Gas Marketing Code Consultative Committee

Final Review Report

2018 Review of the Gas Marketing Code of Conduct

9 April 2019
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Executive summary

By law, the Economic Regulation Authority must establish a committee to advise it on matters relating to the Gas Marketing Code of Conduct. This committee, the Gas Marketing Code Consultative Committee (GMCCC), must review the Code every two years. The GMCCC must undertake public consultation as part of the review and report its findings to the ERA.

This report presents the findings of the GMCCC’s 2018 review of the Code.

The Energy Coordination Act 1994 states that the purpose of the review is to ‘re-assess the suitability of the provisions of the code of conduct for the purposes of section 11ZPM(2)’. Section 11ZPM(2) sets out the objective of the code which is to:

…regulate and control the conduct of gas trading licensees and gas marketing agents with the object of protecting customers from undesirable marketing conduct and defining standards of conduct in the marketing of gas to customers.

Under the Act, the GMCCC must give any interested person an opportunity to offer comments relevant to the review. The GMCCC published a Draft Review Report for public consultation on 5 February 2019. The public consultation period closed on 25 February 2019. Three submissions were received.

Following consideration of the issues raised in the submissions, the GMCCC makes the following recommendations to the ERA:

Recommendation 1 – Amend clause 2.3(2) to allow a retailer to provide the customer with the information in subclause 2.3(2)(d)-(l) on or with the customer’s first bill, rather than before entering into the non-standard contract.

Recommendation 2 – Delete the note at the end of clause 2.10.

Recommendation 3 – Delete clauses 2.2(2)(i) and 2.3(2)(l) from the Code.

Recommendation 4 – Amend clauses 2.2(2)(e) and 2.3(2)(h) to be consistent with the wording of clause 4.5(1)(h) of the Gas Compendium.

Recommendation 5 – Amend clauses 2.2(2)(g) and 2.3(2)(j) to be consistent with the wording of clause 4.5(1)(z) & 4.5(1)(aa) of the Compendium.

The rationale for these recommendations can be found in section 2 of this report.

A copy of the current Code is at Attachment 1.
1. **Background**

Persons who supply gas to small use customers must hold a gas trading licence issued by the Economic Regulation Authority under the *Energy Coordination Act 1994*. Gas trading licensees must comply with the *Gas Marketing Code of Conduct* as a condition of their licence.

A small use customer is a customer who consumes not more than 1TJ of gas per year. Currently, 1TJ of gas equates to an annual gas bill of approximately between $28,500 and $43,000, depending on where the customer is located.

### 1.1 Gas Marketing Code of Conduct

The Code regulates and controls the conduct of retailers and gas marketing agents who supply and market gas to residential and non-residential small use customers. The Code was developed to protect the interests of customers who have little or no market power. For this reason, the Code only applies to small use customers.

The Code has the power of subsidiary legislation.

### 1.2 Gas Marketing Code Consultative Committee

Under section 11ZPO of the Act, the ERA 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 or GMCCC.

Under section 11ZPV of the Act, the committee must carry out a review of the Code as soon as practicable after the first anniversary of the Code’s commencement and then every two years thereafter.

#### 1.2.1 Committee members

Appointments for the current term of the GMCCC were made in October 2018. Current members of the GMCCC are:

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<th>Economic Regulation Authority</th>
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<td>Executive Director, Regulation and Inquiries</td>
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<tr>
<td>Executive Officer</td>
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<td>Industry Representatives</td>
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<tr>
<td>Sarah Silbert</td>
<td>AGL Sales Pty Limited</td>
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<tr>
<td>Catherine Rousch</td>
<td>Alinta Energy</td>
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<td>Nina Telford</td>
<td>Wesfarmers Kleenheat Gas Pty Ltd</td>
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1.3 Code review process

The Secretariat of the ERA prepared a Discussion Paper for the consideration of the GMCCC in December 2018. The GMCCC considered the issues outlined in the Discussion Paper and subsequently released its Draft Review Report.

