

Gas Marketing Code Consultative Committee

Draft Review Report

2020 Review of the *Gas Marketing Code of Conduct*

15 December 2020

Invitation to make submissions

Submissions are due by 4:00 pm WST, Friday, 22 January 2021

The Gas Marketing Code Consultative Committee (GMCCC) invites interested parties to provide comment on the matters discussed in this draft review report and any other issues or concerns with the *Gas Marketing Code of Conduct 2019* not already raised in this report.

Submissions should be addressed to Mr Paul Kelly, Chairman GMCCC.

Comments can be submitted via the Economic Regulation Authority's online submission form: <https://www.erawa.com.au/consultation>

You can also send comments through:

Email: publicsubmissions@erawa.com.au
Post: PO Box 8469, PERTH BC WA 6849

Please note that submissions provided electronically do not need to be provided separately in hard copy.

Submissions made available to the GMCCC will be published on the ERA website. Making all submissions publicly available facilitates an informed and transparent consultative process. Where there is a valid claim for confidentiality, the GMCCC may accept a confidential submission along with a redacted version to be published on the website. If you are seeking to claim confidentiality over your submission, please contact the GMCCC in advance at info@erawa.com.au.

For further information please contact

General Enquiries

Shane Riebeling
Ph: 08 6557 7920
info@erawa.com.au

Media Enquiries

Natalie Warnock
Ph: 08 6557 7933 | Mob: 0428 859 826
media@erawa.com.au

Contents

Executive summary	ii
1. Background	1
1.1 The gas market in Western Australia	1
1.2 The Code	1
1.3 Gas Marketing Code Consultative Committee	1
1.3.1 Committee Members	2
1.4 Code Review Process	2
2. Recommendations	4
2.1 Wear/display identification	4
2.2 TTY services	4
2.3 Administrative Amendments	5
2.3.1 Delete unused definitions	5
2.3.2 Correcting a formatting error	5
2.4 Drafting	6
Appendix 1 <i>Gas Marketing Code of Conduct 2017</i>	7

Executive summary

By law, the Economic Regulation Authority (ERA) 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 outlines the proposed recommendations of the GMCCC's 2020 review of the Code. This report is a draft. The GMCCC will prepare a Final Review Report for the ERA after considering issues raised in submissions.

Interested parties should note that the absence of a particular issue from this report does not preclude it from being considered by the GMCCC. The GMCCC therefore encourages submissions regarding any issues related to the Code, not just those set out in this report.

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

The GMCCC proposes to make the following recommendations:

Recommendation 1

Amend clause 2.5(2) to allow a retailer or gas marketing agent that meets a customer face to face with the purpose of marketing to display, rather than wear, their identity card.

Recommendation 2

- a) Replace references to TTY services in clauses 2.2(2)(g)(ii) and 2.3(2A)(g)(iii) with a reference to services that assist customers with a speech or hearing impairment.
- b) Delete the definition of TTY in clause 1.5

Recommendation 3

- a) Delete the terms 'gas customer safety awareness program' and 'emergency' from clause 1.5 of the Code.
- b) Amend clause 2.2(2)(c) to indicate the terms 'retailer' and 'gas marketing agent' are defined terms.

Recommendation 4

Request the PCO to review the drafting of the Code to improve clarity.

1. Background

1.1 The gas market in Western Australia

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

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

Nine gas retailers currently hold a licence to supply gas to small use customers.²

In WA, the market for gas is contestable. This means that gas retailers may sell gas to any customer within their supply area regardless of the customer's consumption level. There is one exception: Synergy may only sell to customers who consume more than 0.18TJ of gas per annum.

As at 30 June 2020, the WA gas retail market comprised approximately 745,258 residential and non-residential small use customers.³

1.2 The Code

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 bargaining power. For this reason, the Code only applies to small use customers.

The Code has the power of subsidiary legislation. The ERA is responsible for monitoring and enforcing compliance with the Code.

1.3 Gas Marketing Code Consultative Committee

Under section 1ZPO 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 (GMCCC).

