



Western Australia

~~Energy Coordination Act 1994~~
Gas Marketing Code of Conduct ~~2017~~ 2022

Consultation Draft

Consultation Draft

Gas Marketing Code of Conduct 2017

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Gas Marketing Code of Conduct ~~2017~~ 2022

Approved by the Economic Regulation Authority.

Part 1 — Preliminary

1.1. ~~Title~~ Citation

~~The *Code* may be cited as _____~~ This code is the *Gas Marketing Code of Conduct* ~~2017~~ 2022.

1.2. ~~Authority~~

~~This *Code* is made pursuant to Part 2C of the *Act*.~~

1.3. ~~Commencement~~

~~The *Code*~~ This code comes into operation ~~upon the day prescribed by the *Authority*.~~ as follows —

- ~~(a) clauses 1 and 2 — on the day on which this code is published in the *Gazette*;~~
- (b) the rest of the code — on 1 April 2022.

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,~~

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~~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*.~~

3. Terms used

In this code —

~~*alternative tariff, for a small use customer*, means a tariff other than the tariff under which the customer is currently supplied gas;~~

~~*AS*, followed by a designation, means an Australian Standard having that designation that is published by Standards Australia;~~

~~*Australian Consumer Law (WA)* means schedule 2 to the *Competition and Consumer Act 2010 (Cth)* as modified by section 36 of the *has the meaning given in the Fair Trading Act (WA) 2010*; section 17(1);~~

~~*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~~ any day ~~except other than~~ a Saturday, a Sunday or a public holiday ~~throughout the State;~~

~~_____ *change in personal circumstances* includes _____~~

- ~~_____ (a) sudden and unexpected disability, illness 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 ~~prepared and administered by the Authority;~~

complaint means an expression of dissatisfaction made to or about an organisation, related to its products ~~or~~, services, staff or the ~~complaints~~ handling ~~process itself~~ 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 ~~in relation to the supply of gas;~~

contact means contact that is —

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(a) face to face; or

(b) by telephone; or

(c) by post; or facsimile; or

(d) by email or other means of electronic communication;

contract means a standard form contract or a non-standard contract;

cooling-off period, in relation to a contract, 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, in relation to a small-use customer who has entered into a contract, means the person who holds the distribution licence under Part 2A of the Act, for the system through which gas is supplied to the customer under the contract;~~

~~**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 industry ombudsman means the Energy and Water Ombudsman Western Australia performing the function of gas industry ombudsman under a scheme approved under Part 2D of the Act and an agreement under the *Parliamentary Commissioner Act 1971* section 34;

~~gas marketing agent~~ ~~means~~ —

- (a) means 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~~

and

- (b) includes a representative, agent or employee of a person referred to in paragraph (a); but
- (c) does not ~~a person who is~~ include 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 —

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~~(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;

National Interpreter Symbol means the national public information symbol “Interpreter Symbol” (with text) developed by the State of Victoria in partnership with the Commonwealth, State and Territory governments in accordance with AS 2342-1992;

~~**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**.~~ has the meaning given in section 11WB of the Act;

~~**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 **small use** 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~~ has the **Authority** under meaning given in section 11WB 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~~ has the meaning given in the Australian Consumer Law (WA) ~~section 69;~~

verifiable confirmation means confirmation that is given ~~— to a retailer or a gas marketing agent —~~

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

verifiable consent means consent that is given ~~— to a retailer or a gas marketing agent —~~

- (a) expressly; and
- (b) in writing or orally; and

~~(c) by a small use customer or a nominated person competent to give the consent on the customer's behalf; and~~

(d) after the retailer or gas marketing agent (whichever is relevant) has, in plain language appropriate to ~~that~~ the 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*.~~

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~~1.7. Purpose~~

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

Note for this clause:

~~Other terms used in this code have the same meanings as in the *Energy Coordination Act 1994*. See the *Energy Coordination Act 1994* sections 3 and 11ZPL in particular, and the *Interpretation Act 1984* section 44.~~

Part 2 — Marketing

Note for this Part:

This ~~Code~~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 Commonwealth)~~, the ~~Spam Regulations 2004 (Cth 2021 Commonwealth)~~, the ~~Do Not Call Register Act 2006 (Cth Commonwealth)~~, the ~~Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth 2017 Commonwealth)~~ and the ~~Privacy Act 1988 (Cth Commonwealth)~~.

