

Gas Marketing Code Consultative Committee

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

2 March 2007

Economic Regulation Authority



WESTERN AUSTRALIA

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Executive Summary

The *Gas Marketing Code of Conduct 2004* (Code) commenced operation on 31 May 2004. Under the *Energy Coordination Act 1994* (EC Act), a review of the Code is required to be undertaken after twelve months of operation of the Code. Pursuant to the EC Act, the Gas Marketing Code Consultative Committee (GMCCC) is required to undertake this review and provide a report to the Economic Regulation Authority (Authority). The Authority is the Code Administrator.

On 3 January 2006, the Authority issued a Principles Paper which had been prepared by the GMCCC. This Principles Paper outlined the background, principles and process proposed for the Code review including a proposed approach for undertaking the review. Interested Persons, as identified by the Authority and the GMCCC, were provided with an eight week period to make submissions on the Principles Paper.

Three submissions were received on the Principles Paper. These submissions were from the Consumers Association of Western Australia (Inc), Energy Ombudsman of Western Australia and Western Power Corporation. These submissions were placed on the Authority's website www.era.wa.gov.au.

Following receipt of these submissions, the GMCCC proceeded to undertake a review of the Code to identify any overlap between the Code and existing State and Commonwealth laws. This review was carried out by Lavan Legal.

Following consideration of the report by Lavan Legal and taking into account the submissions received, the GMCCC issued a draft Report on 11 August 2006.

Four submissions were received on the Draft Report. These submissions were from the Consumers Association of Western Australia (Inc), Energy Ombudsman of Western Australia, WA Council of Social Services and Western Power Corporation. These submissions were placed on the Authority's website www.era.wa.gov.au.

Taking into account the submissions received, the GMCCC makes the following final recommendations to the Authority.

Final Recommendations

Recommendation 1

The Gas Marketing Code of Conduct 2004 should be repealed by the Authority.

Recommendation 2

The Gas Trading Licences administered by the Authority should be amended through the insertion of a condition as set out in Appendix 1.

Recommendation 3

The 'Gas Marketing Standard' regulatory instrument referred to under the above licence condition should be created, as set out in Appendix 2, and placed on the Authority's website.

Recommendation 4

A consumer information document called the 'Guide to Consumer Protection for Gas Marketing' should be created, as set out in Appendix 3, and placed on the Authority's website.

Recommendation 5

The Authority should write to each supplier recommending that both the Gas Marketing Standard and the Guide to Consumer Protection for Gas Marketing be made available to gas consumers by placement on their websites.

Recommendation 6

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.

1 Introduction

The *Gas Marketing Code of Conduct 2004* (Code) came into operation on 31 May 2004 along with a number of other measures designed to provide for gas full retail contestability in Western Australia.

The Code regulates and controls the conduct of the holders of gas trading licences and gas marketing agents with the object of protecting customers from undesirable marketing conduct and defining the standards of conduct in the marketing of gas to customers.

2 Requirement for Review

Under section 11ZPV of the *Energy Coordination Act 1994* (EC Act) the Gas Marketing Code Consultative Committee (GMCCC) is required to undertake a review of the Code as soon as practicable after the first anniversary of its commencement.

The object of such a review is to re-assess the suitability of the provisions of the code of conduct for the purposes of section 11ZPM(2) of the EC Act. Section 11ZPM(2) of the EC Act stipulates that:

The code of conduct is to regulate and control the conduct of –

- (a) the holders of gas 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.”

Under the Code the Committee must:

- In accordance with section 11ZPW of the EC Act, give any Interested Person an opportunity to offer comments relevant to the review.
- Take into account any comments received from Interested Persons in carrying out the review.
- Prepare a report based on the review and give it to the Code Administrator the Economic Regulation Authority (Authority).

3 Background

3.1 Establishment of the GMCCC

The Authority is responsible for administering Part 2C of the EC Act (Code of Conduct for Marketing of Gas to Small Use Customers). The EC Act provides for the Authority to establish a committee to advise it on matters relating to the Code. This committee also has responsibility for carrying out reviews of the Code under the provisions of the EC Act. Consistent with this requirement the Authority reconvened the GMCCC which was originally established by the Minister for Energy to assist in developing the Code.

The Authority, as the Code Administrator, 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.

The current GMCCC membership is as follows:

Chairman	Russell Dumas (Authority)
Executive Officer	Michael Styles (Authority)
Members	Gary Newcombe (Department of Consumer & Employment Protection) Jessica Shaw (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 (WorleyParsons Asset Management Pty Ltd)

The GMCCC held its first meeting on 26 May 2005. The Committee considered that the review should be undertaken 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.

After a series of meetings, the GMCCC prepared a Principles Paper for comment by Interested Persons. Under the EC Act, the GMCCC is required to invite submissions on the review from Interested Persons selected by the GMCCC and the Authority as likely to have a particular interest in the review.

The Principles Paper was endorsed by the Authority and published on the Authority's website on 3 January 2006.

3.2 Principles Paper

3.2.1 *Proposed Approach for the Review*

The Principles Paper outlined the background to the Code review and suggested a proposed approach for undertaking the review. The proposed approach was as follows:

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 Principles Paper also provided an outline of the proposed Code review process, 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.

