



Gas Marketing Code Consultative Committee

2011 Review of the Gas Marketing Code of Conduct

Draft Review Report

2 June 2011

A full copy of this document is available from the Economic Regulation Authority website at www.erawa.com.au.

For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 9213 1900

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1 INVITATION FOR SUBMISSIONS

This Draft Review Report (**report**) presents the preliminary findings of the statutory review of the *Gas Marketing Code of Conduct 2008* (**Code**) carried out by the Gas Marketing Code Consultative Committee (**GMCCC**).

The *Energy Coordination Act 1994* (**Act**) requires that the GMCCC undertake a review of the Code every two years and provide a report to the Economic Regulation Authority (**Authority**).

The Act states that the purpose of the review is to 're-assess the suitability of the provisions of the code of conduct for the purposes of section 11ZPM(2)'. That section relates to the objective of the code which is to:

...regulate and control the conduct of gas trading licensees 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.

The GMCCC has made a number of preliminary recommendations to retain, amend or delete provisions of the Code.

The GMCCC invites written submissions from interested parties.

Submissions should be addressed to:

Mr Paul Kelly
GMCCC Chairman
PO Box 8469
PERTH BC WA 6849
Fax: (08) 9213 1999
Email: gmccc@erawa.com.au

Submissions may be provided in hard-copy or electronic form and must be received by 4pm (WST) on Friday 15 July 2011.

Should you require further information, please contact Ms Lanie Chopping, Assistant Director, Customer Protection on (08) 9213 1900.

Confidentiality

In general, all submissions from interested parties will be treated as in the public domain and placed on the Authority's website. The receipt and publication of any submission lodged for the purposes of this public consultation shall not be taken as indicating that the GMCCC or the Authority has formed an opinion as to whether or not any particular submission contains any information of a confidential nature.

Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which it is claiming confidentiality, and specify in reasonable detail the basis upon which the claim is made. The treatment of information provided in submissions, including confidential information, will be handled in accordance with applicable legislation.

2 Executive Summary

The Authority is required by the Act to appoint the GMCCC to review the Code bi-annually. The GMCCC is required to undertake public consultation as part of the review and to report the review findings to the Authority.

This report outlines the proposed recommendations of the GMCCC 2011 review of the Code. The report is a draft and after considering the issues raised in submissions the GMCCC will prepare a Final Review Report for the Authority.

In undertaking the review the GMCCC is faced with significant changes to related legislation in both Western Australia and nationally. Consideration regarding the extent of duplication and overlap with provisions in other legislation has been the major area of deliberation for the GMCCC to date.

The GMCCC proposes the following recommendations:

Recommendation 1 – Amend the Code to remove duplication with the Australian Consumer Law (comprised of the *Fair Trading Act 2010* (WA) and the *Competition and Consumer Act 2010* (Cth)), *Spam Act 2003*, *Spam Regulations 2004*, *Do Not Call Register Act 2006*, *Telecommunications Industry Standard 2007* and the *Privacy Act 1988*.

Recommendation 2 - Retain remaining provisions (subject to recommendation 3).

Recommendation 3 – Amend remaining provisions to achieve consistency with the *Code of Conduct for the Supply of Electricity to Small Use Customers*.

Recommendation 4 – Note the National Energy Customer Framework which will apply in the National Energy Market from 1 July 2012 but do not propose any amendments to the Code to achieve consistency at this time.

In addition to the proposed recommendations the GMCCC has proposed a small number of consequential amendments and corrections, which are outlined in Attachment 2.

The report is comprised of the following sections:

