b) the *retailer* or *gas marketing agent* has informed the *customer* how the *customer* may obtain the information, unless the *customer* requests to receive the information.
- (4) Subject to subclause (3), the *retailer* or *gas marketing agent* must obtain the *customer's verifiable consent* that the information in clause 2.3(2) has been given.

37. The Code offers different levels of protection depending on whether the contract is a standard form contract, a non-standard contract, an unsolicited consumer agreement or a 'solicited' consumer agreement. The GMCCC considers the current drafting of clauses 2.2 to 2.4 of the Code to be complex, and has recommended that these clauses be restructured into two new clauses: 2.2 and 2.3. New clause 2.2 includes the requirements for entering into a standard form contract, while new clause 2.3 includes the requirements for entering into a non-standard contract. These new clauses aim to improve customer protection by creating greater clarity regarding the obligations imposed on retailers and gas marketing agents.
38. As part of the restructuring of clauses 2.2 to 2.4, the GMCCC has also recommended that some of the obligations in clauses 2.2 to 2.4 be amended. These amendments can be summarised as follows:

### **Consent requirements for non-standard contracts**

39. Clause 2.2(1) currently requires non-standard contracts entered into as a result of the internet to be signed by the customer. It is not clear how this will occur. All other non-standard contracts require the customer's verifiable consent. The Authority agrees that the customer's verifiable consent should be required when entering into any non-standard contract.

### **Providing a copy of the contract to the customer, and when**

40. The Code contains a number of clauses regarding the provision of the contract to the customer. The GMCCC has recommended these clauses be rationalised into a single obligation that ensures that all customers who enter into a non-standard contract which is not in a 'template' format (and not available from the retailer's website) will always be given a copy of their contract.
41. Clause 2.4(1) currently provides that, if a customer accepts a retailer's offer for a copy of the contract, the retailer must give, or make available, a copy of the contract as soon as possible, but no more than 28 days later. The Authority agrees that the maximum timeframe of 28 days for providing a copy of the contract is excessive, and can result, for example, in the customer being provided with details of the cooling-off period in the contract *after* the cooling-off period has expired.

42. The Authority agrees that, consistent with the ACL, for contracts entered into other than by telephone, a copy of the contract should be provided at the time the contract is entered into. For contracts entered into over the telephone, the contract should be provided within five business days of the customer entering into the contract.
43. In relation to standard form contracts that are not unsolicited consumer agreements, the GMCCC has noted that cooling-off periods do not apply to these types of contracts. The GMCCC has, therefore, recommended deletion of the requirement that retailers must provide information on cooling-periods for these types of contracts.

#### **Advising a customer about the availability of a standard form contract**

44. At present, clauses 2.3(a) and (b) require a retailer to tell a customer, before arranging a contract, that the customer is free to choose the retailer's standard form contract; and the differences between a standard form contract and a non-standard contract.
45. The GMCCC believes there is no need to provide this information to a customer before arranging a standard form contract. In particular, as a retailer is not obliged to offer a customer a non-standard contract, a retailer should not be required to tell a customer about the differences between the two types of contract when arranging a standard form contract.
46. The Authority agrees that the information specified in clauses 2.3(a) and (b) should only be provided before a customer enters into a non-standard contract.

#### **Information and consent requirements for contracts**

47. Clause 2.4(3)(b) currently requires a retailer or gas marketing agent to provide specified information to a customer before entering into a standard form contract that is an unsolicited consumer agreement. For all other standard form contracts this information may be provided with the customer's first bill.
48. As the specified information does not affect the terms of the contract, the GMCCC could discern no reason why this information should be provided *before* a customer enters such a contract.
49. The Authority agrees that the specified information can be provided with the first bill for all standard form contracts.
50. Similarly, clause 2.4(3)(b) also requires a retailer or gas marketing agent to provide the specified information before a customer enters into a non-standard contract and to obtain the customer's written acknowledgement that this information has been provided.
51. As the specified information does not affect the terms of the contract, the Authority agrees that written acknowledgement should be replaced with verifiable consent. This will ensure consistency in the consent requirements.
52. The Authority accepts these recommendations and proposes amendments accordingly.