As required by the Act, the GMCCC sought comment from interested parties on the Draft Review Report. On 5 February 2019, the Draft Review Report was published on the ERA website and an email was sent to all those registered with the ERA as interested parties.

A period of three weeks was provided for public consultation on the Draft Review Report, with the date for submissions closing on 25 February 2019. The GMCCC received three submissions, from Alinta, AGL and Synergy (Attachment 2).

Following receipt of the submissions, the GMCCC considered the issues raised and subsequently approved this report.

For previous GMCCC Final Review Reports, the ERA’s Secretariat prepared a marked-up copy of the Code on behalf of the GMCCC. This time, the ERA has advised the GMCCC that it will engage Parliamentary Counsel’s Office (PCO) to draft any proposed amendments to the Code.

If, after consideration of the Final Review Report, the ERA decides to propose amendments to the Code it will request PCO to draft the amendments. The ERA’s Draft Decision will include a marked-up copy of the Code, including any proposed amendments.

The Act requires the ERA to refer any proposed Code amendments to the GMCCC for advice. The GMCCC must undertake further consultation with interested parties before providing its final advice to the ERA.

Upon receipt of the GMCCC’s advice, the ERA will make its final decision.
2. Recommendations

2.1 Information to be given before entering into a non-standard contract

Clause 2.3(2) of the Code details the information that a retailer must provide to a customer before entering into a non-standard contract. Clause 2.3(2) states:

(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 nonstandard 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.

It is important that before entering into a non-standard contract a customer is given all relevant information that may affect the customer’s decision to enter into that contract. However, the information in clauses 2.3(2)(d)-(l) is information that is not particularly relevant to the customer at the time they enter into a non-standard contract and is unlikely to inform the customer’s decision as to whether or not to enter into the contract.

Clause 2.3(3) recognises this as it provides that retailers do not have to give the information to the customer if the information was already provided in the last 12 months, or if the retailer informs the customer how they may obtain the information (e.g. by referring the customer to a website or brochure that contains the information).

Although clause 2.3(3) reduces the information requirements of clauses 2.3(2)(d)-(l), clause 2.3(3)(b) still requires retailers to explain to customers what information is available. To do so,
the retailer will have to mention the information in subclauses 2.3(2)(d)-(l) to the customer on the phone.

The GMCCC recommends the Code be amended to allow retailers to provide the information in subclauses 2.3(2)(d)-(l) on or with the customer’s first bill. This is equal to the protection afforded to customers entering into a standard form contract under clause 2.2(2) of the Code.

**Recommendation 1**
Amend clause 2.3(2) to allow a retailer to provide the customer with the information in subclause 2.3(2)(d)-(l) on or with the customer’s first bill, rather than before entering into the non-standard contract.

### 2.2 Records to be kept

Clause 2.10 states:

**2.10 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.]

The note at the end of this clause refers to clause 13.1(1) of the *Compendium of Gas Customer Licence Obligations*. As part of the 2014 review of the Compendium, the record keeping obligations under clause 13 of the Compendium were removed. The GMCCC recommends removing this note from clause 2.10.

**Recommendation 2**
Delete the note at the end of clause 2.10.

### 2.3 Gas Customer Safety Awareness Programme

Licensed gas retailers are required to have a gas customer safety awareness programme.¹ This programme provides gas customers with information about the requirement for proper installation and use of gas appliances and equipment, the requirement to use qualified tradespersons for connections and installations, and the procedures for reporting gas leaks, equipment defects, and emergencies.

The Gas Marketing Code requires a retailer to give a customer general information on the retailer’s gas customer safety awareness programme.