3.2.2 Submissions Received

On 3 January 2006 the Authority published a notice on its website, together with the Principles Paper. This notice informed the public of the review and detailed the review process being undertaken by the GMCCC. At the same time the GMCCC wrote to each of the Interested Persons providing them with an eight week period to make submissions on the Principles Paper with submissions closing on 28 February 2006. The list of Interested Persons invited to comment on the Principles Paper was as follows:

- Australian Competition and Consumer Commission
- Australian Direct Marketing Association
- Consumers' Association of Western Australia (Inc)
- Consumer Credit Legal Service Western Australia
- Consumers' Federation of Australia
- Chamber of Minerals and Energy of Western Australia
- DBNGP (WA) Transmission Pty Ltd
- Energy Ombudsman of Western Australia
- Energy Retailer's Association of Australia
- Perth Energy
- Standards Australia
- Western Australian Sustainable Energy Association
- Western Power Corporation

3.2.2.1 *Submissions on the Principles Paper*

Three submissions were received on the Principles Paper. These submissions were from the Consumers Association of Western Australia (Inc), Energy Ombudsman of Western Australia and Western Power Corporation. These submissions have been placed on the Authority's website (www.era.wa.gov.au).

All three submissions supported the approach proposed for undertaking the Code review outlined in the Principles Paper.

A brief summary of the submissions is provided below.

The **Consumers Association of Western Australia (Inc)** believed that the proposed legal review outlined in the Principles Paper would greatly assist interested persons in identifying any duplication with State and Commonwealth legislation. The Association also believed that the outcome of the legal review needed to be accessible and transparent to all stakeholders, including consumers, to enable appropriate consultation and consideration before any final decision which may involve elimination of the Code.

The **Energy Ombudsman of Western Australia** considered the proposed approach for the Code review including the process as outlined in the Principles Paper to be sound and if followed, would give Interested Persons an opportunity to contribute to the review.

Western Power Corporation strongly supported the proposal to undertake a legal review of the Code to remove duplication of legislative instruments and associated reporting requirements. Western Power also supported potential alignment of the Code with the Code of Conduct (for the Supply of Electricity to Small Use Customers) which came into operation on 31 December 2004, noting that a highly efficient and effective compliance environment would provide benefits of clear and simple codes for all energy consumers and retailers.

3.2.2.2 *Other Submissions*

The Authority also received an earlier submission from **Alinta Sales Pty Ltd** concerning section 14(3)(a) of the Code dealing with information to be given at the time of entering into a customer contract. Alinta Sales Pty Ltd has proposed that section 14(3)(a) of the Code be amended to allow a marketer to provide the information set out in clause 14(2) for a standard customer contract that is not entered into as a result of door to door marketing no later than with a customer's first bill rather than within two days after the customer enters into such a contract. This proposed amendment would be consistent with clause 2.7(2) of the Code of Conduct (for the Supply of Electricity to Small Use Customers) and would result in a significant reduction in cost to Alinta Sales Pty Ltd.

3.3 Legal Review

3.3.1 *Brief for Legal Review*

Following receipt of submissions, the GMCCC proceeded to undertake a legal review of the Code. A brief of the work required was developed by the GMCCC for the purpose of employing a consultant to undertake the legal review.

The brief prepared for the legal review was as follows:

1. Identify relevant legislation that covers the same or similar areas as the Code.
2. Review the Code to identify:
 - areas of overlap with relevant legislation;
 - areas of inconsistency with relevant legislation;
 - the relevancy of the Code provisions, in particular, consistency with the objectives of the Code;
 - whether the Code provisions achieve the objective of the Code and, if not, whether they should be amended or deleted; and
 - any areas which could be considered a regulatory barrier to competition.
3. Review submissions to the GMCCC concerning the Code using the agreed principles contained in the Principles Paper.
4. Provide a report to the GMCCC recommending amendments and deletions to the Code.

3.3.2 *Overlap of the Code with Existing Legislation*

Lavan Legal was commissioned by the Authority, on behalf of the GMCCC, to undertake the legal review of the Code based on the scope of work outlined under 4.1 above.

The outcome of Lavan Legal's review was that there are many clauses of the Code that overlap with State and Commonwealth legislation or relevant common law principles. Further, many of the obligations in the Code duplicate provisions that are required by the *Energy Coordination (Customer Contract) Regulations 2004* (CC Regulations) to be in the standard form contract or non-standard form contract.

Lavan Legal's legal review report identifies the following provisions of the Code which overlap or duplicate State or Commonwealth legislation or the provisions of the standard form contract or non-standard form contract:

- Clause 6 - No contracting out of this Code;
- Clause 7 - Responsible marketers to ensure representatives comply with this Code;
- Clause 8 - Training marketing representatives;
- Clause 9 - Written information must be easy to understand;
- Clause 13 - Entering into customer contracts;
- Clause 14(2), (4) and (5) - Information to be given at time of entering into a customer contract;
- Clause 15 - Misleading, deceptive or unconscionable conduct;
- Clause 19 - Marketing by the internet or by email;
- Clause 21 - Collection and use of personal information;
- Clause 22 - Dispute resolution;
- Clause 23 - Presumption of Authority.