**Recommendation 15 – That the Authority replaces ‘the holder of a trading licence’ with ‘a retailer’ in the definition of ‘gas marketing agent’ in clause 1.5 of the Code.**

53. The GMCCC has recommended that the Authority replaces ‘the holder of a trading licence’ with ‘a retailer’ in the definition of ‘gas marketing agent’ for reasons of consistency.
54. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 16 – That the Authority deletes clauses 1.6(a) and (c) from the Code.****Recommendation 17 – That the Authority deletes reference to ‘distributors’ from clause 1.7 of the Code.**

55. Clauses 1.6(a) and (c) of the Code provide that the Code applies to customers and distributors, while clause 1.7 provides that that the Code regulates and controls the conduct of gas marketing agents, retailers and distributors.
56. The Authority notes that Section 11ZPM(2) of the Gas Act provides that the Code is to regulate and control the conduct of retailers and gas marketing agents; it does not refer to customers or distributors. Further, the Code does not place any obligations on customers or distributors.
57. The Authority accepts these recommendations and proposes amendments accordingly.

**Recommendation 18 – That the Authority replaces ‘Australian Consumer Law’ with ‘Fair Trading Act 2010 (WA)’ in the explanatory note under clause 1.7.**

58. The GMCCC has recommended that the Authority replaces ‘Australian Consumer Law (WA)’ in the explanatory note under clause 1.7 with ‘Fair Trading Act 2010 (WA)’ as this is the relevant Act which implements the ACL in WA.
59. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 19 – That the Authority deletes clause 2.5(2) from the Code.**

60. Clause 2.5(2) requires all non-standard contracts that are not unsolicited consumer agreements to be in writing.
61. The Authority notes that GMCCC recommendation 14 (which recommends that a copy of the contract is given, or made available, to all customers when entering into a contract) effectively ensures that all non-standard contract will be in writing, making clause 2.5(2) redundant.
62. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 20 – That the Authority deletes clause 2.6(2)(a) from the Code.**

63. Clause 2.6(2)(a) requires a retailer to tell a customer the purpose of the contact when negotiating a contract that is not an unsolicited consumer agreement with the customer face to face. In practice, this clause only applies to ‘solicited’ contracts entered into face to face at the retailer’s business or trade premises.
64. The Authority agrees that, in these instances, the purpose of the contact should be readily apparent to the customer.
65. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 21 – That the Authority deletes clauses 2.6(3) and (4) from the Code.**

66. Clauses 2.6(3) and (4) require a retailer to keep a record of any contact initiated by the retailer for the purposes of marketing, including the customer’s name, the gas marketing agent involved and the date and time of the contact.
67. The Authority notes that the GMCCC could not discern a persuasive reason to require a retailer to keep these types of records. The GMCCC further received advice from the Energy Ombudsman that deletion of clause 2.6(3) would not affect its operations.
68. The Authority agrees that gas retailers should not be required to keep records if there is no compelling reason for keeping those records.
69. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 22 – That the Authority replaces references to ‘retailers’ and references to ‘gas marketing agents’ with ‘retailers and gas marketing agents’ as appropriate throughout the Code.**

70. The GMCCC has recommended that the Authority replaces ‘retailers’ and ‘gas marketing agents’ with ‘retailers and gas marketing agents’ as appropriate throughout the Code to correct a number of incorrect references.
71. The Authority accepts this recommendation and proposes amendments accordingly.

**Recommendation 23 – That the Authority deletes all instances of ‘other party’ from the Code.**

72. The Authority notes that the GMCCC has advised that these references appear to be a hangover from when the Code purported to apply to consumer representatives (i.e. marketers who act on behalf of consumers rather than retailers). As the definition of ‘gas marketing agent’ no longer includes consumer representatives, references to ‘other party’ ought to be removed from the Code. The GMCCC further noted that there is an issue with enforcement as it is difficult to see how the Authority could meaningfully enforce the Code against a party other than a retailer.
73. The Authority agrees that all instances of ‘other party’ should be removed from the Code for the reasons outlined by the GMCCC.

74. The Authority accepts this recommendation and proposes amendments accordingly.

## Proposed amendments to the Code

75. The Authority is required, under section 11ZPU of the Gas Act, to refer the proposed amendments to the GMCCC for advice.
76. The Authority will send a letter to the GMCCC requesting that this advice be provided.
77. The Gas Act requires that the GMCCC provide interested parties with an opportunity to comment before providing its advice to the Authority.
78. Following receipt of the GMCCC advice, the Authority will consider the advice and make a final decision regarding the amendments.

