



Economic Regulation Authority

Final decision

Amendments to the *Gas Marketing Code of Conduct*
2017

14 June 2022

Economic Regulation Authority

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Final decision

1. The Economic Regulation Authority has decided to exercise its power under the *Energy Coordination Act 1994* (the Gas Act) to repeal and replace the *Gas Marketing Code of Conduct Amendment Code 2017*. This follows the ERA's consideration of the Gas Marketing Code Consultative Committee's (GMCCC) final review report, and the final GMCCC advice on the ERA's proposed amendments to the Code.
2. A copy of the proposed new Code, both with tracked changes (Appendix 1) and without tracked changes (Appendix 2), is attached to this final decision.
3. The Code will be gazetted to take effect on 1 July 2022.

Discussion

4. In its [final review report](#) the GMCCC made five recommendations to the ERA to amend the Code.
5. The ERA considered the GMCCC's final review report and has decided to not accept the following two recommendations:
 - a. That the ERA write to the Minister for Energy to request he create a single energy code. The ERA is supportive of a single energy code and has recommended it be established in both its [2018/19](#) and [2019/20](#) annual reports on the operation of the electricity licensing scheme and licensee compliance. The ERA is aware that the Government is currently considering reforms to the customer protection frameworks for electricity and gas customers.
 - b. Amend clause 2.2(2)(c) of the Code to indicate the terms 'retailer' and 'gas marketing agent' are defined terms. The PCO has drafted the amended Code in accordance with its current drafting standards, which do not require defined terms to be highlighted.
6. The ERA accepted the GMCCC's three other recommendations and decided to make the following amendments to the Code:

Wear/display identification

7. 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.
8. The Code requires a retailer or gas marketing agent to wear an identity card to enable a customer to identify the retailer or gas marketing agent they are meeting. The GMCCC recommended that 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 recommendation 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.
9. This is consistent with a similar proposal in the Electricity Code Consultative Committee's draft review report on its 2019 to 2022 review of the *Code of Conduct for the Supply of Electricity to Small Use Customers 2018*.¹

TTY Services

10. Replace references to TTY (teletypewriter) 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 and delete the definition of TTY in clause 1.5.
11. 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

¹ The ECCC's [Draft Review Report](#) is available on the ERA's website.

retailer or gas marketing agent must give a residential customer the retailer's telephone number for TTY services.²

12. There are now 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, type and read and type and listen services. To provide gas retailers with more flexibility in the services they offer, it is recommended to replace the reference to TTY services with a general reference to services that assist customers with a speech or hearing impairment.
13. Replacing references to TTY services with a reference to services that assist customers with a speech or hearing impairment means the definition of TTY in clause 1.5 is no longer required and should be deleted.
14. This would be consistent with a similar proposal in the Electricity Code Consultative Committee's draft review report on its 2019 to 2022 review of the Electricity Code.

Administrative amendment

15. Delete the term 'gas customer safety awareness program' as defined within clause 1.5 of the Code. 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 term is no longer used in the Code.

Repeal and replace the Code

16. The ERA requested the PCO to consider improving the clarity of the Code when it prepared the final version of the Code. The PCO made a significant number of drafting amendments to:
 - clarify the intent of the clauses in the Code.
 - simplify the drafting and improve consistency with other regulatory instruments.
 - comply with the PCO's drafting standards.
17. The PCO delivered the *Gas Marketing Code of Conduct 2022* to the ERA on 5 May 2022. The ERA does not consider the PCO's amendments to be substantive, but they have resulted in a significant number of changes to the formatting and layout of the Code.

Background to the review of the Code

18. More information about the GMCCC and the review of the Code is in Appendix 3.

Regulatory framework

19. Whenever the ERA exercises its power under the Gas Act to repeal and replace the Code, it must ensure that any replacement Code is consistent with the purpose and objective of the Code as set out in section 11ZPM(2) of the Gas Act:

[...] to regulate and control the conduct of –

² Clause 1.5 of the Code defines TTY to mean teletypewriter services.