In Lavan Legal's view, the overlap is such that the GMCCC could recommend the overlap provisions be removed without reducing the level of consumer protection or the effectiveness of the Code. If such a course were adopted it would simplify the regulation of gas marketing while simultaneously ensuring the level of customer protection was not diluted.

3.3.3 *Remaining Elements in the Code*

3.3.3.1 *Overview*

Lavan Legal noted that, the remaining provisions of the Code where duplication with existing legislation did not occur fell into one of the following categories:

- administrative;
- record keeping; and
- conduct of marketers.

The clauses that Lavan Legal grouped into 'administrative' provisions concern the operation of the Code. That is, they are necessary to ensure the Code operates effectively. For example clause 5 relates to breaches of the Code.

The clauses referred to as 'record keeping' contain obligations on the responsible marketer to keep certain records for a specific period of time. For example, visits by marketers made to a person's premises (17(6) of the Code).

The clauses termed 'conduct of marketers' contain obligations on marketers to act in a particular way when dealing with customers. For example, a marketer must not make a telephone call to a person outside the permitted call times (clause 16(3) of the Code).

The specific clauses in the Code which fall under each of the three categories above are listed in Table 1 below.

Table 1 **Clauses of Code Not Duplicated**

Administrative	Record keeping	Conduct of marketers
Clauses 1 - 4 – Preliminary provisions.	Clause 10 – Information about complaints and compliance with this Code.	Clause 14(1) and (3) - Information to be given at time of entering into a customer contract.
Clause 5 - Complying with this Code.	Clause 11 - Records to be kept.	Clause 16(1) to (4) - Marketing by telephone.
	Clause 12 - Contact details of marketers.	Clause 17(1) to (5) - Marketing at a person's premises.
	Clause 16(5) - Marketing by telephone.	Clause 18(1) and (2) - Marketing by personal contact other than at the person's premises.
	Clause 17(6) - Marketing at a person's premises.	Clause 20(1) and (4) - Conduct when a person does not wish to be contacted.
	Clause 18(3) - Marketing by personal contact other than at the person's premises.	
	Clause 20(2) and (3) - Conduct when a person does not wish to be contacted.	

3.3.3.2 *Record keeping*

In Lavan Legal's view, consideration should be given to moving the record keeping obligations to a retail supplier's licence. This would place the obligation on the retail supplier, as opposed to the responsible marketer (if they are different entities). However, as a matter of contract, a prudent retail supplier would ensure that a responsible marketer employed by it was bound to comply with the obligations.

Lavan Legal recommended this approach, as a licence obligation is a flexible instrument compared to a Code provision. That is, it is easier for the Authority to add or modify the record keeping requirements in relation to a licence obligation.

Lavan Legal also noted that if a licence condition is breached the Authority has wider powers to ensure compliance. In particular, the Authority has the power to cause the contravention to be rectified rather than ordering the licensee to pay a monetary penalty.

Section 11ZPP of the EC Act 1994 provides that "[i]t is a condition of every trading licence that the licensee is to comply with the provisions of the code of conduct that apply to the licensee." However, the record keeping provisions apply to a "responsible marketer" which may not be the retail supplier. Therefore, although a retail supplier may be liable for a breach of the Code under clause 5(3) of the Code, it is not entirely clear that a breach of the Code by a responsible marketer would be a breach of licence condition by the retail supplier.

Lavan Legal notes that the electricity licences contain wide powers for the Authority to demand information from a licensee. The standard provision in the licence titled "provision of Information" states:

The licensee must provide to the Authority any information that the Authority may require in connection with its functions under the Act in the time, manner and form specified by the Authority.

3.3.3.3 *Conduct of Marketers*

Retail suppliers, responsible marketers and marketers must comply with the provisions of the *Trade Practices Act 1974* (TP Act) and the *Fair Trading Act 1987* (FT Act). Both the TP Act and the FT Act have a broad prohibition against engaging in misleading or deceptive conduct. Further, the TP Act and the FT Act contain a prohibition against engaging in unconscionable conduct.

In Lavan Legal's view, consideration should be given to whether the level of detail prescribed in the Code is necessary to ensure that consumers are protected given the provisions in the TP Act, FT Act and the existence of the energy industry ombudsman. That is, if a marketer is prohibited from engaging in misleading or unconscionable conduct is it necessary to prescribe the steps preventing the marketer from engaging in the conduct.

Further, it is highly likely that any disputes would be referred to the energy industry ombudsman or any action will be taken by the relevant enforcement agency under the TP Act or FT Act, rather than dealing with the issue under the Code. A person who contravenes the Code is liable for a penalty. However, this would not be of assistance to an aggrieved customer. The remedies available under the TP Act and the FT Act would be more likely to provide direct relief for a customer (for example the contract may be declared void *ab initio*) and therefore any action against the marketer or retail supplier

would be expected to be commenced under the FT Act or TP Act. Accordingly, the deterrent provided by the Code is likely to be of limited value.

Lavan Legal noted that if the GMCCC wanted to retain the provisions concerning the conduct of marketers, then consideration should be given to moving the obligations to a flexible document, such as an industry standard, rather than leaving them in the Code. This would allow for a more flexible approach while retaining the obligations on marketers. Compliance with the industry standard could be made a licence condition to ensure that the obligations are enforceable.