## APPENDICES

## **Appendix 1 Proposed new Code (with tracked changes)**

***Gas Marketing Code of Conduct ~~2012~~2014***



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## Part 1 Preliminary

### 1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct* [2012/2014](#).

### 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.

“**business day**” means any day except a Saturday, Sunday or **public holiday**.

“**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 2012-2014* 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 specified in the contract as the cooling-off 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) the retailer or 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 retailer or 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~~the **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 ~~a **retailer**~~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**.

“**public holiday**” means a public holiday in Western Australia.

“**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-tele~~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)(a) **retailers**; and~~

- (c) ~~distributors~~; and
- (d)(b) gas marketing agents.

## 1.7 Purpose

The **Code** regulates and controls the conduct of **gas marketing agents**, and 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 including, but not limited to, the Australian Consumer Law Fair Trading Act 2010 (WA), the Spam Act 2003 (Cth), the Spam Regulations 2004 (Cth), the Do Not Call Register Act 2006 (Cth), the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth), Telecommunications Industry Standard 2007 and the Privacy Act 1988 (Cth).]

## 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 – Contracts and Information information to be provided to customers

#### 2.2 Entering into a standard form contract

- (1) When entering into a **standard form contract** that is not an **unsolicited consumer agreement**, a **retailer** or **gas marketing agent** must-
- record the date the **standard form contract** was entered into;
  - give, or make available to the **customer** at no charge, a copy of the **standard form contract** -

- (i) at the time the **standard form contract** is entered into, if the **standard form contract** was not entered into over the **telephone**; or
    - (ii) as soon as possible, but not more than 5 **business days** after the **standard form contract** was entered into, if the **standard form contract** was entered into over the **telephone**.
  - (2) Subject to subclause (3), a **retailer** or **gas marketing agent** must give the following information to a **customer** no later than on or with the **customer's** first bill -
    - (a) how the **customer** may obtain -
      - (i) a copy of the **Code** and **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** 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**; and
    - (i) general information on the **retailer's gas customer safety awareness program**.
  - (3) For the purposes of subclause (2) a **retailer** or **gas marketing agent** is taken to have given the **customer** the required information if -
    - (a) the **retailer** or **gas marketing agent** has provided the information to that **customer** within the preceding 12 months; or
    - (b) the **retailer** or **gas marketing agent** has informed the **customer** how the **customer** may obtain the information, unless the **customer** requests to receive the information.

### 2.3 Entering into a non-standard contract

- (1) When entering into a **non-standard contract** that is not an **unsolicited consumer agreement**, a **retailer** or **gas marketing agent** must -
  - (a) obtain and make a record of the **customer's verifiable consent** that the **non-standard contract** has been entered into, and



- (b) give, or make available to the **customer** at no charge, a copy of the **non-standard contract** -
- (i) at the time the **non-standard contract** is entered into, if the **non-standard contract** was not entered into over the **telephone**; or
  - (ii) as soon as possible, but not more than 5 **business days** after the **non-standard contract** was entered into, if the **non-standard contract** was entered into over the **telephone**.
- (2) Before entering into a **non-standard contract**, a **retailer** or **gas marketing agent** must give the **customer** the following information -
- (a) that the **customer** is able to choose the **standard form contract** offered by the **retailer**,
  - (b) the difference between the **non-standard contract** and the **standard form contract**,
  - (c) details of any right the **customer** may have to rescind the **non-standard contract** during a **cooling-off period** and the charges that may apply if the **customer** rescinds the **non-standard contract**,
  - (d) how the **customer** may obtain -
    - (iii) a copy of the **Code** and the **Compendium**; and
    - (iv) details on all relevant tariffs, fees, charges, **alternative tariffs** and service levels that may apply to the **customer**,
  - (e) the scope of the **Code**;
  - (f) that a **retailer** and **gas marketing agent** must comply with the **Code**;
  - (g) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
  - (h) with respect to a **residential customer**, the **concessions** that may apply to the **residential customer**,
  - (i) the **distributor's** 24 hour **telephone** number for faults and emergencies;
  - (j) 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;
  - (k) how to make an enquiry of, or **complaint** to, the **retailer**, and
  - (l) general information on the **retailer's gas customer safety awareness program**.
- (3) For the purposes of subclauses (2)(d)-(l), a **retailer** or **gas marketing agent** is taken to have given the **customer** the required information if -
- (a) the **retailer** or **gas marketing agent** has provided the information to that **customer** within the preceding 12 months; or

(b) the **retailer** or **gas marketing agent** has informed the **customer** how the **customer** may obtain the information, unless the **customer** requests to receive the information.

