

# Decision on Amendment to Gas Trading Licences – Gas Marketing Code of Conduct 2008

27 January 2009

Economic Regulation Authority



WESTERN AUSTRALIA

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## DECISION

1. On 27 January 2009, the Economic Regulation Authority (Authority) approved the amendment of all gas trading licences by replacing the Gas Marketing Standard (Schedule 2), with reference to the approved Gas Marketing Code of Conduct 2008 (GMCC).
2. The amendment was made pursuant to section 11W(1) of the *Energy Coordination Act 1994* (Act).
3. Pursuant to section 11W(1) of the Act, the Authority approves the amendment to the following Gas Trading Licences (GTL):
  - GTL9 - Alinta Sales Pty Ltd;
  - GTL7 - Origin Energy Retail Pty Ltd;
  - GTL8 - Synergy (Electricity Retail Corporation);
  - GTL10 - Wesfarmers Kleenheat Gas Pty Ltd; and
  - GTL11 - WorleyParsons Asset Management Pty Ltd .

## REASONS

1. Under section 11ZPM of the *Energy Coordination Act 1994* (Gas Act), the Authority may, in consultation with the Gas Marketing Code Consultative Committee (GMCCC), approve a code of conduct to regulate and control the conduct of the holders of trading licences and gas marketing agents.
2. In May 2005, the GMCCC commenced a review of the Gas Marketing Code of Conduct (GMCC). The GMCCC favoured the expansion of the GMCC to include matters covered by the *Code of Conduct for the Supply of electricity to Small Use Customers* (Electricity Small Use Code). This was not possible due to the limitation of section 11ZPM only applying to marketing matters. The GMCCC recommended that the Authority revoke the GMCC and that a new, substantially more streamlined, instrument should be implemented as a licence condition.
3. In March 2007, the Authority approved the repeal the Gas Marketing Code of Conduct under section 11ZPM of the Gas Act and the implementation of the Gas Marketing Standard as a licence condition under section 11M(1).
4. On 2 November 2007, the Authority gazetted the repeal of the GMCC. On 6 November 2007, Parliamentary Counsel raised concerns regarding the legality of the Authority revoking the Code and not replacing it with an alternative Code.
5. On 17 December 2007, the State Solicitors Office (SSO) provided legal advice that contradicted the Authority's position. The SSO concluded that, whilst the Authority could make licence conditions regarding matters not otherwise covered by the Act (under section 11M), it could not make a licence condition regarding a matter already the subject of a code provision in the Act (such as marketing under section 11ZPM). The Authority accepted the advice provided by the SSO.

6. On 12 January 2008, the Authority approved the Gas Marketing Code of Conduct 2008 and also approved the removal of the Gas Marketing Standard from all gas trading licences.

LYNDON ROWE  
**CHAIRMAN**