Under section 1ZPV of the Act, the GMCCC must carry out the review of the Code as soon as practicable after the first anniversary of its commencement and then every two years thereafter.

¹ Section 3 of the *Energy Coordination Act 1994*.

² AGL Sales Pty Ltd, Alinta Sales Pty Ltd (t/a Alinta Energy), Amanda Energy Pty Ltd, Electricity Generation and Retail Corporation (t/a Synergy), Esperance Gas Distribution Company Pty Ltd, IPower 1 Pty Ltd and IPower2 Pty Ltd (t/a Simply Energy), Origin Energy Retail Limited, Perth Energy Pty Ltd and Wesfarmers Kleenheat Gas Pty Ltd.

³ Gas retail licences include an obligation for licensees to provide the ERA with specified reporting data. The total customer number has been obtained from the latest licensee reporting data.

1.3.1 Committee Members

On 24 August 2020 the ERA appointed the following members to the GMCCC for the 2020-2022 term:

Chair	
Executive Director, Regulation and Inquiries	Economic Regulation Authority
Executive Officer	
Senior Regulatory Officer, Regulation and Inquiries	Economic Regulation Authority
Industry Representatives	
Sarah Silbert	AGL Sales Pty Limited
Catherine Lennon	Synergy
Nina Telford	Wesfarmers Kleenheat Gas Pty Ltd
Consumer Representatives	
Graham Hansen	Western Australian Council of Social Services
Kathryn Lawrence	Citizens Advice Bureau of WA
Diane Hayes	Financial Counsellors' Association of WA
Members from government agencies	
Anne Braithwaite	Energy Policy WA
Robyn Peterson	Department of Mines, Industry Regulation and Safety

1.4 Code Review Process

The Act requires the GMCCC undertake consultation with interested parties and consider any submissions made before providing its advice to the ERA. The GMCCC has provided a five-week period for this consultation process.

Once the public consultation period has ended the GMCCC will consider the issues raised and provide a Final Review Report to the ERA.

After consideration of the Final Review Report the ERA may decide to propose amendments to the Code. The Act requires the ERA to send proposed amendments to the GMCCC for advice. The GMCCC must undertake further consultation with interested parties before providing that advice.

Upon receipt of the GMCCC's advice, the ERA will make its final decision.

Unlike previous GMCCC reports, this draft review report does not include a draft of the proposed Code. This is because the ERA has advised the GMCCC that it will seek to engage the Parliamentary Counsel's Office to draft the amendments to the Code.

2. Recommendations

2.1 Wear/display identification

Clause 2.5(2) of the Code requires a retailer or gas marketing agent who meets a customer face to face for the purpose of marketing to wear an identity card. Clause 2.5(2) states:

- (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

It is important that customers can identify the retailer or gas marketing agent they are meeting with. However, the information will still be available to the customer if the retailer or gas marketing agent is required to display, rather than wear, an identify card.

The GMCCC proposes the Code be amended to replace the requirement for retailers or gas marketing agents to wear the identity card with a requirement that the identity card needs to be displayed. The proposal will provide more flexibility to the retailer or gas marketing agent to either wear or display the identity card. For example, a retailer or gas marketing agent at a sales booth could opt to place its identity card on the sales desk in front of them. The identity card must, at all times, be clearly visible and legible.

This would be consistent with a similar proposal in the Electricity Code Consultative Committee Draft Review Report on its review of the Electricity Code.

Recommendation 1

Amend clause 2.5(2)(a) of the Code by replacing the word 'wear' with 'display'.

2.2 TTY services

The Code requires retailers or gas marketing agents to provide certain information to customers after entering into a contract. Under clauses 2.2(2)(g)(ii) and 2.3(2A)(g)(iii) a retailer or gas marketing agent must give a residential customer the retailer's telephone number for TTY services.⁴

There are various services that assist customers with a speech or hearing impairment, not only TTY services. For example, the National Relay Service offers SMS Relay, Video Relay, Voice Relay, Speak and Read (TTY), Type and Read (TTY) and Type and Listen (TTY) services. To provide retailers and distributors with more flexibility in the services they offer, it

⁴ Clause 1.5 of the Code defines TTY to mean teletypewriter services.

is proposed to replace the reference to TTY services with a general reference to services that assist customers with a speech or hearing impairment.