3.3.3.4 *Administrative provisions*

Lavan Legal considered that if the overlap provisions, record keeping prohibitions and the conduct of marketer provisions were to be removed from the Code then the administrative provisions would have no purpose and could also be deleted.

3.3.3.5 *Conclusion*

In Lavan Legal's view, the provisions of the Code it identified as "overlap provisions" could be deleted without diluting consumer protection or taking away from the purpose of the Code. This would also reduce dual regulation of retail suppliers which, in turn, should provide for more efficiency in the market.

Lavan Legal also recommended the GMCCC examine the 'record keeping' and 'conduct of marketer' provisions identified in its review to ensure that these provisions are necessary and to consider whether the same purpose could be achieved by moving these obligations from the Code to a more flexible instrument, such as the licence.

4 Draft Report

On 11 August 2006, the Authority published the Draft Report on its website with an accompanying notice. This notice informed the public of the review and detailed the review process being undertaken by the GMCCC. At the same time the GMCCC wrote to each of the Interested Persons providing them with an eight week period to make submissions on the Draft Report with submissions closing on 6 October 2006. The list of Interested Persons invited to comment on the Draft Report was the same as that for the Principles Paper.

4.1 Submissions on the Draft Report

Four submissions were received on the Draft Report. These submissions were from the Consumers Association of Western Australia (Inc), Energy Ombudsman of Western Australia, WA Council of Social Services and Synergy. These submissions were placed on the Authority's website www.era.wa.gov.au.

All four submissions supported the proposed recommendations resulting from the legal review undertaken by Lavan Legal as contained in the Draft Report.

A brief summary of the submissions is provided below.

The **Consumers Association of Western Australia (Inc)** supported the Draft Report recommendations including Recommendation 5 of the Draft Report dealing with the future

development of an Energy Code of Conduct to cover both gas and electricity licensees. The Association noted that best practice should be adhered to and sufficient discussion on implementation achieved.

The **Energy Ombudsman of Western Australia** supported the Draft Report recommendations including the proposed amendment to section 14(3)(a) of the Code proposed by Alinta Sales Pty Ltd and also raised a number of queries concerning Recommendation 1 of the Draft Report dealing with the repeal of the Code. The Ombudsman believed that an Energy Code of Conduct should be developed prior to the repeal of the existing Code.

The **WA Council of Social Services** supported the Draft Report recommendations on the basis that it is the beginning of a process that will lead to an outcome whereby gas consumers have consumer protection measures afforded to them comparable to electricity consumers.

Synergy supported the Draft Report recommendations and asked that it be given the opportunity to view the proposed regulatory instrument prior to it taking effect. Synergy also believed that the development of an Energy Code of Conduct be undertaken in parallel with the current review of the Code of Conduct (for the Supply of Electricity to Small Use Customers).

4.2 Issues arising from the Submissions

Subsequent to the receipt of the above submissions, the GMCCC Chairman and Executive Officer met with the Ombudsman to discuss the matters raised in the Ombudsman's submission. These matters were resolved resulting in the Ombudsman's support for the Draft Report recommendations.

The Chairman also met with Synergy to discuss the proposed regulatory instrument, as requested in Synergy's submission.

The proposed amendment to section 14(3)(a) of the Code, as put forward by Alinta Sales Pty Ltd, and on which comments were sought under the Draft Report has been incorporated in the regulatory instrument on the basis that it was supported by a number of parties and there were no opposing comments.

5 Recommendations

Following the support received in the submissions on the Draft Report recommendations the GMCCC proceeded to prepare drafts of the following documents:

- Condition to be inserted into Gas Trading Licences (Appendix 1);
- Gas Marketing Standard regulatory instrument (Appendix 2); and
- Guide to Consumer Protection for Gas Marketing (Appendix 3).

The above documents will form the basis for continuing appropriate provisions of the Code through the incorporation of these provisions into licences in a manner which will not diminish consumer protection.

The GMCCC considers that the repeal of the Code and implementation of the licence arrangements recommended in this report will simplify and improve the efficiency of gas marketing regulation to the benefit of both consumers and industry.

The final recommendations of the GMCCC are that:

Recommendation 1

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

Recommendation 2

The Gas Trading Licences administered by the Authority should be amended through the insertion of a condition as set out in Appendix 1.

Recommendation 3

The 'Gas Marketing Standard' regulatory instrument referred to under the above licence condition should be created, as set out in Appendix 2, and placed on the Authority's website.

Recommendation 4

A consumer information document called the 'Guide to Consumer Protection for Gas Marketing' should be created, as set out in Appendix 3, and placed on the Authority's website.

Recommendation 5

The Authority should write to each supplier recommending that both the Gas Marketing Standard and the Guide to Consumer Protection for Gas Marketing be made available to gas consumers by placement on their websites.

Recommendation 6

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.

APPENDICES

Appendix 1 Licence Condition

Licence Condition

1 *Complying with the Gas Marketing Standard*

(1) A licensee must comply with the Gas Marketing Standard.

(2) A licensee must ensure all agents and employees comply with the Gas Marketing Standard.

Note

Compliance by licensees with the Gas Marketing Standard will be made part of the performance criteria contained within the gas licences.