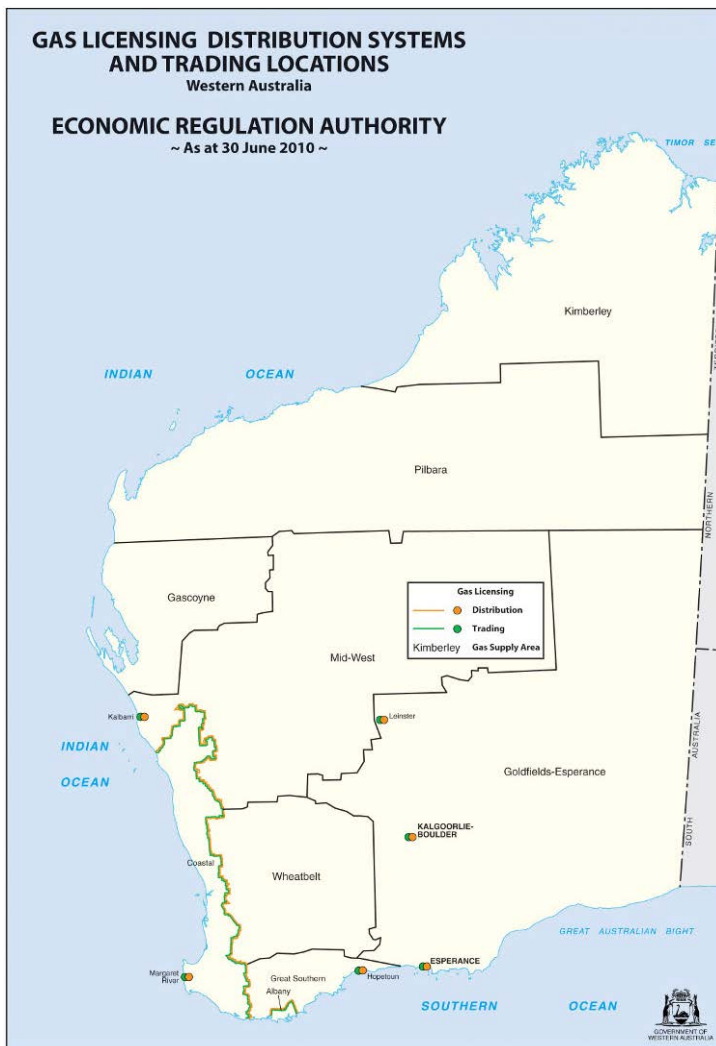
- Executive Summary
- Background
- Recommendations
- Attachment 1 – GMCCC Terms of Reference
- Attachment 2 – Table of proposed amendments
- Attachment 3 – Table of Code provisions not duplicated by other legislation
- Attachment 4 – Proposed new Code (with track changes)
- Attachment 5 – Proposed new Code (clean copy)
- Attachment 6 – Comparison of NECF and Code provisions

3 Background

3.1 The Gas Market in Western Australia

The Authority issues gas trading licences which permit retailers to supply gas in one or more supply areas, or one or more parts of one or more supply areas. Figure 1 shows the eight gas supply areas in the State and the locations of gas trading operations that were licensed by the Authority as at 30 June 2010.

Figure 1 WA Gas Supply Areas



In WA only the small use market is regulated. A small use customer is a customer who consumes less than 1TJ of gas per annum. At the moment 1 TJ of gas costs approximately \$22,500.

During 2009/10, there were four gas retailers active in the small use market:

- Alinta Sales Pty Ltd (Alinta Sales);
- Electricity Retail Corporation (t/a Synergy);
- Wesfarmers Kleenheat Pty Ltd (Wesfarmers); and

- WorleyParsons Asset Management (WorleyParsons).

At 30 June 2010, the WA gas retail market comprised approximately 613,000 residential and non-residential small use customers.

The retail market is dominated by Alinta Sales, which holds a licence to retail gas in the Coastal, Goldfields-Esperance and Great Southern supply areas. As at 30 June 2010, Alinta Sales supplied 99.9% of total small use customer accounts.

The remaining 0.1% of customers are shared between Wesfarmers (who supply reticulated LPG in Margaret River and Albany), WorleyParsons (who supply natural gas in Esperance) and Synergy (who supply natural gas in the Coastal, Goldfields-Esperance and Great Southern supply areas).

The WA Government has placed a moratorium on Synergy which means that Synergy is unable to sell gas to customers that consume less than 0.18TJ (around \$4,000) of gas per annum. More information about the moratorium is available on the Office of Energy website.

Perth Energy were granted a gas trading licence in 2009, however, Perth Energy did not have any gas customers in 2009/10.

3.2 Gas Marketing Code of Conduct

The Code is made under section 11ZPM of the Act. The Code regulates and controls the conduct of gas trading licensees 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.

The original Code commenced operation on 31 May 2004.

Under the Act, the GMCCC is required to review the Code and provide its findings to the Authority. A review was required to be undertaken as soon as practicable after 12 months of the Code's operation and then every two years.

The first Code review was undertaken between 2005 and 2007 with the GMCCC Final Review Report published in March 2007. The Authority accepted the recommendation of the GMCCC to repeal the Code and replace with a Gas Marketing Standard.