Under the new Australian Standard AS-NZS 4645.1:2018 *Gas distribution networks Network management* (AS 4645), a gas distributor has an obligation to have a safety and operating plan. The plan must assign responsibilities for distributors and retailers in the gas supply chain for consumer education and public awareness programs that cover gas safety issues. Appendix E of the standard covers consumer safety awareness programs. Appendix E1 notes

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¹ Clause 10.5A of the Compendium of Gas Customer Licensing Obligations (online).
that the information may be provided by various parties in the gas supply chain, including the distributors themselves and retailers. The appendix identifies two possible models:

- The distributor integrates the information with other parties in the supply chain, including retailers.
- The distributor may need to provide information to assist the main party (retailers) that is in communication with customers, to allow the retailer to package the information directed to the customer.

Both of these models place the responsibility for ensuring consumers receive appropriate safety awareness material on the distributor. The EnergySafety division of the Department of Mines, Industry Regulation and Safety is responsible for regulating compliance with AS 4645.

The Code no longer needs to require a retailer or gas marketing agent to give customers information on the retailer’s gas customer safety awareness programme, because this information must be given to customers under AS 4645.

The GMCCC recommends removing the requirement for a retailer or gas marketing agent to give a customer general information on the retailer’s gas customer safety awareness programme.

**Recommendation 3**
Delete clauses 2.2(2)(i) and 2.3(2)(l) from the Code.

### 2.4 Concessions information

Clauses 2.2(2) and 2.3(2) of the Code set out the information that a retailer must give to a customer who enters into a contract with the retailer. One of the requirements is for retailers to give residential customers information on the concessions that may apply to the customer.

Clause 2.2(2) states:

2.2 Entering into a standard form contract

[...]

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

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

Clause 2.3(2) states:

2.3 Entering into a non-standard contract

[...]

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

(h) with respect to a residential customer, the concessions that may apply to the residential customer;
Under the Code, a retailer must inform a customer of the concessions that may apply the customer, but the retailer does not have to tell the customer where to find information on their eligibility.

The Compendium also requires retailers to give residential customers information on concessions. Clause 4.5(1) of the Compendium requires retailers to include concession information on a customer's bill:

1. Unless a customer agrees otherwise, a retailer must include at least the following information on the customer's bill —

   (h) with respect to a residential customer, a statement that the residential customer may be eligible to receive concessions and how the residential customer may find out its eligibility for those concessions.

The Compendium requires a retailer to inform a residential customer that they may be eligible to receive concessions and how the customer may find out their eligibility for those concessions. This means retailers need to refer the customer to an information source where the customer can find out more about their eligibility (for example the retailer could refer a customer to the retailer's website or to ConcessionsWA).

The GMCCC considers the concession information to be given to customers under the Compendium would be more useful to customers than the concession information given to customers under the Code. This is because under the Compendium customers are given information on how to find out their eligibility for concessions rather than simply being told about the concessions that may apply.

The GMCCC recommends the Code be amended to replicate the wording of the Compendium.

**Recommendation 4**

Amend clauses 2.2(2)(e) and 2.3(2)(h) to be consistent with the wording of clause 4.5(1)(h) of the Gas Compendium.

### 2.5 Interpreter information

The Code requires retailers to give residential customers information on how to access interpreter services.

Clause 2.2(2)(g) states:

1. 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 —

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

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

      (ii) TTY services;

Clause 2.3(2)(j) states:

2. Before entering into a non-standard contract, a retailer or gas marketing agent must give the customer the following information —
(h) with respect to a residential customer, how the residential customer may access the retailer’s—

(ii) multi-lingual services (in languages reflective of the retailer’s customer base); and

(iii) TTY services;

The Compendium requires retailers to give residential customers information on how to access interpreter services under clause 4.5(1):

(1) Unless a customer agrees otherwise, a retailer must include at least the following information on the customer’s bill –

[...]

(z) with respect to residential customers, the telephone number for interpreter services together with the National Interpreter Symbol and the words “Interpreter Services”;

(aa) the telephone number for TTY services;

The GMCCC considers that for non-English speaking customers, the National Interpreter Symbol next to the telephone number for interpreter services (as required under the Compendium) is clearer than a blurb on how to access multi-lingual services.