Appendix 2 Gas Marketing Standard

Gas Marketing Standard

Preamble

This Gas Marketing Standard is derived from the *Gas Marketing Code of Conduct* 2004 (“Code”), and was created following a review of the Code.

The review of the Code identified substantial areas of overlap between the provisions of the Code and applicable State and Commonwealth legislation. The overlapping legislation included the *Energy Coordination (Customer Contracts) Regulations* 2004 (WA), the *Trade Practices Act* 1974 (Cth), the *Fair Trading Act* 1987 (WA), the *Spam Act* 2003 (Cth), and the *Privacy Act* 1988 (Cth).

The underlying principles of the Code were to protect consumers from undesirable marketing conduct and define standards of conduct in the marketing of gas to customers. The review of the Code sought to achieve efficient and effective regulation while keeping compliance costs at a minimum. The review also aimed to produce a simple, clear and concise document for both gas consumers and retailers.

The Gas Marketing Standard therefore aims to maintain the principles underlying the Code, while clarifying and simplifying its contents, to ensure best practice outcomes for consumers.

The Gas Marketing Standard is designed to supplement the contract between licensee and consumer, which is a source of obligations on the licensee and a source of rights and protection for consumers. If there are issues arising under that contract, consumers can have recourse to the Energy Ombudsman Western Australia or the Courts. The Energy Ombudsman receives, investigates and facilitates the resolution of complaints from residential and small business customers about their gas company. The services of the Energy Ombudsman are free, and a wide range of complaints can be investigated, including gas supply and billing disputes.

1 Definitions

In this Gas Marketing Standard,

“**customer**” means a small use customer or a person contacted for the purposes of marketing;

“**customer contract**” means an arrangement between a retail supplier and a customer for the supply of gas to the customer;

“**Economic Regulation Authority**” means the Economic Regulation Authority created pursuant to the *Economic Regulation Authority Act* 2003;

“**licensee**” means a person or body corporate who is the holder of a trading licence;

“**marketer**” means a person authorised by a licensee to engage in marketing on behalf of the licensee;

“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;
- (b) advertising, promotion, market research or public relations in relation to the supply of gas to customers.

“small use customer” means a customer whose consumption of gas is less than 1 terajoule per year;

“standard customer contract” means a customer contract that is a standard form contract within the meaning of section 11WB of the *Energy Coordination Act 1994*;

“trading licence” means a licence which authorises the licensee to sell to small use customers gas transported through a distribution system.

2 Complying with State and Commonwealth legislation

- 2.1 A licensee must comply with, and must ensure compliance by all agents and employees with, all applicable State and Commonwealth legislative requirements.
- 2.2 Where a licensee is not subject to the *Privacy Act 1998*, a licensee must comply with the National Privacy Principles as set out in the *Privacy Act 1998*.

3 Marketer must not coerce, insult or harass

A marketer must not coerce, insult or harass a customer while marketing.

4 Record keeping

- 4.1 A licensee must keep records of any complaint made by a customer about the marketing carried out on behalf of the licensee.
- 4.2 The licensee must provide any information it is required to keep under this Gas Marketing Standard to the Economic Regulation Authority or the Energy Ombudsman Western Australia on request.
- 4.3 Records or other information that a licensee is required to keep under this Gas Marketing Standard must be kept for at least 2 years after the last time the person to whom the information relates was contacted by the licensee.

5 Information to be given at the time of entering into a customer contract

- 5.1 A licensee must ensure that before arranging a customer contract a marketer gives the customer the following information:
 - (a) that the customer is free to choose the standard customer contract offered by the retail supplier;

- (b) how the terms of the customer contract will be given to the customer; and
 - (c) the details of any right the customer may have to rescind the customer contract during a cooling off period and the charges that may apply if the customer rescinds the contract.
- 5.2 A licensee must ensure that the terms and conditions of the customer contract are provided to the customer no later than the first bill.
- 5.3 Notwithstanding clause 5.2, a customer may request a copy of the contract at any time at no charge.

6 Contact for the purposes of marketing

- 6.1 A licensee must ensure that a marketer who contacts a person on its behalf for the purposes of marketing:
- (a) as soon as practicable, tells the person:
 - (i) his or her name and telephone number;
 - (ii) the name of the licensee on whose behalf the call is being made; and
 - (iii) the purpose of the call;
 - (b) only makes contact between 9.00 a.m. and 8.00 p.m. on Mondays to Fridays (other than public holidays) and 9.00 a.m. and 5.00 p.m. on Saturdays; and
 - (c) keeps the following records each time contact is made:
 - (i) the name and telephone number of the person;
 - (ii) the name of the marketer; and
 - (iii) the date and time of the contact.
- 6.2 A licensee must ensure that a marketer who visits a person or meets with a person on its behalf for the purposes of marketing wears a clearly visible identity card that shows:
- (a) his or her name; and
 - (b) a photograph of the marketer.

7 Conduct when a person does not wish to be contacted

- 7.1 If, when a marketer contacts a person for the purposes of marketing, the person indicates that he or she wishes the contact to end, the licensee must ensure that the contact is ended as soon as possible and:
- (a) must ensure that the person is not contacted by or on behalf of the licensee for the purposes of marketing for the next 30 days without the express consent of the person; and
 - (b) if the person also indicates that he or she does not wish to be contacted again by or on behalf of the licensee, must ensure

that the person is not contacted by or on behalf of the licensee for marketing purposes for the next 2 years.