In 2008, the Authority agreed that the protections afforded to gas customers should be consistent with those afforded to electricity customers. The Authority therefore developed the *Compendium of Gas Customer Licence Obligations (Gas Customer Code) (Compendium)*. The Compendium is a series of licence conditions appearing in a schedule in all gas trading and distribution licences. The Compendium mirrors all of the relevant provisions of the *Code of Conduct for the Supply of Electricity to Small Use Customers (Electricity Code)* with the exception of the marketing provisions as they are dealt with in this Code.

The Authority also administers the Electricity Code which is made under section 79 of the *Electricity Industry Act 2004 (Electricity Act)*. The Electricity Code controls the conduct of electricity retailers and distributors in a range of customer areas including marketing. As is the case under the Act, the Electricity Act requires the Authority to establish a

committee (the Electricity Code Consultative Committee (**ECCC**)) and for the ECCC to review the Electricity Code. The ECCC has completed two reviews of the Electricity Code. The most recent review was completed in late 2009 and resulted in the Authority amending the Electricity Code in July 2010.

3.3 What is 'Marketing'

The Code defines marketing as:

“**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 is traditionally associated with competitors in a market promoting their products and endeavouring to get customers to 'sign up' to particular offers. The definition of marketing in the Code includes this kind of marketing and also extends to arrangements surrounding the offer and acceptance of contracts where there is little or no real competition or in situations where the customer approaches the retailer to enter into the contract.

3.4 Gas Marketing Code Consultative Committee

In late 2010 the Authority approved new Terms of Reference for the GMCCC (**Attachment 1**).

The GMCCC Terms of Reference allow for the GMCCC to comprise:

- a Chairperson from the Authority, who has no voting rights;
- an executive officer from the Authority, who has no voting rights;
- a government agency representative from the Department of Commerce;
- a government agency representative from the Office of Energy;
- three consumer organisation representatives; and
- three industry representatives.

Following consultation with the gas licensees and the other consumer consultative committees established by the Authority, the following members were appointed to the GMCCC in March 2011.

Industry representatives:

- Mr Geoff White – Alinta Sales Pty Ltd
- Mr Simon Thackray – Electricity Retail Corporation (t/a Synergy)
- Mr Brendan McColl – Wesfarmers Kleenheat Pty Ltd

Consumer organisation representatives:

- Mr Andrew Canion – Small Enterprise Network (Chamber of Commerce & Industry)
- Ms Amelia Brancato – Western Australian Council of Social Service
- Ms Julie Abela – Salvation Army

Government representatives:

- The Department of Commerce nominated Mr Gerry Milford as their representative.
- The Office of Energy nominated Ms Lita Geros as their representative.

Authority staff:

- Mr Paul Kelly, Executive Director, Licensing, Monitoring & Customer Protection remains as Chairman.
- Ms Lanie Chopping, Assistant Director, Customer Protection is executive officer.

The GMCCC Terms of Reference provide detail regarding the decision-making model to be employed by the GMCCC.

3.5 Review Process & Code Amendment Requirements

The Secretariat of the Authority prepared a Discussion Paper for the consideration of the GMCCC in April 2011. The GMCCC met to discuss the issues outlined in the Discussion Paper and after considering a draft, has approved this report.

The Act requires that the GMCCC undertake consultation with interested parties and consider any submissions made before providing its advice to the Authority. The GMCCC has provided a five week period for this consultation process.

Following receipt of submissions the GMCCC will consider the issues raised and provide a Final Review Report to the Authority.

After consideration of the Final Review Report the Authority may decide to propose amendments to the Code. The Act requires that any proposed amendments must be sent to the GMCCC for advice and that the GMCCC must undertake consultation with interested parties before providing that advice.

4 Recommendations

4.1 Remove duplication with other legislation

Recommendation 1

Amend the Code to remove duplication with the *Australian Consumer Law* (comprised of the *Fair Trading Act 2010* (WA) and the *Competition and Consumer Act 2010* (Cth)), *Spam Act 2003*, *Spam Regulations 2004*, *Do Not Call Register Act 2006*, *Telecommunications Industry Standard 2007* and *Privacy Act 1988*.

The GMCCC has identified a significant number of provisions that are duplicated by other legislation which is enforced by regulators other than the Authority. The detail of these provisions is provided below.

