

FINAL DECISION

*New Gas Marketing Code of Conduct
2014*

26 November 2013

Economic Regulation Authority

WESTERN AUSTRALIA

This document is available from the Economic Regulation Authority's website at www.erawa.com.au. For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 6557 7900

© Economic Regulation Authority 2013

The copying of this document in whole or part for non-commercial purposes is permitted provided that appropriate acknowledgment is made of the Economic Regulation Authority and the State of Western Australia. Any other copying of this document is not permitted without the express written consent of the Authority.

Disclaimer

This document has been compiled in good faith by the Economic Regulation Authority (Authority). The document contains information supplied to the Authority from third parties. The Authority makes no representation or warranty, express or implied, as to the accuracy, completeness, reasonableness or reliability of the information supplied by those third parties.

This document is not a substitute for legal or technical advice. No person or organisation should act on the basis of any matter contained in this document without obtaining appropriate professional advice. The Authority and its staff members make no representation or warranty, expressed or implied, as to the accuracy, completeness, reasonableness or reliability of the information contained in this document, and accept no liability, jointly or severally, for any loss or expense of any nature whatsoever (including consequential loss) arising directly or indirectly from any making available of this document, or the inclusion in it or omission from it of any material, or anything done or not done in reliance on it, including in all cases, without limitation, loss due in whole or part to the negligence of the Authority and its employees.

This notice has effect subject to the Competition & Consumer Act 2010 (Cwlth), the Fair Trading Act 1987 (WA) and the Fair Trading Act 2010 (WA), if applicable, and to the fullest extent permitted by law.

Any summaries of the legislation, regulations or licence provisions in this document do not contain all material terms of those laws or obligations. No attempt has been made in the summaries, definitions or other material to exhaustively identify and describe the rights, obligations and liabilities of any person under those laws or licence provisions.

Contents

Decision	1
Reasons	1
APPENDICES	2
Appendix 1 - Proposed new Code (with tracked changes)	3
Appendix 2 - Proposed new Code (clean copy)	4

Decision

1. Following its consideration of the Gas Marketing Code Consultative Committee (**GMCCC**) 2013 Final Review Report (**final report**), and the final advice provided by the GMCCC on the Authority's proposed amendments to the *Gas Marketing Code of Conduct 2012*, the Authority has decided to make the new *Gas Marketing Code of Conduct 2014* (**Code**).
2. A copy of the new Code is attached (**Appendix 1 shows track changes**) (**Appendix 2 is a clean copy**).
3. The Authority has decided to exercise its power under the *Energy Coordination Act 1994* (**Gas Act**) to have the Code take effect on 1 January 2014.

Reasons

4. 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.
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 two yearly interval after that anniversary.
6. The object of a review is to re-assess the suitability of the provisions of the Code for the purposes of section 11ZPM(2).
7. The GMCCC final report was delivered to the Authority on 13 September 2013.
8. The Authority considered the final report and proposed amendments to the Code to the GMCCC for its advice consistent with section 11ZPU of the Gas Act. The proposed amendments were published in the Authority's Decision on the Authority's website on 1 October 2013.
9. The GMCCC, as required by the Gas Act, undertook consultation with interested parties. On 4 October 2013, the GMCCC invited public submissions on the Authority's Decision. The closing date for submissions was 25 October 2013. Three submissions were received. The GMCCC provided its final advice to the Authority on 6 November 2013. Copies of the three submissions are available on the Authority's website as attachments to the GMCCC's final advice.
10. The Authority has decided to make two related, further amendments to the Code as a result of considering the GMCCC's final advice. The amendments will have the effect of requiring a retailer or gas marketing agent to provide a customer with the complaints telephone number of the Energy Ombudsman when requested (clause 2.5(1)) or when meeting with the customer face-to-face for the purposes of marketing (2.5(2)(b)). A retailer or gas marketing agent already has an obligation to give the retailer's complaints telephone number in these situations.
11. The Authority has accepted the GMCCC recommendation in making these amendments.

12. The Authority has determined that the new code will come into effect on 1 January 2014.

APPENDICES

Appendix 1 - Proposed new Code (with tracked changes)

Gas Marketing Code of Conduct ~~2012~~2014

PART 1 PRELIMINARY	2
1.1 Title	2
1.2 Authority	2
1.3 Commencement	2
1.4 Interpretation	2
1.5 Definitions	2
1.6 Application	5
1.7 Purpose	6
1.8 Objectives	6
1.9 Amendment and Review	6
PART 2 MARKETING	7
<u>DIVISION 1 – OBLIGATIONS PARTICULAR TO RETAILERS.....</u>	7
2.1 Retailers to ensure representatives comply with this Part.....	7
<u>DIVISION 2 – CONTRACTS AND INFORMATION TO BE PROVIDED TO</u>	
<u>CUSTOMERS.....</u>	7
2.2 Entering into a standard form contract.....	7
2.3 Entering into a non-standard contract.....	8
<u>DIVISION 3 – MARKETING CONDUCT.....</u>	11
2.4 Standards of conduct	11
2.5 Contact for the purposes of marketing.....	12
2.6 No canvassing or advertising signs	13
<u>DIVISION 4 – MISCELLANEOUS.....</u>	13
2.7 Presumption of authority	13
2.8 Gas marketing agent complaints	13
2.9 Records to be kept.....	13

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~~ 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) **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~~2 – 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-
- (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 -
 - (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~~ 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;

~~(a)~~(b) provide the **customer** with the **telephone** number of the **gas ombudsman**; and

~~(b)~~(c) 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

~~(d)~~(v) the business address and Australian Business or Company Number of the **retailer** ~~or other party~~ on whose behalf the **contact** is being made; and

(vi) the **telephone** number of the **gas ombudsman**.

~~(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 (clean copy)

Gas Marketing Code of Conduct 2014

PART 1 PRELIMINARY	2
1.1 Title	2
1.2 Authority.....	2
1.3 Commencement.....	2
1.4 Interpretation.....	2
1.5 Definitions	2
1.6 Application	5
1.7 Purpose	5
1.8 Objectives	6
1.9 Amendment and Review	6
PART 2 MARKETING	7
DIVISION 1 – OBLIGATIONS PARTICULAR TO RETAILERS.....	7
2.1 Retailers to ensure representatives comply with this Part.....	7
DIVISION 2 – CONTRACTS AND INFORMATION TO BE PROVIDED TO	
CUSTOMERS.....	7
2.2 Entering into a standard form contract.....	7
2.3 Entering into a non-standard contract.....	8
DIVISION 3 – MARKETING CONDUCT.....	9
2.4 Standards of conduct	9
2.5 Contact for the purposes of marketing.....	10
2.6 No canvassing or advertising signs	10
DIVISION 4 – MISCELLANEOUS.....	10
2.7 Presumption of authority	11
2.8 Gas marketing agent complaints	11
2.9 Records to be kept.....	11

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 -
 - (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.

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;
 - (b) provide the **customer** with the **telephone** number of the **gas ombudsman**; and
 - (c) 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;
 - (v) the business address and Australian Business or Company Number of the **retailer** on whose behalf the **contact** is being made; and
 - (vi) the **telephone** number of the **gas ombudsman**.

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*.]