- 7.2 A licensee must keep a record of each person who has indicated that he or she does not wish to be contacted, that includes the name and address of the person at the time that the person made that indication.
- 7.3 The licensee must give a copy of the record referred to in clause 7.2 to the Economic Regulation Authority or the Energy Ombudsman Western Australia on request.
- 7.4 A licensee must ensure that, in the case of contact at a person's premises, to the extent practicable, marketers comply with a notice on or near a person's premises indicating that the person does not wish to receive unsolicited mail or other marketing (for example, 'No canvassing' signs).

Appendix 3 Guide to Consumer Protection for Gas Marketing

Guide to Consumer Protection for Gas Marketing

This guide is designed to inform you (the customer) of your rights in relation to marketing by your gas supplier. It was created as a result of the review of the *Gas Marketing Code of Conduct* 2004. The review also resulted in the creation of the *Gas Marketing Standard*, which replaced the *Gas Marketing Code of Conduct* 2004. This guide, together with the newly developed *Gas Marketing Standard*, aim to maintain the principles of protection of consumers from undesirable marketing conduct, while achieving efficient and effective regulation and keeping compliance costs at a minimum.

There are a range of obligations on your gas supplier to ensure comprehensive, best practice outcomes for consumers. This guide sets out those obligations. The obligations are contained in the contract between you and the gas supplier, State and Commonwealth legislation and your gas supplier's licence. The obligations are a source of rights and protection for consumers. In particular, consumers are protected by obligations on gas suppliers which relate to areas such as behaviour by marketers when engaging in marketing to consumers, information to be given at the time of entering into a customer contract, complaints handling and investigation, and privacy.

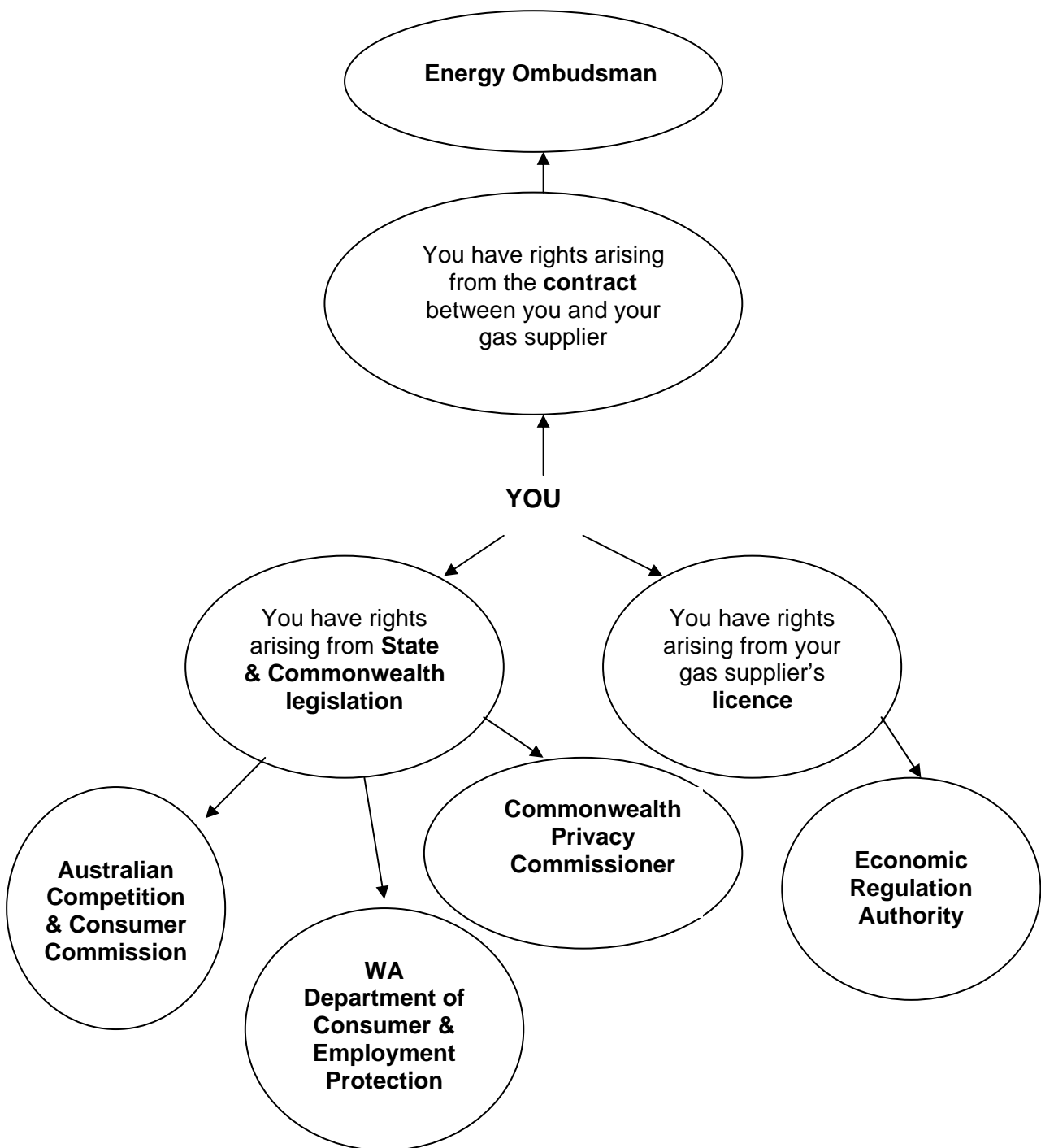
Overview of legislative rights and obligations

There are three main sources of consumer protection in the gas industry.

