



wacoss

Western Australian
Council of Social Service Inc

*Ways to make
a difference*

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20 September 2006

Dear Mr Dumas,

WACOSS Submission to Gas Marketing Code Consultative Committee Draft Report for Review of the Gas Marketing Code of Conduct 2004.

The Western Australian Council of Social Service (WACOSS) provides the attached submission to the Gas Marketing Code Consultative Committee (GMCCC) Draft Report for Review of the Gas Marketing Code of Conduct 2004.

We commend the GMCCC's public consultation on the Draft Report for Review of the Gas Marketing Code of and would welcome an opportunity to discuss our comments, should you wish to do so.

For further information please contact our Senior Policy Officer, Ms Rebekah Garwood on (08) 9420 7217.

Yours sincerely,

pp. Lisa Baker
Executive Director

Economic Regulation Authority	
FILE No: 1323/05	
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| Social Policy & Advocacy | Organisation Development Services | Member Services |

Draft Report for Review of the Gas Marketing Code of Conduct 2004



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Response by the
Western Australian Council of Social Service
to the Gas Marketing Code Consultative Committee's
Report for Review of the Marketing Code of Conduct 2004

October 2006

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Background to WACOSS

The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community service sector across Western Australia. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist all Western Australians. With over 350 members, WACOSS has strong relationships with the social services sector and seeks to represent their interests, and those of the disadvantaged individuals and families they assist at a service level. Given this relationship, WACOSS is in a unique position to comment on issues in our society that socially impact upon disadvantaged members of the community.

In March 2005, WACOSS commenced the Consumer Utilities Project, funded through the Department of Consumer and Employment Protection. This Project builds upon the utility policy work WACOSS has undertaken over the past 4 years.

The Consumer Utilities Project has been established to work with consumers and representative organisations to achieve better outcomes in the provision of essential services. WACOSS has earned a reputation as being an authoritative voice for consumers with regard to energy market reform in Western Australia.

WACOSS has developed strong networks with utility policy workers across Australia, which provides us with information and expert opinion on National Energy Market issues.

WACOSS also has direct access to the issues of low-income and disadvantaged consumers through our Consumer Reference Group, which includes representatives from the Emergency Relief sector, Unions, Financial Counsellors and Community Legal Centres. These agencies provide us with policy information and direction in relation to our work and look to us to represent the interests of their clients with regard to utility issues. We have taken on this role due to the level and severity of the utility issues being raised by community agencies and the absence of any other resourced body in Western Australia representing these issues.

Introduction

As a participating member of the Gas Marketing Code Consultative Committee (GMCCC) WACOSS have supported the process, outcomes and recommendations of the GMCCC.

WACOSS' intention in putting in a submission to the GMCCC's Draft Review of the Gas Marketing Code of Conduct 2004 is to provide additional explanation of our position, for interested parties and consumers.

WACOSS supports the GMCCC's review of the Code and trusts that it will lead to an outcome whereby gas consumers have comparable consumer protection measures afforded to them as electricity consumers.

Executive Summary

WACOSS represents and advocates the interests of consumers in essential energy markets, in particular through its Consumer Utilities Project. It is in this capacity that WACOSS is interested in commenting on the Draft Review of the Gas Marketing Code of Conduct 2004.

The GMCCC's Draft Report for Review of the Marketing Code of Conduct 2004 proposes a series of recommendations to the Economic Regulation Authority (Authority) in relation to the Gas Marketing Code of Conduct, the most significant of which is the recommendation that the Gas Code be repealed by the Authority.

Codes are an appropriate way of delivering consumer protection in what is inarguably an essential service market and our support for the Draft Review of the Gas Marketing Code of Conduct 2004 has been conditional on the adoption of the fifth recommendation of the development of an alternative Code that offers comprehensive protection for gas and electricity consumers.

Recommendations and Responses

Recommendation 1

The Gas Marketing Code of Conduct 2004 should be repealed by the Authority.

WACOSS supports this way forward providing that the Authority undertake further work through a separate committee to consider the development of a more comprehensive code, converging gas and electricity consumer protection regulation.

This work is essential to fill the current gap in regulatory protection for gas consumers in WA.

WACOSS' support for the recommendation to repeal the Gas Marketing Code of Conduct and replace it with a regulatory instrument offering comparable consumer protection and enforceable by a licence condition cannot be seen as a precedent for the annulment of codes. Codes offer appropriate consumer protection in that they are 'living' documents that can be amended and updated as a market grows and develops¹.