On 1 January 2011 the new Australian Consumer Law (ACL) commenced. The ACL is Schedule 2 to the *Competition and Consumer Act 2010*.

The ACL includes:

- a new, national unfair contract terms law covering standard form contracts;
- a new, national law guaranteeing consumer rights when buying goods and services, which replaces existing laws on conditions and warranties;
- a new, national product safety law and enforcement system;
- a new, national law for unsolicited consumer agreements, which replaces existing State and Territory laws on door-to-door sales and other direct marketing;
- simple national rules for lay-by agreements; and
- new penalties, enforcement powers and consumer redress options, which currently apply nationally.

The ACL applies nationally and in all States and Territories (pursuant to the relevant Fair Trading Acts), and to all Australian businesses. The ACL applies in Western Australia as modified by section 36 of the *Fair Trading Act (WA) 2010*.

A number of provisions in the current Code are in conflict with, or are now contained in, the ACL. For example, up until 1 January 2011 the energy industry was exempt from door-to-door trading regulations (in the *Door to Door Trading Act 1987*). Matters, such as permitted call times for face-to-face contact, were dealt with in the Code. Since 1 January 2011, the *Door to Door Trading Act 1987* ceases to apply and the ACL contains the relevant provisions relating to door to door trading. The energy industry is not exempt from the provisions in the ACL and therefore, the Code may be amended either to reflect consistency with these ACL provisions or to remove the provisions as they are now contained in the ACL.

The current Code differentiates between door-to-door marketing (which the Code defines as including going from place to place, telephone and electronic means), and other forms

of marketing (which could include exhibitions, public places, or marketing conducted at the premises of the licensee). The ACL introduces the concept of “unsolicited consumer agreements”. Whilst a contract entered into as a result of “door-to-door marketing” is largely the same as an “unsolicited consumer agreement” there are some differences.

Under the ACL, an unsolicited consumer agreement is an agreement:

- that is for the supply of goods or services to a consumer;
- is made as a result of negotiations between a dealer and the consumer either in each other’s presence at a place other than the supplier’s business or trade premises, or by telephone;
- where the consumer did not invite the dealer to come to that place or to make that telephone call; and
- where the total price payable by the consumer under the agreement is not ascertainable at the time the agreement is made or is more than \$100 (or as prescribed by the relevant regulations).

The ACL provides a range of protections for customers in relation to unsolicited consumer agreements (which by definition arise as a result of marketing conducted at premises other than the licensee’s or by telephone (voice)). The ACL does not cover agreements made as a result of marketing contact which occurs via fax, email, SMS or MMS. These forms of contact are dealt with in other legislation (see below).

The ACL does not contain any provisions relating to marketing in respect of solicited consumer agreements. Whilst customers are afforded a broad range of contract and other customer protections regardless of whether the contract is solicited or unsolicited it is only marketing in respect of unsolicited agreements that is captured under the ACL. Attachment 3 contains a list of all of the provisions that are not duplicated by other legislation, including some provisions related to solicited consumer agreements.

Telephone contact in Australia is generally dealt with nationally by the *Do Not Call Register Act 2006 (DNC Act)*. The DNC Act allows a customer to register their telephone number/s to avoid receiving unsolicited telemarketing calls (not SMS) and marketing faxes. Any business that either calls or faxes a listed number, or arranges for calls or faxes to be made or sent on its behalf, may be in breach of the legislation and could face penalties. The DNC Act is enforced by the Australian Communications and Media Authority (**ACMA**). ACMA has powers to issue enforcement notices and financial penalties for businesses that breach the DNC Act.

The ACMA also enforces the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Telemarketing Industry Standard)* which establishes a minimum set of requirements for telemarketing.

Telephone (voice) contact has been intentionally included in the ACL only insofar as it relates to matters not covered by either the DNC Act or the Telemarketing Industry Standard.

Contact by ‘electronic means’ (currently covered by the Code) is not covered by the ACL. ‘Electronic means’ is defined in the current Code as internet, email, facsimile or other means. Text and email contact is dealt with in the *Spam Act 2003 (Spam Act)*. Under the Spam Act, it is illegal to send, or cause to be sent, unsolicited commercial electronic messages.