The GMCCC proposes the Code be amended to replace references to TTY services with a reference to services that assist customers with a speech or hearing impairment. If this proposal is accepted the definition of TTY in clause 1.5 would no longer be required.

This would be consistent with a similar proposal in the Electricity Code Consultative Committee's Draft Review Report on its review of the Electricity Code.

Recommendation 2

- a. Replace references to TTY services in clauses 2.2(2)(g)(ii) and 2.3(2A)(g)(iii) with a reference to services that assist customers with a speech or hearing impairment.
- b. Delete the definition of TTY in clause 1.5.

2.3 Administrative Amendments

The GMCCC proposes two administrative amendments to the Code to correct identified errors.

2.3.1 *Delete unused definitions*

The terms 'gas customer safety awareness program' and 'emergency' are defined terms within clause 1.5 of the Code. The term 'emergency' is only used within the Code as part of the 'gas customer safety awareness program' definition. The *Gas Marketing Code of Conduct Amendment Code 2019* removed the requirement for a retailer or gas marketing agent to give a customer general information on the retailer's gas customer safety awareness program. Therefore, the terms are no longer used in the Code and do not need to be defined. The GMCCC proposes to delete the terms from clause 1.5 of the Code.

2.3.2 *Correcting a formatting error*

Clause 2.2(2)(c) of the Code uses the defined terms 'retailer' and 'gas marketing agent', but neither is formatted as a defined term within this clause. It is standard legal drafting practice for defined terms to be identified as italicised and boldened. The GMCCC proposes to amend the clause so that the terms 'retailer' and 'gas marketing agent' are formatted as defined terms.

Recommendation 3

- a. Delete the term 'gas customer safety awareness program' and 'emergency' from clause 1.5 of the Code.
- b. Amend clause 2.2(2)(c) to indicate the terms 'retailer' and 'gas marketing agent' are defined terms.

2.4 Drafting

As explained in section 1.4, the ERA has advised the GMCCC that it will seek to engage the PCO to draft any amendments to the Code.

The PCO may be able to assist to improve the readability of the Code. For example, Clauses 2.2(1) and 2.3(1) of the Code both use of the term 'not an unsolicited'. It has been proposed that replacing that term with the word "solicited" would improve the readability of the Code.

As the ERA cannot prescribe how the PCO should draft provisions, the draft review report does not contain specific suggestions to improve the drafting of clauses. Instead, the GMCCC proposes that the ERA request the PCO to generally review the drafting of the Code to improve clarity.

Recommendation 4

Request the PCO to review the drafting of the Code to improve clarity.

Appendix 1 – *Gas Marketing Code of Conduct 2017*



Western Australia

Energy Coordination Act 1994

Gas Marketing Code of Conduct 2017

Gas Marketing Code of Conduct 2017

Contents

Part 1 — Preliminary

1.1.	Title	1
1.2.	Authority	1
1.3.	Commencement	1
1.4.	Interpretation	1
1.5.	Definitions	2
1.6.	Application	6
1.7.	Purpose	6
1.8.	Objectives	7
1.9.	Amendment and Review	7

Part 2 — Marketing

Division 1 — Obligations particular to retailers

2.1.	Retailers to ensure representatives comply with this Part	8
------	---	---

Division 2 — Contracts and information to be provided to customers

2.2.	Entering into a standard form contract	8
2.3.	Entering into a non-standard contract	10

Division 3 — Marketing conduct

2.4.	Standards of conduct	12
2.5.	Contact for the purposes of marketing	12
2.6.	No canvassing or advertising signs	13

Division 4 — Miscellaneous

2.7.	Compliance	13
2.8.	Presumption of authority	14
2.9.	Gas marketing agent complaints	14

Contents

2.10.	Records to be kept	15
	Notes	
	Compilation table	16
	Defined terms	

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.

cl. 1.5

- (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 2017* made under section 11ZPM of the *Act* as amended by the *Authority* under Part 2C of the *Act*.