1. The contract between you and your gas supplier.
2. State and Commonwealth legislation, including obligations relating to misleading, deceptive or unconscionable conduct, and privacy.
3. Obligations in the gas supplier's licence.

These three main sources are explained below in the Framework for Consumer Protection diagram.

Framework of consumer protection



The contract between you and your gas supplier

This section sets out the rights a customer has under the contract between the customer and the gas supplier. Your gas company is required to provide you with a choice as to whether or not to enter into a “standard form contract”. A standard form contract is a contract which contains standard terms, and is offered to all consumers. Many of the terms in the standard form contract are prescribed by legislation including a requirement for the contract to have a complaints handling process. Further, the contract (or any changes to it) must be approved by the Economic Regulation Authority.

You should endeavour to read and understand the contract before you sign it. Otherwise, the gas company must provide you with a copy of the contract no later than the first bill.

If you have entered into the contract as a result of door to door marketing a cooling off period applies and you can end the contract within 10 days after entering into the contract. Please note that you may have to pay for any gas used during that period.

Complaints about matters in the contract

Your gas company must comply with its obligations under your contract. If you believe that your contractual rights have been breached, the first step you should take is to contact your gas company, and report the problem. It may be possible for the problem to be resolved without any further action on your part.

If reporting the problem to your gas company does not solve the problem, you can take the matter to the Energy Ombudsman Western Australia. The Energy Ombudsman receives, investigates and facilitates the resolution of complaints from residential and small business customers about their gas company. The services of the Energy Ombudsman are free, and a wide range of complaints can be investigated, including gas supply and billing disputes.

In accessing the services of the Energy Ombudsman, the first step to take (after you have attempted to resolve the matter with your gas company) is to submit a complaint. A complaint can be submitted in writing, by telephone, email, fax, online or in person. The contact details of the Energy Ombudsman are listed below. After the complaint has been submitted, depending on the nature of the complaint, you may be provided with information or advice. If your complaint continues to remain unresolved, the Energy Ombudsman will commence an investigation into the matter. At this stage, you will be advised in writing of the process which will be followed in conducting the investigation of your complaint.

In addition to the services of the Energy Ombudsman, you can also seek a resolution to any contractual matters through the appropriate legal channels.

Energy Ombudsman

The office hours of the Energy Ombudsman Western Australian are 8.00am to 5.00pm, Monday to Friday (excluding Public Holidays).

Freecall: 1800 754 004*

(* Calls made from mobile phones will be charged at the applicable rate.)

Phone: (08) 9220 7588

Translating and Interpreting Service 131 450

National Relay Service 1800 555 727

Email: energy@ombudsman.wa.gov.au

Freefax: 1800 611 279

Fax: (08) 9220 7599

In person: 12th Floor, St Martin's Tower, 44 St George's Terrace, Perth WA 6000
Postal address: PO Box Z5386, St George's Terrace, Perth WA 6831

Rights arising from State and Commonwealth legislation

Marketing by gas suppliers

The marketing conduct of gas suppliers is regulated by State and Commonwealth legislation. You may be approached by a marketer who will offer you a contract with a gas company for the supply of gas to your home. The marketer may make such an offer at your door, by telephone or another way.

There are strict requirements for a marketer to honestly tell you the terms and conditions associated with the offer to supply gas. In particular, a marketer must not engage in misleading or deceptive conduct.

If you believe you have been misled by a gas company in its marketing or in its offer to you of a gas contract there may be a remedy under the Commonwealth legislation, which is the *Trade Practices Act 1974*, or alternatively the State legislation, which is the *Fair Trading Act 1987*. Further, if the marketer or the gas company has engaged in unconscionable conduct, being conduct designed to place unfair pressure on you or other such tactics, then those Acts may also provide protection.

If you do experience problems with a marketer, the first step you should take is to contact the gas company who the marketer works for and report the problem. It may be possible for the problem to be resolved without any further action on your part.

If your problem has not been resolved, and you believe it relates to a potential breach of the *Trade Practices Act 1974*, a complaint can be made to the Australian Competition and Consumer Commission (**ACCC**). The ACCC also has an information line available to explain your rights under the legislation, and how the Commission is likely to react in particular situations. Depending on the nature of the complaint, the ACCC may give information or advice, or may commence an investigation.

Similarly, if the problem relates to a potential breach of the *Fair Trading Act 1987*, a complaint can be made to the Department of Consumer and Employment Protection (**DOCEP**). DOCEP's call centre can provide information on advice to consumers as to their rights and responsibilities. Like the ACCC, depending on the nature of a complaint received from a consumer, DOCEP may give information or advice, or may commence an investigation into the complaint.