(4) Subject to subclause (3), the **retailer** or **gas marketing agent** must obtain the **customer's verifiable consent** that the information in clause 2.3(2) has been given.

### **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 4.3 – Marketing conduct

### 2.52.4 Standards of conduct

- (1) A **retailer** or **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)~~(2) A **retailer** or **gas marketing agent** ~~other party~~ must ensure that a **customer** is able to **contact** the **retailer** or **gas marketing agent** ~~other party~~ on the **retailer's** or **gas marketing agent's** ~~other party's~~ **telephone** number during the normal business hours of the **retailer** or **gas marketing agent** ~~other party~~ for the purposes of enquiries, verifications and **complaints**.

#### **2.62.5 Contact for the purposes of marketing**

- (1) A **retailer** or **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) for contact by a **gas marketing agent**, provide the **customer** with the **gas marketing agent's marketing identification number**.
- (2) A **retailer** or **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)~~(a) \_\_\_\_\_ 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** (for contact by a **gas marketing agent**); and
    - (iv) the name of the **retailer** or ~~other party~~ on whose behalf the **contact** is being made; and
  - ~~(c)~~(b) \_\_\_\_\_ as soon as practicable, provide the **customer**, in writing –
    - (i) his or her first name;
    - (ii) his or her **marketing identification number** (for contact by a **gas marketing agent**);
    - (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.~~

## 2.6 No canvassing or advertising signs

A **retailer** or **gas marketing agent** who visits a person's **premises** for the purposes of **marketing** must comply with any clearly visible signs at a person's **premises** indicating –

- (a) canvassing is not permitted at the **premises**; or
- (b) no advertising or similar material is to be left at the **premises** or in a letterbox or other receptacle at, or associated with, the **premises**.

## Division 5.4 – 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

(4) 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**.

## 2.9 Records to be kept

(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**.

[Note: Clause 13.1(1) of the *Compendium* sets out record keeping obligations that apply to retailers in relation to records to be kept under this *Code*.]

## **Appendix 2 Proposed new Code (without tracked changes)**

***Gas Marketing Code of Conduct 2014***

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## Part 1 Preliminary

### 1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 2014*.

### 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.

“**business day**” means any day except a Saturday, Sunday or **public holiday**.

“**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 2014* 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 specified in the **contract** as the cooling-off period.

“**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**.

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

- (a) the **retailer** or **gas marketing agent** goes from place to place seeking out persons who may be prepared to enter, as **customers**, into **contracts**; and
- (b) the **retailer** or 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, the **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 a **retailer** –
  - (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** 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**.

“**public holiday**” means a public holiday in Western Australia.

“**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**.

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

“**TTY**” means teletypewriter.

“**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) **retailers**; and
- (b) **gas marketing agents**.

## 1.7 Purpose

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

[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 *Fair Trading Act 2010 (WA)*, the *Spam Act 2003 (Cth)*, the *Spam Regulations 2004 (Cth)*, the *Do Not Call Register Act 2006 (Cth)*, the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth)* and the *Privacy Act 1988 (Cth)*.]

## 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 and information to be provided to customers

#### 2.2 Entering into a standard form contract

- (1) When entering into a **standard form contract** that is not an **unsolicited consumer agreement**, a **retailer** or **gas marketing agent** must-
  - (a) record the date the **standard form contract** was entered into;
  - (b) give, or make available to the **customer** at no charge, a copy of the **standard form contract** -
    - (i) at the time the **standard form contract** is entered into, if the **standard form contract** was not entered into over the **telephone**; or
    - (ii) as soon as possible, but not more than 5 **business days** after the **standard form contract** was entered into, if the **standard form contract** was entered into over the **telephone**.
- (2) Subject to subclause (3), a **retailer** or **gas marketing agent** must give the following information to a **customer** no later than on or with the **customer's** first bill -
  - (a) how the **customer** may obtain -
    - (i) a copy of the **Code** and **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** 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**; and
  - (i) general information on the **retailer's gas customer safety awareness program**.
- (3) For the purposes of subclause (2) a **retailer** or **gas marketing agent** is taken to have given the **customer** the required information if -
- (a) the **retailer** or **gas marketing agent** has provided the information to that **customer** within the preceding 12 months; or
  - (b) the **retailer** or **gas marketing agent** has informed the **customer** how the **customer** may obtain the information, unless the **customer** requests to receive the information.

