

Gas Marketing Code Consultative Committee

Principles Paper for the Review of the Gas Marketing Code of Conduct 2004

23 December 2005

Economic Regulation Authority

 WESTERN AUSTRALIA

GAS MARKETING CODE CONSULTATIVE COMMITTEE

PRINCIPLES PAPER FOR THE REVIEW OF THE GAS MARKETING CODE OF CONDUCT 2004

Background

The *Gas Marketing Code of Conduct 2004 (Code)* came into operation on 31 May 2004 as part of the implementation of Gas Full Retail Contestability in Western Australia. The Code is designed to regulate and guide the behaviour of gas trading licensees and gas marketers that are employed by the gas trading licensees to avoid undesirable marketing conduct by defining standards of conduct in the marketing of gas to customers.

Legislation

Establishment of the Code was provided for under Part 3, Division 5 of the *Energy Legislation Amendment Act 2003* which amended the *Energy Coordination Act 1994 (EC Act)*.

Role of the Economic Regulation Authority (Authority)

The Authority is responsible for administering Part 2C of the EC Act (Code of Conduct for the Marketing of Gas to Small Use Customers). The Act provides for the Authority to establish a committee to advise it on matters relating to the Code. Consistent with this requirement the Authority reconvened the Gas Marketing Code Consultative Committee (**GMCCC**) which was originally established by the Minister for Energy.

The Authority is the Code Administrator and has the power under the EC Act to amend, repeal or replace the Code subject to the referral of any such proposals to the GMCCC for advice.

Role of the GMCCC

The current GMCCC membership is as follows:

Chairman	Russell Dumas (Authority)
Executive Officer	Michael Styles (Authority)
Members	Gary Newcombe (Department of Consumer & Employment Protection)
	Ray Wills (Chamber of Commerce & Industry of WA)
	Lisa Baker (WA Council of Social Services)
	Ray Myles (Alinta Sales Pty Ltd)
	Brendan McColl (Wesfarmers Kleenheat Gas Pty Ltd)
	Lawrence Teo (BRW Power Generation (Esperance) Pty Ltd)

Apart from advising the Authority on matters relating to the Code, one of the principal functions of the GMCCC is to carry out a review of the Code at the intervals set out under section 11ZPV(1)(a) of the EC Act, i.e. as soon as practicable after the first anniversary of the commencement of the Code and every two years thereafter.

As the Code came into force in mid 2004 the first review of the Code is now required.

The GMCCC is also required to invite submissions from any interested person as defined under section 11ZPW(a) of the EC Act. An interested person is a person who the GMCCC or the Authority considers to have a particular interest in the review of the Code. Parties not identified by the GMCCC or the Authority as interested persons may contact the GMCCC Chairman if they wish to be included on the interested persons list.

Basis for Review of the Code

A review of the Gas Marketing Code of Conduct is required under the EC Act, which states “the object of a review is to reassess the suitability of the provisions of the code of conduct for the purposes of section 11ZPM(2).” This includes regulating and guiding the conduct of the holders of trading licences and gas marketing agents with the object of “protecting customers from undesirable marketing conduct; and defining standards of conduct in the marketing of gas to customers.”

Discussions have been held between GMCCC members and the Authority to identify the best approach to reviewing the Code.

An overly complicated consumer protection code can act as an impediment to the entry of new retailers and in the long run could be counter-productive to consumers by reducing opportunities both for competitive pricing and increased reliability of supply to consumers.

The GMCCC has also given consideration to the need to undertake the review based on the following principles:

- delivering comprehensive, best-practice consumer protection that meets the objectives of the Code;
- efficient regulation to keep compliance costs at a minimum, without compromising effectiveness;
- the benefits of simple, clear and concise codes for both gas consumers and retailers; and
- the ability of the Authority to maintain oversight through regular compliance monitoring.

Proposed Approach for the Code Review

The review will include scope to consider issues including, but not limited to, consistency, duplication, effectiveness and fairness.

The Authority has proposed to the GMCCC that it consider undertaking a legal review of the Code which would include the identification and removal of any duplication with existing State and Commonwealth legislation (such as the State Fair Trading, Door to Door Trading and Credit Acts and the Commonwealth Trade Practices Act). Depending upon the extent of regulation remaining in the Code following such a legal review it may be possible to eliminate the Code altogether and to incorporate the remaining regulation into an internal compliance document for which the gas trading licensees are responsible. The internal compliance documents may be in the nature of guidelines that detail the existing legislative and conduct requirements to assist parties. The Authority would then monitor compliance with

these internal compliance documents through annual audits or other similar mechanisms.

The GMCCC intends to consider the Authority's proposal for carrying out the review in conjunction with any suggestion or proposal which interested persons and GMCCC members may put forward before deciding on the most appropriate process to be followed for the review.

Proposed Code Review Process

The major steps to be taken in the Code review process are as follows:

Step 1

- GMCCC to seek submissions on the Principles Paper from Interested Persons (8 week submission period).

Step 2

- GMCCC to evaluate the Interested Persons submissions and prepare a Draft Code Review Report.
- GMCCC to submit the Draft Code Review Report to the Authority for consideration and endorsement.
- GMCCC to seek submissions on the Draft Code Review Report from Interested Persons (8 week submission period).

Step 3

- GMCCC to evaluate the Interested Persons submissions and prepare a Final Code Review Report.
- GMCCC to submit the Final Code Review Report to the Authority for consideration and endorsement.
- The Authority, as Code Administrator, to implement changes to the Code arising from its consideration of the Final Code Review Report.