- (a) the holders of trading licences, and
- (b) gas marketing agents,
- with the object of –
- (c) protecting customers from undesirable marketing conduct; and
- (d) defining standards of conduct in the marketing of gas to customers.
20. When performing its functions under the Gas Act, the ERA must also have regard to the requirements of section 26 of the *Economic Regulation Authority Act 2003* (the ERA Act):
26. Authority to have regard to certain matters
- (1) In performing its functions, other than the functions described in section 25(c) and (d), the Authority must have regard to –
- (a) the need to promote regulatory outcomes that are in the public interest;
- (b) the long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets;
- (c) the need to encourage investment in relevant markets;
- (d) the legitimate business interests of investors and service providers in relevant markets;
- (e) the need to promote competitive and fair market conduct;
- (f) the need to prevent abuse of monopoly power or market power;
- (g) the need to promote transparent decision-making processes that involve public consultation.
- (2) The Authority has the discretion as to the weight it gives to each of the matters referred to in subsection (1) in the performance of a particular function.
- (3) Nothing in subsection (1) limits a provision of another written law that requires the Authority, in performing a particular function, to have regard to, or take into account, particular objectives, considerations or other matters.
- (4) If there is any conflict or inconsistency between subsection (1) and a provision described in subsection (3), the latter provision prevails to the extent of the conflict or inconsistency.
21. The ERA has considered the matters covered by section 11ZPM(2) of the Gas Act and section 26 of ERA Act and considers the repeal and replacement of the *Gas Marketing Code of Conduct 2017* by the *Gas Marketing Code of Conduct 2022* is not contrary to the public interest for the following reasons:
- **The legitimate business needs of investors and service providers in relevant markets**
Regulation often prescribes conduct for retailers to promote outcomes that are in the public interest, but which may unnecessarily restrict the ways a retailer offers its services. These restrictions could lead to increased compliance costs. The ERA considers that the amendments to the Code strike an appropriate balance between the protections provided to customers and the regulatory burden placed on retailers and marketing agents.
 - **The need to promote regulatory outcomes that are in the public interest**
It is in the public interest to ensure customer protection instruments such as the Code are accessible to the public and industry. The ERA considers that the PCO's

redrafting improves the Code's accessibility as it clarifies the intent, simplifies the drafting, and improves the consistency with other regulatory instruments.

- **The need to promote transparent decision-making processes that involve public consultation**

The review process promotes transparent decision making and involves public consultation. As required by the Gas Act, the ERA requests the GMCCC to seek comment from interested parties on the draft review report and the ERA's draft decision. The GMCCC is required to take any submissions received into account when providing its advice to the ERA.

Appendix 1 Code (Marked-up)



Western Australia

Energy Coordination Act 1994

Gas Marketing Code of Conduct ~~2017~~ 2022

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Gas Marketing Code of Conduct 2017

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Gas Marketing Code of Conduct 2017 2022

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Western Australia

Energy Coordination Act 1994

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* comes into operation upon the day prescribed by the *Authority* as follows —~~

- ~~(a) Part 1 — on the day on which this code is published in the *Gazette*;~~
- ~~(b) the rest of the code — on 1 July 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*.~~

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~~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;~~

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~~*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);~~

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

~~**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; 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;~~

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~~**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;

~~**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;~~

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- ~~(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 retailer; or~~
 - ~~(ii) in dealings with existing customers in relation to contracts for the supply of gas by the licensee retailer; or~~~~

~~and~~

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

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~~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.;

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~~ 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 ~~11WF~~ 11WB of the Act.;

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~~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 (ACL) ~~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~~

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~~(b) *gas marketing agents*.~~

~~1.7. Purpose~~

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

Note for this clause:

~~A term used in this code has the same meaning as it has 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-Commonwealth~~ 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)*.

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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 must ensure representatives gas marketing agents comply with this Part

A retailer must ensure that its gas marketing agents comply with this Part.