Recommendation 2

A regulatory instrument should be developed by the Authority, based on advice from the GMCCC, which would include those elements of the Code not duplicated in other laws and other relevant requirements.

WACOSS supports the removal of duplication from the code on the proviso that it will not result in any weakening of consumer protection, or detract from the purpose of the Code.

¹ *Consumer protections in the National Energy Market – The Need for Comprehensive Energy-Specific Consumer Protections*. The Consumer Action Law Centre

WACOSS supports the development of a regulatory instrument, which would include those elements of the Code not duplicated elsewhere, providing that the regulatory instrument be developed in consultation with appropriate representation and that it will lead to an outcome whereby gas consumers are afforded improved consumer protection measures comparable to electricity consumers.

While WACOSS understands that duplication within the Code is considered by some to be unnecessary and overly prescriptive we believe that energy-specific regulation doesn't duplicate generalist protection, but rather complements or builds upon it creating robust and comprehensive protection for consumers. There are a number of markets that warrant specific consumer protections. In service markets such as energy, water and finance, consumers are particularly vulnerable and in need of specific regulation that safeguards them and reinforces or complements generalist consumer protection measures.

Recommendation 3

A condition should be inserted into the gas trading licences by the Authority requiring compliance with the regulatory instrument outlined under recommendation 2.

WACOSS supports the inclusion of a compliance condition with the *regulatory instrument* as a licence condition for gas licensees.

Transparent and corresponding penalties for breaches are in the interest of consumers, retailers and the public good. A regulation is neither effective nor efficient if it is not successfully enforced. Applicable penalties are a deterrent to non-compliance.

WACOSS would also like to see performance indicator monitoring as a licence condition of the *regulatory instrument*. We believe that performance monitoring and compliance reporting is vital in an essential services industry. Access to performance and compliance information is fundamental to policy and advocacy work and provides a means of ensuring that consumers are able to make informed choices in a competitive essential services market.

Recommendation 4

A consumer educational document should be developed by the Authority based on Advice from the GMCCC, advising consumers of their rights concerning gas marketing and providing other relevant information.

WACOSS supports the development of a document by the Authority, which articulates all of the protections for gas consumers, where they sit legislatively or in alternative regulatory instruments how they are monitored, how compliance is enforced, and how consumers can access their rights under each instrument. Given the essential nature of the service it is important that customers are aware of all the relevant consumer protections relating to gas.

We do not believe that, in Western Australia's newly competitive market, stakeholders are sufficiently informed to rely solely on generalist consumer provisions such as the Fair Trading Act (FTA) and Trade Practices Act (TPA) and would welcome a document that articulates all of the relevant consumer protections.

WACOSS are not aware of any such document existing in other jurisdictions but believe that such a document could be a worthwhile tool for consumers, providing that it is accessible and that both the format and the language are user friendly and easily understood.

Recommendation 5

At the completion of the review of the Code of Conduct (for the Supply of Electricity to Small Use Customers), the Authority should establish a committee with appropriate representation to discuss the development of an Energy Code of Conduct covering both gas and electricity licensees, with implementation of this Code through a regulatory instrument incorporated into the gas and electricity licences.

WACOSS supports the recommendation that a committee be developed to discuss the development of an Energy Code of Conduct after completion of the review of the Code of Conduct (for the Supply of Electricity to Small Use Customers) with the expectation that the outcome is a more comprehensive code, converging gas and electricity consumer protection regulation.

While WACOSS concurs with the Gas Marketing Consultative Committee that this recommendation is essential to get regulatory continuity across the two essential service markets of gas and electricity we reiterate our position that we would not like to see any lessening of regulatory protection for electricity consumers as a result of this action. WACOSS anticipates that an Energy Code of Conduct will help to fill the current gap in regulatory protection for gas consumers in WA.

Conclusion

WACOSS supports the GMCCC's proposed move towards a converging Energy Code of Conduct 2004 believing that gas consumers are entitled to the same consumer protection measures as electricity consumers. However WACOSS reiterates our position that support for this way forward in the review of the Code should not in any way be taken as a precedence of support for the abandonment of codes as regulatory instruments. Nor should it be taken as a position that duplication of legislation makes for a redundant regulation.

WACOSS believes that codes are an appropriate way of delivering consumer protection in the gas and electricity market since the conduct of licensees, who are selling essential services in the community, has a direct bearing on people's well being, and therefore must be responsibly regulated.

We are hopeful that the recommendations and comments made in this submission assist in furthering protections for gas consumers in Western Australia.