The Spam Act covers email, instant messaging, SMS and MMS (text and image-based mobile phone messaging) of a commercial nature. It does not cover facsimile and voice telemarketing (which are dealt with by the DNC Act and the Telemarketing Industry Standard) or internet pop-ups.

The Spam Act provides strict guidelines on the information that can be sent via these methods, including a requirement for the customer to provide consent, capacity for the customer to unsubscribe and the requirement to provide identifying information.

The ACMA is responsible for enforcing the Spam Act and significant penalties apply for a breach.

The *Privacy Act 1988* protects the privacy of individuals within Australia. The Privacy Act 1988 is enforced by the Federal Privacy Commissioner within the Office of the Australian Information Commissioner.

The GMCCC considered whether it should recommend deletion of duplicated provisions or amendment of the Code to achieve consistency with the duplicated provisions.

Customer stakeholders may have concerns that if the duplicated provisions are deleted a customer will not be able to use the Energy Ombudsman WA (**EOWA**) to have their complaint resolved. However, the EOWA has advised that it accepts complaints between customers and licensees regardless of whether the matter is dealt with by State or Commonwealth legislation. The purpose of the EOWA is to resolve complaints not to enforce the law (this is the role of the relevant regulator), and a complaint can be resolved regardless of whether the conduct standards are set by the Code or another piece of legislation.

The GMCCC agrees that it is inefficient and unnecessary for the Code to contain provisions which duplicate other legislation enforced by regulators other than the Authority.

Attachment 2 contains a table of proposed amendments to the Code and the rationale for doing so.

4.2 Retain remaining provisions

Recommendation 2

Retain remaining provisions (subject to recommendation 3).

Attachment 3 contains a list of Code provisions that are not duplicated by other legislation.

These provisions relate to matters including:

- the retailer obligation to ensure gas marketing agents comply with the Code;
- information to be provided to the customer; and
- marketing conduct.

The GMCCC proposes that these provisions be retained and in some cases amended to achieve consistency with the Electricity Code (recommendation 3) or to correct minor errors or inconsistencies.

4.3 Amend remaining provisions to be consistent with the Electricity Code

Recommendation 3

Amend remaining provisions to achieve consistency with the *Code of Conduct for the Supply of Electricity to Small Use Customers*.

The ECCC reviewed the Electricity Code in 2009 and as a result of its consideration of the ECCC Final Review Report the Authority proposed and subsequently made a number of amendments to the Electricity Code. These amendments can be summarised as:

- Amendments to the marketing related definitions contained within the Code to remove unnecessarily complicated definitions of the parties involved in marketing.
- Removal of some requirements regarding non-residential customers. For example, removal of the requirement to inform non-residential customers about concessions (as no concessions are payable).
- Restriction on the number of occasions that the contract is required to be provided to the customer.

The GMCCC has proposed a number of amendments to the Code to provide consistency with the Electricity Code.

As stated above, Attachment 2 contains a table of proposed amendments to the Code including those that will achieve consistency with the Electricity Code.

4.4 Note the National Energy Customer Framework

Recommendation 3

Note the National Energy Customer Framework which will apply in the National Energy Market from 1 July 2012 but do not propose any amendments to the Code to achieve consistency at this time.

The Ministerial Council on Energy (**MCE**) has developed the NECF which is due to be implemented on 1 July 2012. The National Energy Customer Framework (**NECF**) is a set of laws and rules that will govern retail and distribution non-price regulation in the National Energy Market.

Whilst the WA Government participates in the MCE the GMCCC understands that there is no intention of implementing the NECF in WA at this stage. The GMCCC has noted the proposed changes in NECF and reviewed a comparison of these provisions and the Code (**Attachment 6**).

Given the fact that the NECF has not yet been implemented the GMCCC has agreed that it would be premature to propose anything other than noting the NECF changes.

APPENDICES

Appendix 1 - *Gas Marketing Code of Conduct* Terms of Reference

**TERMS OF REFERENCE
GAS MARKETING CODE CONSULTATIVE COMMITTEE (2011-2013)**

Section 11ZPM of the *Energy Coordination Act 1994* (EC Act), gives the Economic Regulation Authority (ERA) the power to approve a Code in consultation with the Gas Marketing Code Consultative Committee (the Committee);

The Code is to regulate and control 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 standards of conduct in the marketing of gas to customers;

Section 11ZPO of the EC Act gives the Authority the power to establish the Committee to advise it on matters relating to the Code.