The GMCCC recommends the Code be amended to be consistent with the wording of the Compendium.

**Recommendation 5**

Amend clauses 2.2(2)(g) and 2.3(2)(j) to be consistent with the wording of clauses 4.5(1)(z) & 4.5(1)(aa) of the Compendium.
ENERGY COORDINATION ACT 1994

GAS MARKETING CODE OF CONDUCT 2017
The Economic Regulation Authority—

(a) repeals the “Gas Marketing Code of Conduct 2015” gazetted 3 June 2015 (No. 83), which repeal is to take effect on 1 July 2017;

(b) approves the “Gas Marketing Code of Conduct 2017”, gazetted 29 May 2017 (No. 103); and

(c) prescribes 1 July 2017 as the date on which the “Gas Marketing Code of Conduct 2017”, gazetted 29 May 2017 (No. 103) comes into operation.

pursuant to section 11ZPM (Part 2C) of the Energy Coordination Act 1994.

Ms NICOLA CUSWORTH, Chair, Economic Regulation Authority.
ENERGY COORDINATION ACT 1994

GAS MARKETING CODE OF CONDUCT 2017

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GAS MARKETING CODE OF CONDUCT 2017

PART 1—PRELIMINARY

1.1 Title
The Code may be cited as the Gas Marketing Code of Conduct 2017.

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—


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


“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.


“Compendium” means the Compendium of Gas Customer Licence Obligations.
“complaint” means an expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

“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.

“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), a retailer or gas marketing agent must obtain the customer’s verifiable consent that the information in clause 2.3(2) has been given.

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 contact details, including 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) 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,
as soon as practicable following a request by the customer for the information.
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 the 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 Compliance
(1) A gas marketing agent who contravenes a provision of this Code commits an offence.
Penalty—
   (a) for an individual, $5 000;
   (b) for a body corporate, $20 000.
(2) If a gas marketing agent of a retailer contravenes a provision of this Code, the retailer commits an offence.
Penalty—
   (a) for an individual, $5 000;
   (b) for a body corporate, $20 000.
(3) It is a defence to a prosecution for a contravention of subclause (2) if the retailer proves that the retailer used reasonable endeavours to ensure that the gas marketing agent complied with this Code.

2.8 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.

2.9 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.
2.10 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.]
Appendix 2 – Submissions to Draft Review Report
8 February 2019

Paul Kelly
Chairman GMCCC
Economic Regulation Authority
PO Box 8469
Perth BC WA 6849

publicsubmissions@erawa.com.au

Dear Paul

2018 Review of the Gas Marketing Code of Conduct

Alinta Sales Pty Ltd (Alinta Energy) is pleased to provide comment on the amendments to the Gas Marketing Code of Conduct (Code) proposed by the Gas Marketing Code Consultative Committee (GMCCC) and presented in the Draft Review Report.

Alinta Energy agrees with the recommendations in the Draft Review Report and would like to propose some further amendments to the Code for consideration by the GMCCC.

Clauses 2.2(2)(e) and 2.2(3)(h)

Clauses 2.2(2)(e) and 2.2(3)(h) of the Code require a retailer to provide a residential customer, for a standard form contract and a non-standard contract respectively, the concessions that may apply to the customer.

A "concession" is defined in clause 1.5 as “a concession, rebate, subsidy or grant related to the supply of gas, which is available to residential customers only”.

It is currently unclear whether this definition refers to concessions applied by the retailer only, or to more generally available concessions, such as the energy rebate provided by the State Government, which is not relevant to all retailers.