The contact details of the ACCC and DOCEP are listed below. There are no costs involved in making a complaint to the ACCC or DOCEP. If you believe that a breach of the relevant legislation has occurred, it is helpful if you keep a written record of information such as the company the marketer is working for, the time and date of the marketing conduct, and specific details of the incident, including the exact words used by the marketer.

If the ACCC or DOCEP decide to investigate a complaint, you will not be charged for the investigation. If the ACCC or DOCEP find that your gas company has breached the *Trade Practices Act 1974* or the *Fair Trading Act 1987*, the ACCC or DOCEP may write to the gas company asking that the conduct cease, or may take legal action against the gas company.

ACCC

Information line phone number: 1300 302 502

The ACCC's information line is available to business and consumers. This line can be used if you require further explanation of your rights under the *Trade Practices Act 1974* (Cth), or information as to how the ACCC is likely to react to particular conduct by businesses.

Email: www.accc.gov.au

Postal address: 233 Adelaide Terrace, Perth WA 6000

DOCEP

DOCEP's office hours are 8.30am to 5.00pm, Monday to Friday (excluding Public Holidays).

General Advice Line: 1300 30 40 54 (Cost of a local call)

Regional Office Network: 1300 30 40 54 (Cost of a local call)

TTY (for hearing impaired): 08 9282 0800

Email: online@docep.wa.gov.au

In person: Ground Floor, Forrest Centre, 219 St George's Terrace, Perth WA 6000

Postal address: Locked Bag 14, Cloister's Square WA 6850

How is your privacy protected?

If you believe your rights in relation to privacy have been breached, you can take action under the National Privacy Principles, set out in the *Privacy Act* (1988). In particular, the National Privacy Principles state the following:

- if it is reasonable and practical to do so, your gas company must only collect personal information about you, from you;
- your gas company must not use or disclose your personal information for any purpose other than the primary purpose of collection;
- your gas company must take reasonable steps to protect personal information it holds from misuse and loss and from unauthorised access, modification or disclosure;
- other than in specified circumstances, if your gas company holds personal information about you, it must provide you with access to that information on request by you; and
- your gas company must provide reasons for any denial of access or a refusal to correct errors in your personal information.

If you believe a breach has taken place, the first step is to attempt to resolve the problem by contacting your gas company.

If you have attempted to resolve the problem with your gas company, the next step is to make a complaint to the Privacy Commissioner who may be able to assist you further. The Office of the Privacy Commissioner handles your privacy complaint free of charge. You do not have to be represented by a lawyer to make a complaint to them about privacy. The contact details of the Privacy Commissioner are listed below.

Privacy Commissioner

Phone: 1300 363 992

Email: privacy@privacy.gov.au

The Privacy Commissioner discourages using unencrypted emails to transmit complaints. Arrangements have therefore been made for complaints submitted via email to be protected by encryption via the free Hushmail service. You can set up a free account at www.hushmail.com and send the Privacy Commissioner your complaint from your “Hushmail” email address to privacycommissioner@hushmail.com

Fax: (02) 9284 9666

Postal address: Director, Compliance, Office of the Privacy Commissioner, GPO Box 5218, Sydney NSW 2001

Obligations in the Gas Supplier’s Licence

Your gas supplier is subject to a number of obligations which are contained in its licence including prescribed service standards and the requirement to have a complaints handling process.

A gas supplier is also required, by its licence, to comply with the *Gas Marketing Standard*. The *Gas Marketing Standard* is a document which is designed to supplement the contract between licensee and consumer. It is a source of obligations on the licensee and a source of rights and protection for consumers. In particular, the *Gas Marketing Standard* contains requirements relating to record keeping, complying with State and Commonwealth legislative requirements, information to be given when making contact for the purposes of marketing, the times that a marketer can call and conduct when a person has indicated that they do not wish to be contacted. The *Gas Marketing Standard* also includes provisions designed to protect consumers from undesirable marketing conduct. In particular, a licensee must ensure that a customer is not coerced, harassed or insulted by a marketer. The *Gas Marketing Standard* aims to ensure best practice outcomes for consumers. For further information on the *Gas Marketing Standard* please refer to the Economic Regulation Authority’s website at www.era.wa.gov.au.

If you believe that your gas supplier has failed to comply with the provisions of its licence, including any failure to comply with the provisions of the *Gas Marketing Standard*, your first step should be to report the breach to your gas company. If this does not solve the problem, you can contact the Economic Regulation Authority. In a situation where the Economic Regulation Authority is of the view that a gas supplier has failed to comply with the provisions of its licence it can take the following steps:

- the Authority may serve a notice on the gas supplier requiring it to rectify the contravention; and
- if the gas supplier fails to comply with such a notice, the Authority may take one or more of the following steps:

- send a letter of reprimand to the gas supplier;
- order the gas supplier to pay a penalty of up to \$100,000; or
- cause the contravention to be rectified.

The contact details of the Economic Regulation Authority are listed below.

Economic Regulation Authority

Phone: (08) 9213 1900

Fax: (08) 9213 1999

In person: 6th Floor, Governor Stirling Tower, 197 St George's Terrace, Perth WA 6000

Postal address: PO Box 8469, Perth Business Centre, Perth WA 6849