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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, ~~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

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Marketing Part 2
Contracts and information to be provided to small use customers Division 2

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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~~

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Gas Marketing Code of Conduct 2017 2022

Part 2 Marketing

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

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~~(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*~~

Gas Marketing Code of Conduct 2017 2022

Marketing Part 2
Contracts and information to be provided to small use Division 2
customers

cl. 5

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~~ retailer or a gas marketing agent is ~~taken to have given the *customer* then~~ not

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Gas Marketing Code of Conduct 2017 2022

Part 2 Marketing

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

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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 a 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.

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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 network operator'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 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

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Gas Marketing Code of Conduct 2017 2022

Part 2 Marketing
Division 3 Marketing conduct
cl. 7

(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.

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(45) A retailer or gas marketing agent must obtain the small use customer's verifiable confirmation that the information referred to set out in subclause (2) has been given.

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

Division 3 — Marketing conduct

2.47. Standards of conduct

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(1) A retailer or 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.

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(2) A retailer or gas marketing agent must ensure that a small use customer of the retailer is able to contact the retailer or gas marketing agent on using the retailer's or gas marketing agent's contact details, including their telephone number, during the normal business hours of the retailer or gas marketing agent for the purposes of enquiries, verifications and complaints.

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2.58. Contact for the purposes of marketing

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(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 —

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(a) provide the customer with the complaints telephone number of the retailer on whose behalf the contact is being made; and

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(b) provide the customer with the telephone number of the gas industry ombudsman; and

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- (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 Number or Australian Company Number of the retailer on whose behalf the contact is being made; ~~and~~

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(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 advertising. **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

2.710. 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 of a retailer 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 a contravention of an offence under subclause (2) if the retailer proves that the retailer used

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

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2.811, Presumption of authority

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~~A~~ (1) This clause applies to a person who carries out any marketing activity in the name of or for the benefit of —

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(a) a retailer; or

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(b) a gas marketing agent.

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(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.

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2.912, Gas marketing agent complaints

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A gas marketing agent must —

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(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

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(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.

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2.1013, Records ~~to~~must be kept

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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.

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

Part 3 — Repeal

14. Gas Marketing Code of Conduct 2017 repealed

The Gas Marketing Code of Conduct 2017 is repealed.

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Appendix 2 Code (Clean)

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) Part 1 — on the day on which this code is published in the *Gazette*;
- (b) the rest of the code — on 1 July 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;

Compendium means the Compendium of Gas Customer Licence Obligations prepared and administered by the Authority;

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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 retailer; or
 - (ii) in dealings with existing customers in relation to contracts for the supply of gas by the retailer;

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;

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

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

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- (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:

A term used in this code has the same meaning as it has 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 Commonwealth 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.

Gas Marketing Code of Conduct 2022

Part 2 Marketing

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

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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 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) 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 a 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;

Gas Marketing Code of Conduct 2022

Part 2 Marketing

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

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- (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 network operator'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 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 gas marketing agent must obtain the small use customer's verifiable confirmation that the information set out in subclause (2) has been given.

Division 3 — Marketing conduct

7. Standards of conduct

- (1) A retailer or 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 gas marketing agent must ensure that a small use customer of the retailer is able to contact the retailer or gas marketing agent using the retailer's or gas marketing agent's contact details, including their 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 Number or Australian 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.

Part 3 — Repeal

14. *Gas Marketing Code of Conduct 2017* repealed

The *Gas Marketing Code of Conduct 2017* is repealed.

Economic Regulation Authority

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)
alternative tariff.....	3
AS	3
Australian Consumer Law (WA)	3
business day	3
Compendium.....	3
complaint	3
concession.....	3
contact.....	3
contract	3
cooling-off period	3
distributor.....	3
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Appendix 3 GMCCC and review process

The Code regulates and controls the conduct of gas trading licensees and gas marketing agents, with the object of:³

- defining standards of conduct in the supply and marketing of gas to customers; and
- protecting customers from undesirable marketing conduct.