The following are the Terms of Reference for the Committee established under section 11ZPO of the EC Act

1. Purpose of the Committee

The Committee is established for the purpose of:

- (i) advising the Authority on matters relating to the Code;
- (ii) undertaking reviews of the Code; and
- (iii) making recommendations to the Authority on any additions, variations, or deletions to the Code.

2. Membership

- (a) The membership of the Committee currently comprises:
 - (i) a Chairperson from the Authority, who has no voting rights;
 - (ii) an executive officer from the Authority, who has no voting rights;
 - (iii) a government agency representative from the Department of Commerce;
 - (iv) a government agency representative from the Office of Energy;
 - (v) three consumer organisation representatives;
 - (vi) three industry representatives;
- (b) All members of the Committee (apart from the Authority representatives) shall have equal voting rights.
- (c) The Authority may discharge, alter or reconstitute the Committee at its discretion as provided for under section 11ZPO(2)(b) of the EC Act.
- (d) Membership terms will be for a period of two years.

3. Funding and resources of the Committee

- (a) On request and subject to the approval of the Authority, a member of the Committee may receive an allowance for participating on the Committee at a level set by the Minister for Public Sector Management.
- (b) The Authority shall provide the support services necessary for the Committee to carry out its functions.

4. Meeting governance

- (a) The Chairman will endeavour to achieve consensus of the members present.
- (b) If consensus is not possible voting will be by a majority vote of 50% of members plus one.
- (c) Members not present will be allowed a vote out of session subject to the discretion of the Chairman.

- (d) Members unable to attend will be allowed to send a proxy subject to the discretion and prior approval of the Chairman.
- (e) Decisions may be made by e-mail communication at the discretion of the Chairman.

5. Consultation

The Authority has identified that “interested parties” for the purposes of the Act are gas licensees and those parties listed as interested parties to receive gas licensing Notices from the Authority.

6. Amendment, Repeal or Replacement of the Code

The Committee shall formulate appropriate procedures, consistent with the requirements of the EC Act, for the provision of advice to the Authority at the time that the Authority chooses to exercise its power to amend, repeal or replace the Code under section 11ZPU(1) of the EC Act.

7. Review of the Code

The Committee shall formulate appropriate procedures, consistent with the requirements of the EC Act, for carrying out each review of the Code at the time each review becomes necessary as set out under section 11ZPV(1) of the EC Act.

8. Code Consistency

The Committee shall:

- (a) Endeavour to promote consistency across the gas and electricity Codes in Western Australia.
- (b) Keep informed of the trends in Marketing Code development in the energy sector in other states and promote Code consistency at a national level.
- (c) Advise the Authority on any Code changes it considers necessary in line with the above objectives as required from time to time.
- (d) Promote Code consistency according to principles of best practice in consumer protection.

Appendix 2 – Table of proposed amendments to the Code

Table of proposed changes to the Gas Marketing Code of Conduct 2008

Abbreviations used:

Code	= Gas Marketing Code of Conduct 2008 (WA).
Electricity Code	= Code of Conduct for the Supply of Electricity to Small Use Customers 2008 (WA).
ACL	= Schedule 1 of the <i>Fair Trading Act 2010</i> (WA) and Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth) (together, implement the Australian Consumer Law, as applicable in Western Australia).
DNCR Act	= Do Not Call Register Act 2006 (Cth)
Telemarketing Industry Std	= Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth).
Spam Act	= Spam Act 2003 (Cth) together with the Spam Regulations 2004 (Cth).

Clause	Amendment	Rationale	GMCCC approval
1.4(6)	Replace references to “marketing representative” with the term “gas marketing agent”. Replace reference to “marketer’s” with references to “retailer’s or customer’s”.	Streamline with the Electricity Code – marketing terms.	Q2
1.4(7)	Delete subclause 1.4(7) in its entirety.	Streamline with the Electricity Code – marketing terms.	Q2
1.5	Definitions:		
	Insert definition of “ Australian Consumer Law (WA) ”	Remove duplication with the ACL.	Q10
	Insert definition of “ Compendium ”.	To differentiate between the Compendium and the Code.	Q27
	Amend definition of “ concession ” so that it relates to residential customers only.	Streamline with the Electricity Code – to reflect that concessions currently available to residential customers only.	Q4
	Amend definition of “ contact ” to remove the words “or by post, facsimile or electronic communication”.	Limit the definition to contact which is face to face and or over the telephone.	Q12
	Move definition of “ contract ” to correct	Corrects formatting error.	Q27