### 2.3 Entering into a non-standard contract

- (1) When entering into a **non-standard contract** that is not an **unsolicited consumer agreement**, a **retailer** or **gas marketing agent** must -
- (a) obtain and make a record of the **customer's verifiable consent** that the **non-standard contract** has been entered into, and
  - (b) give, or make available to the **customer** at no charge, a copy of the **non-standard contract** -
    - (i) at the time the **non-standard contract** is entered into, if the **non-standard contract** was not entered into over the **telephone**; or
    - (ii) as soon as possible, but not more than 5 **business days** after the **non-standard contract** was entered into, if the **non-standard contract** was entered into over the **telephone**.
- (2) Before entering into a **non-standard contract**, a **retailer** or **gas marketing agent** must give the **customer** the following information -
- (a) that the **customer** is able to choose the **standard form contract** offered by the **retailer**,
  - (b) the difference between the **non-standard contract** and the **standard form contract**,
  - (c) details of any right the **customer** may have to rescind the **non-standard contract** during a **cooling-off period** and the charges that may apply if the **customer** rescinds the **non-standard contract**,
  - (d) 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**,

- (e) the scope of the **Code**;
  - (f) that a **retailer** and **gas marketing agent** must comply with the **Code**;
  - (g) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
  - (h) with respect to a **residential customer**, the **concessions** that may apply to the **residential customer**;
  - (i) the **distributor's** 24 hour **telephone** number for faults and emergencies;
  - (j) 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;
  - (k) how to make an enquiry of, or **complaint** to, the **retailer**; and
  - (l) general information on the **retailer's gas customer safety awareness program**.
- (3) For the purposes of subclauses (2)(d)-(l), a **retailer** or **gas marketing agent** is taken to have given the **customer** the required information if -
- (a) the **retailer** or **gas marketing agent** has provided the information to that **customer** within the preceding 12 months; or
  - (b) the **retailer** or **gas marketing agent** has informed the **customer** how the **customer** may obtain the information, unless the **customer** requests to receive the information.
- (4) Subject to subclause (3), the **retailer** or **gas marketing agent** must obtain the **customer's verifiable consent** that the information in clause 2.3(2) has been given.

## Division 3 – Marketing conduct

### 2.4 Standards of conduct

- (1) A **retailer** or **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 **retailer** or **gas marketing agent** must ensure that a **customer** is able to **contact** the **retailer** or **gas marketing agent** on the **retailer's** or **gas marketing agent's telephone** number during the normal business hours of the **retailer** or **gas marketing agent** for the purposes of enquiries, verifications and **complaints**.



## 2.5 Contact for the purposes of marketing

- (1) A **retailer** or **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** on whose behalf the **contact** is being made; and
  - (b) for contact by a **gas marketing agent**, provide the **customer** with the **gas marketing agent's marketing identification number**.
- (2) A **retailer** or **gas marketing agent** who meets with a **customer** face to face for the purposes of **marketing** must –
  - (a) 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** (for contact by a **gas marketing agent**); and
    - (iv) the name of the **retailer** on whose behalf the **contact** is being made; and
  - (b) as soon as practicable, provide the **customer**, in writing –
    - (i) his or her first name;
    - (ii) his or her **marketing identification number** (for contact by a **gas marketing agent**);
    - (iii) the name of the **retailer** on whose behalf the **contact** is being made;
    - (iv) the complaints **telephone** number of the **retailer** on whose behalf the **contact** is being made; and
    - (v) the business address and Australian Business or Company Number of the **retailer** on whose behalf the **contact** is being made.

## 2.6 No canvassing or advertising signs

A **retailer** or **gas marketing agent** who visits a person's **premises** for the purposes of **marketing** must comply with any clearly visible signs at a person's **premises** indicating –

- (a) canvassing is not permitted at the **premises**; or
- (b) no advertising or similar material is to be left at the **premises** or in a letterbox or other receptacle at, or associated with, the **premises**.

## Division 4 – 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

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**.

## 2.9 Records to be kept

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**.

[Note: Clause 13.1(1) of the *Compendium* sets out record keeping obligations that apply to retailers in relation to records to be kept under this *Code*.]