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*.

emergency means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens

cl. 1.5

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 for this definition:

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.

cl. 1.6

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 confirmation means confirmation that is given —

- (a) expressly; and
- (b) in writing or orally; and
- (c) by the **customer** or a nominated person competent to give the confirmation on the **customer's** behalf.

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.

[Clause 1.5 amended: Gazette 20 Sep 2019 p. 3381.]

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 for this clause:

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), if a *customer* enters into a contract described in subclause (1), the *retailer* or *gas marketing agent* must give the following information to the *customer* before or at the time of giving 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**, a statement that the **residential customer** may be eligible to receive **concessions** and how the **residential customer** may find out about their eligibility for those **concessions**;
 - (f) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (g) with respect to a **residential customer** —
 - (i) the **telephone** number for interpreter services, identified by the National Interpreter Symbol; and
 - (ii) the **telephone** number for **TTY** services;
 - (h) how to make an enquiry of, or **complaint** to, the **retailer**.
- (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.

[Clause 2.2 amended: Gazette 20 Sep 2019 p. 3382.]

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* to entering into the *non-standard contract*; 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*.
- (2A) Subject to subclause (3), if a *customer* enters into a *non-standard contract*, the *retailer* or *gas marketing agent* must give the following information to the *customer* before or at the time of giving the *customer's* first bill —
 - (a) how the *customer* may obtain —
 - (i) a copy of the *Code* and the *Compendium*; and

- (ii) details on all relevant tariffs, fees, charges, **alternative tariffs** and service levels that may apply to the **customer**;
 - (b) the scope of the **Code**;
 - (c) that a **retailer** and **gas marketing agent** must comply with the **Code**;
 - (d) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
 - (e) with respect to a **residential customer**, a statement that the **residential customer** may be eligible to receive **concessions** and how the **residential customer** may find out about their eligibility for those **concessions**;
 - (f) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (g) with respect to a **residential customer** —
 - (i) the **telephone** number for interpreter services, identified by the National Interpreter Symbol; and
 - (ii) the **telephone** number for **TTY** services;
 - (h) how to make an enquiry of, or **complaint** to, the **retailer**.
- (3) For the purposes of subclause (2A), 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) A **retailer** or **gas marketing agent** must obtain the **customer's verifiable confirmation** that the information referred to in subclause (2) has been given.

[Clause 2.3 amended: Gazette 20 Sep 2019 p. 3382-3.]

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* 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 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. 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*.

[Clause 2.10 amended: Gazette 20 Sep 2019 p. 3384.]



Notes

This is a compilation of the *Gas Marketing Code of Conduct 2017* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table.

Compilation table

Citation	Published	Commencement
<i>Gas Marketing Code of Conduct 2017</i>	29 May 2017 p. 2715-24	1 Jul 2017 (see cl. 1.3 and <i>Gazette</i> 29 May 2017 p. 2716)
<i>Gas Marketing Code of Conduct Amendment Code 2019</i>	20 Sep 2019 p. 3381-4	cl. 1 and 2: 20 Sep 2019 (see cl. 2(a)); Code other than cl. 1 and 2: 1 Jan 2020 (see cl. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Code	1.1, 1.5
Act.....	1.5
alternative tariff.....	1.5
Australian Consumer Law (WA)	1.5
Authority.....	1.5
basic living needs	1.5
business day	1.5
change in personal circumstances	1.5
Compendium.....	1.5
complaint	1.5
concession.....	1.5
contact.....	1.5
contract	1.5
cooling-off period	1.5
customer.....	1.5
distributor.....	1.5
emergency.....	1.5
financial hardship.....	1.5
gas customer safety awareness program	1.5
gas marketing agent	1.5
gas ombudsman.....	1.5
marketing	1.5
marketing identification number	1.5
non-standard contract.....	1.5
payment difficulties	1.5
premises	1.5
public holiday	1.5
residential customer	1.5
retailer	1.5
standard form contract	1.5
telephone.....	1.5
TTY.....	1.5
unsolicited consumer agreement.....	1.5
verifiable confirmation.....	1.5
verifiable consent	1.5