Section 11ZPO of the Gas Act requires the ERA to establish a committee to advise it on matters relating to the Code, called the Gas Marketing Code Consultative Committee.

Gas Marketing Code Consultative Committee

On 24 August 2020, the ERA appointed members to the GMCCC for the 2020 to 2022 membership term:⁴

Members from consumer organisations

Diane Hayes – Financial Counsellors’ Association of WA

Graham Hansen – Western Australian Council of Social Service

Kathryn Lawrence – Citizens Advice Bureau of WA

Members from industry organisations

Valeriya Kalpakidis – AGL Sales Pty Limited

Catherine Lennon – Synergy

Wayne McCrae – Wesfarmers Kleenheat Gas Pty Ltd

Members from government agencies

Anne Braithwaite – Energy Policy WA

Robyn Peterson – Department of Mines, Industry Regulation and Safety, Consumer Protection

Chair

Executive Director, Regulation and Inquiries, ERA

Executive Officer

Senior Regulatory Officer, Utilities Services Regulation, ERA

The Chair and Executive Officer do not have voting rights.

Review of the Code

Under section 11ZPV of the Gas Act, the GMCCC must review the Code as soon as practicable after the first anniversary of its commencement and after the expiry of each two-yearly interval after that anniversary. The object of a review is to re-assess the suitability of the Code’s provisions for the purposes of section 1ZPM(2) of the Gas Act.

The GMCCC commenced the 2020 review of the Code in August 2020.

³ *Energy Coordination Act 1994 (WA)* section 11ZPM(2).

⁴ Two members of the GMCCC, who were industry representatives from Kleenheat (Nina Telford) and AGL Sales (Sarah Silbert), resigned from the GMCCC. Both companies nominated replacement GMCCC members which were appointed by the ERA on 15 February 2022.

Draft review report

In October 2020, the ERA asked the GMCCC members to raise issues for inclusion in the discussion paper. In response to the call for issues the ERA only received issues with minor effect on the Code. The GMCCC considered the issues raised and prepared a draft review report.

As required by the Gas Act, the GMCCC sought comment from interested parties on the draft review report. On 15 December 2020, 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 five weeks was provided for public consultation on the draft review report, with the date for submissions closing on 22 January 2021. The GMCCC received four submissions, from Alinta, AGL, Synergy and Perth Energy.

The submissions are in Attachment 2 of the GMCCC's [final review report](#).

Final review report

Following receipt of the submissions, the GMCCC considered the issues raised. The outcomes of the GMCCC's discussions are reflected in the GMCCC's [final review report](#).

The GMCCC provided its final review report to the ERA on 24 May 2021.

Draft decision

The ERA considered the GMCCC's final review report and decided to propose amendments to the Code. The proposed amendments are in the ERA's [draft decision](#) published on the ERA website on 22 February 2022.

The ERA referred its proposed amendments to the GMCCC for its advice, as required under section 11ZPU of the Gas Act.

The Gas Act requires that the GMCCC provide interested parties with an opportunity to comment before providing its advice to the ERA. On 8 March 2022, the GMCCC called for public submissions on the ERA's draft decision, with the date for submissions closing on 25 March 2022. The GMCCC received two submissions, from Alinta Energy and AGL, which were both supportive of the amendments proposed by the ERA.⁵

The GMCCC considered the amendments in the ERA's draft decision, noted the submissions received from Alinta Energy and AGL (that were supportive of the amendments), and sent its final advice to the ERA on 19 April 2022. In its final advice the GMCCC endorsed the amendments proposed by the ERA in its draft decision.

After receiving the GMCCC's final advice, the ERA requested the Parliamentary Council's Office (PCO) to deliver the final version of the Code. The PCO made some additional minor administrative amendments to the Code resulting from its final review of the Code and delivered the *Gas Marketing Code of Conduct 2022* to the ERA on 5 May 2022.

⁵ The submissions are in Attachment 1 of the GMCCC's [final advice](#).