

# Gas Marketing Code of Conduct 2022

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## Gas Marketing Code of Conduct 2022

Approved by the Economic Regulation Authority.

### Part 1 — Preliminary

**1. Citation**

This code is the *Gas Marketing Code of Conduct 2022*.

**2. Commencement**

This code comes into operation 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.

**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)* has the meaning given in the *Fair Trading Act 2010* section 17(1);

*business day* means a day other than a Saturday, a Sunday or a public holiday throughout the State;

**cl. 3**

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**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, 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, available to residential customers only, in relation to the supply of gas;

**contact** means contact that is —

- (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;

**distributor**, 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;

**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** —

- (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;

and

(b) includes a representative, agent or employee of a person referred to in paragraph (a); but

(c) does not include a customer representative;

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

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

**unsolicited consumer agreement** 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 a small use customer or a nominated person competent to give the confirmation on the customer’s behalf;

**cl. 3**

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***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 the customer, disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used.

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 is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities, including the *Fair Trading Act 2010*, the *Spam Act 2003* (Commonwealth), the *Spam Regulations 2021* (Commonwealth), the *Do Not Call Register Act 2006* (Commonwealth), the *Telecommunications (Telemarketing and Research Calls) Industry Standard 2017* (Commonwealth) and the *Privacy Act 1988* (Commonwealth).

### **Division 1 — Retailer obligations**

#### **4. Retailers must ensure gas marketing agents comply with 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**

#### **5. Entering into standard form contract**

- (1) When a retailer and a small use customer enter into a standard form contract that is not an unsolicited consumer agreement, 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) if the standard form contract is entered into by telephone — as soon as possible, but not more than 5 business days, after the standard form contract is entered into; or
    - (ii) otherwise — at the time the standard form contract is entered into.

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**Part 2** Marketing

**Division 2** Contracts and information to be provided to small use customers

**cl. 5**

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- (2) Unless subclause (3) applies, if a small use customer enters into a standard form 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 1<sup>st</sup> 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) 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 to receive those concessions;
  - (f) the distributor's 24-hour telephone number for faults and emergencies;
  - (g) 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;
  - (h) how to make an enquiry of, or complaint to, the retailer.



- (3) A retailer or a gas marketing agent is 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 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 1<sup>st</sup> 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, and the customer has not requested to be given the information.
- (5) 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.

**Division 3 — Marketing conduct**

**7. 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.

**8. Contact for purposes of marketing**

- (1) A retailer or gas marketing agent who contacts a small use customer for the purposes of marketing must, on request by the customer, provide —
- (a) the customer with the complaints telephone number of the retailer on whose behalf the contact is being made; and
  - (b) the customer with the telephone number of the gas industry ombudsman; and
  - (c) in the case of a gas marketing agent — 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) display a clearly visible and legible identity card that shows —
    - (i) the first name of the person who is meeting with the customer; and
    - (ii) a photograph of the person who is meeting with the customer; and
    - (iii) in the case of a gas marketing agent — the agent’s marketing identification number; and
    - (iv) the name of the retailer on whose behalf the contact is being made;and
  - (b) on request by the customer, provide the following information, in writing, to the customer —
    - (i) the first name of the person who is meeting with the customer;
    - (ii) in the case of a gas marketing agent — the agent’s marketing identification number;

- (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;
  - (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 after it is made.

**9. 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**

**10. Compliance with code**

- (1) A gas marketing agent who contravenes a provision of this 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 contravenes a provision of this 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 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.

### **11. Presumption of authority**

- (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 taken, unless the contrary is proved, to have been employed or authorised by the retailer or gas marketing agent to carry out the marketing activity.

### **12. 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 after receiving the request, all information that the gas marketing agent has relating to the complaint.

**13. Records must be kept**

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

Economic Regulation Authority

Consultation Draft