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~~ Retailer obligations

~~2.14.~~ Retailers ~~to~~ must ensure ~~representatives~~ gas marketing agents 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 small use customers

~~2.25.~~ Entering into ~~a~~ standard form contract

- (1) When ~~entering~~ a retailer and a small use customer enter into a standard form contract that is not an unsolicited consumer agreement, ~~a~~ the retailer or a gas marketing agent must —
 - (a) record the date on which the standard form contract was entered into; and
 - (b) give, or make available to the small use 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~~ is entered into ~~over the~~ by telephone; ~~or~~
 - ~~(ii) — as soon as possible, but not more than 5 business days, after the standard form contract was~~ is entered into, ~~if the standard form contract was entered into over the~~ telephone; ~~or~~
 - (ii) otherwise — at the time the standard form contract is entered into.
- (2) ~~Subject to~~ Unless subclause (3), applies, if a small use customer enters into a standard form contract ~~described in subclause (1), with a retailer,~~ the retailer or a gas marketing

agent must give the following information to the customer before or at the time of giving the customer's ~~first~~ 1st bill —

- (a) how the customer may obtain —
 - (i) a copy of ~~the Code~~ this code and the Compendium; and
 - (ii) details ~~on~~ of all relevant tariffs, fees, charges, alternative tariffs and service levels that may apply to the customer; ~~;~~
- (b) the scope of ~~the Code;~~ this code;
- (c) that ~~a retailer~~ retailers and gas marketing ~~agent~~ agents must comply with ~~the Code;~~ this code;
- (d) how the retailer may assist if the customer is experiencing ~~payment difficulties or financial hardship~~ problems paying a bill;

~~(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*, (e) in the case of 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~~ to receive those concessions;~~
 - (f) the distributor's 24-hour telephone number for faults and emergencies;
 - (g) ~~with respect to~~ in the case of a residential customer —
 - (i) the telephone number for interpreter services, identified by the National Interpreter Symbol; and
 - (ii) the telephone number (or numbers) for *TTY* services that can assist customers with a speech or hearing impairment;
 - (h) how to make an enquiry of, or complaint to, the retailer.
- (3) ~~For the purposes of subclause (2A), a~~ a retailer or a gas marketing agent is ~~taken to have given the *customer* the~~ not

required to give the information set out in subclause (2) to a small use customer if —

- (a) the retailer or a gas marketing agent has ~~provided~~given the information to the 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 and the customer has not requested to be given the information.

6. Entering into non-standard contract

(1) When a retailer and a small use customer enter into a non-standard contract that is not an unsolicited consumer agreement, the retailer or a gas marketing agent must —

- (a) obtain and make a record of the verifiable consent of the small use customer with whom the non-standard contract is entered into; and
- (b) give, or make available to the small use customer at no charge, a copy of the non-standard contract —
 - (i) if the non-standard contract is entered into by telephone — as soon as possible, but not more than 5 business days, after the non-standard contract is entered into; or
 - (ii) otherwise — at the time the non-standard contract is entered into.

(2) Before entering into a non-standard contract with a small use customer, a retailer or a gas marketing agent must give the small use 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 the cooling-off period and

the charges that may apply if the customer rescinds the non-standard contract.