Alinta Energy would therefore like to propose the following amendments:

Clause 2.2(2):
(e) with respect to a residential customer, the concessions that are relevant to the retailer and may apply to the residential customer;

Clause 2.2(3):
(h) with respect to a residential customer, the concessions that are relevant to the retailer and may apply to the residential customer;
Clauses 2.2(2)(i) and 2.2(3)(l)

Clauses 2.2(2)(i) and 2.2(3)(l) of the Code require a retailer to provide a residential customer, for a standard form contract and a non-standard contract respectively, information on the retailer’s gas customer safety awareness program.

Clause 1.5 defines “gas customer safety awareness program” and Alinta Energy notes the information to be provided to customers predominantly concerns matters relating to the distributor, including the properties of gas; installation and use of approved appliances and equipment; use of qualified trade persons to install appliances; procedures for reporting gas leaks; and emergency safety procedures.

Alinta Energy suggests deleting clauses 2.2(2)(i) and 2.2.3(l) and the definition of “gas customer safety awareness program” in clause 1.5 as this information is more relevant to, and available from, the distributor.

If you have any questions concerning this submission, please contact me on 9486 3191 or catherine.rousch@alintaenergy.com.au. 

Yours sincerely 

Catherine Rousch
Manager Regulatory Compliance
Alinta Energy
22 February 2019

Dear Paul

AGL Energy (AGL) welcomes the opportunity to provide feedback on the Gas Marketing Code of Conduct (the Code) and the Draft Review Report of the Code released by the Gas Marketing Code Consultative Committee (GMCCC).

GMCCC Draft Review Report (Report)

Recommendation 1

AGL supports recommendation 1 as set out in the Report. Specifically, we support the amendment of clause 2.3(2) to allow a retailer to provide the customer with information in subclause 2.3(d)-(l) on or with the customer’s first bill, rather than before entering into the non-standard contract as currently required.

AGL is of the view that the current requirements under clause 2.3(2) are unduly onerous on the retailer. AGL supports this recommendation due to the length of time it requires for a call centre agent to address each of the matters set out in clause 2.3(2) on a call with a customer. As a result, this often creates a poor customer experience during this initial engagement with the retailer because:

- it unnecessarily extends the call time for the customer;
- at this point in time, most of the information is not relevant to the customer, who is keen to enter into the contract and have the call finished; and
- the information is difficult for the customer to absorb during the call or recall after the call has ended.

As noted in the Report, this change could be consistent with clause 2.2(2) of the Code and the redrafting of clause 2.3(2) could reflect that clause, noting that clause 2.3(2) (a)-(c) would remain unchanged.

Recommendation 2

AGL supports recommendation 2 as set out in the Report.
The Code

Definition of verifiable consent

AGL proposes that the definition of "verifiable consent" in section 1.5 of the Code could be expanded to specifically capture the customer's consent by electronic communication generated by the customer as it is ambiguous whether this is covered by "in writing". This would address a customer signing up online.

AGL recommends that the definition of "verifiable consent" is amended (in italics) to state:

"(b) in writing signed by the customer, orally or by electronic communication generated by the customer; ".

If you would like to discuss our comments further, please contact Sarah Silbert, Senior Network Relationship and Regulation Advisor, on 0400813300 or email SSilbert@agl.com.au.

Yours sincerely,

[Redacted]

Naomi Bott
Acting Manager, Customer Markets Regulatory and Compliance
5 February 2019

Mr Paul Kelly
Chairman Gas Marketing Code Consultative Committee
Economic Regulation Authority
PO Box 8469
PERTH BC WA 6849

Dear Paul

GAS MARKETING CODE CONSULTATIVE COMMITTEE (GMCCC) – 2018 REVIEW OF THE GAS MARKETING CODE OF CONDUCT (CODE)

I refer to the draft review report issued by the Economic Regulation Authority (Authority) on 5 February 2019.

Synergy welcomes the opportunity to provide comment on the draft review report, and supports the two recommendations.

Please contact me on 62827348 should you have any queries or comments with respect to Synergy’s submission.

Yours sincerely

CATHERINE LENNON
REGULATION AND COMPLIANCE ANALYST