(3) Unless subclause (4) applies, if a small use customer enters into a non-standard contract with a retailer, the retailer or a gas marketing agent must give the following information to the customer before or at the time of giving the customer's 1st bill —

(a) how the customer may obtain —

(i) a copy of this code and the Compendium; and

(ii) details of all relevant tariffs, fees, charges, alternative tariffs and service levels that may apply to the customer;

(b) the scope of this code;

(c) that retailers and gas marketing agents must comply with this code;

(d) how the retailer may assist if the customer is experiencing problems paying a bill;

(e) the distributor's 24-hour telephone number for faults and emergencies;

(f) in the case of a residential customer —

(i) the telephone number for interpreter services, identified by the National Interpreter Symbol; and

(ii) the telephone number (or numbers) for services that can assist customers with a speech or hearing impairment;

(g) how to make an enquiry of, or complaint to, the retailer.

(4) A retailer or a gas marketing agent is not required to give the information set out in subclause (3) to a small use customer if —

(a) the retailer or gas marketing agent has given the information to the 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~~ ~~and~~ the customer ~~requests~~ ~~has not requested~~ to ~~receive~~ ~~be given~~ the information.

(45) A retailer or a gas marketing agent must obtain the small use 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

2.47. Standards of conduct

- (1) A retailer or a gas marketing agent must ensure that the inclusion of concessions is made clear to residential customers of the retailer and that any prices that exclude concessions are disclosed.
- (2) A retailer or a gas marketing agent must ensure that a small use customer of the retailer 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.

2.58. Contact for ~~the~~ purposes of marketing

- (1) A retailer or gas marketing agent who ~~makes contact with~~ ~~a~~ contacts a small use customer for the purposes of marketing must, on request by the customer, provide —
 - (a) ~~provide~~ the customer with the complaints telephone number of the retailer on whose behalf the contact is being made; and
 - (b) ~~provide~~ the customer with the telephone number of the gas industry ombudsman; and

- (c) ~~for contact by~~ in the case of 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 small use customer face to face for the purposes of marketing must —
- (a) ~~wear~~ display a clearly visible and legible identity card that shows —
- (i) ~~his or her~~ the first name; of the person who is meeting with the customer; and
 - (ii) ~~his or her~~ a photograph; of the person who is meeting with the customer; and
 - (iii) ~~his or her~~ in the case of a gas marketing agent — the agent's 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~~
- and
- (b) on request by the customer, provide the ~~customer~~ following information, in writing, to the customer —
- (i) ~~his or her~~ the first name of the person who is meeting with the customer;
 - (ii) ~~his or her~~ in the case of a gas marketing agent — the agent's 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 industry ombudsman;

(3) A retailer or gas marketing agent must comply with a request under subclause (2)(b) as soon as practicable following a request by the customer for the information after it is made.

~~2.6.~~ No canvassing or advertising9. Compliance with 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) that canvassing is not permitted at the premises; or
(b) that 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~~10. Compliance with code

- (1) A gas marketing agent who contravenes a provision of this ~~Code~~code commits an offence.

Penalty— for this subclause:

- (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~~code while acting on behalf of a retailer, the retailer commits an offence.

Penalty— for this subclause:

- (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 an offence~~ under subclause (2) if the retailer proves that the retailer used

reasonable endeavours to ensure that the gas marketing agent complied with this ~~Code~~code.

2.811. Presumption of authority

~~A~~ (1) This clause applies to 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.

(2) The person 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~~the marketing activity.

2.912. Gas marketing agent complaints

A gas marketing agent must —

- (a) keep a record of each complaint made by a small use 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 industry ombudsman in relation to a particular complaint, give to the gas industry ombudsman, within 28 days ~~of~~after receiving the request, all information that the gas marketing agent has relating to the complaint.

2.1013. Records ~~to~~must be kept

A record or other information that a gas marketing agent is required ~~by this Code~~ to keep under this code must be kept for at least 2 years ~~after~~from the last time that there was contact between the person to whom the record or other information relates ~~was contacted by or on behalf of~~and the gas marketing agent.

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