alphabetical order.		
Amend definition of “ cooling off period ”. Delete the words “in relation to a door to door contract or non-standard contract”.	Remove overlap of provisions with ACL.	Q10
Delete definition of “ Customer Service Charter ”.	Retailers no longer required to maintain customer service charters - see subclause 2.4(2)(a).	Q8 and Q27
Insert definition for “ Do Not Call Register Act ”.	Remove overlap of provisions with the DNCR Act.	Q27
Amend definition of “ door to door marketing ”. Replace references to “marketing representative” with “gas marketing agent”. Insert “on behalf of, or for the benefit of, a retailer or party other than the customer”. Remove reference to telephone and electronic means from definition.	Streamline with the Electricity Code – marketing terms. Remove duplication with the Spam Act and Telemarketing Industry Std.	Q2 Q13
Delete definition of “ electronic means ”	Limit application of the Code to contact which is face to face and or over the telephone.	Q12
Amend definition of “ gas marketing agent ” to remove subclause (b).	Inclusion of persons who act on behalf of the customers no-longer relevant as this only applied to clause 2.7 in Part 2, which has been deleted.	
Delete definition of “ marketer ”.	Streamline with the Electricity Code – marketing definitions	Q2
Amend definition of “ marketing ” to remove electronic means.	Limit application of the Code to contact which is face to face and or over the telephone.	Q12
Amend definition of “ marketing identification number ”. Replace reference to “marketer” with “retailer or other party”. Replace reference to “marketing representative” with “gas marketing agent”.	Streamline with the Electricity Code – marketing definitions.	Q2
Delete definition of “ marketing representative ”.	Streamline with the Electricity Code – marketing terms.	Q2

	Delete definition of “ permitted call times ”.	Remove duplication with the ACL and the Telemarketing Industry Std.	Q14 and Q15
	Insert definition for “ solicited consumer agreement ”.	Remove duplication with the ACL.	Q9
	Insert definition for “ telemarketing calls ”	Adopts definition in DNCR Act.	Q27
	Insert definition for “ Telemarketing Industry Standard ”	Remove duplication with the Telemarketing Industry Standard.	Q15
	Insert definition for “ telephone ”.	Streamline with the Electricity Code.	Q5
	Insert definition for “ unsolicited consumer agreement ”.	Remove duplication with the ACL. – adopts definition in ACL.	Q9
	Amend definition of “ verifiable consent ”. Replace reference to “marketer or retailer (as appropriate)” with “retailer or gas marketing agent (whichever is relevant)”.	Streamline with the Electricity Code – marketing terms.	Q2
Div. 1	Replace reference to “marketers” with “retailers” in heading.	Streamline with the Electricity Code – marketing terms.	Q2
2.1	Replace reference to “marketer” with the term “retailer” in both body and heading of clause. Delete reference to “marketing representatives”. Insert reference to “gas marketing agents”.	Streamline with the Electricity Code – marketing terms.	Q2
2.2 (1)	Replace reference to “marketer” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
	Amend to remove application to unsolicited consumer agreements	To remove duplication with the ACL.	Q17 and Q22
2.2 (2)	Replace references to “marketer” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
	Amend to remove application to unsolicited consumer agreements	To remove duplication with the ACL.	Q17 and Q22
	Amend to delete “by telephone or electronic means”	Limit application of the Code to contact which is face to face and or over the telephone.	Q12
2.2 (3)	Replace reference to “marketer” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
	Amend to remove application to unsolicited	To remove duplication with the ACL.	Q17 and

	consumer agreements.		Q11
2.2 (4)	Amend and remove application to “door to door” marketing.	To remove duplication with the ACL.	Q11
2.2 (5) and 2.2 (6)	Delete clauses 2.2(5) and 2.2(6).	To bring in line with, and remove duplication of, provisions in the ACL.	Q9* and Q11
2.3 (1)	Replace reference to “marketing representative” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
2.3 (2)	Replace reference to “marketing representative” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
	Amend to remove application to unsolicited consumer agreements.	To remove duplication with the ACL.	Q11
2.3 (3)	Replace reference to “marketing representative” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
	Replace the words “entered into as a result of door to door marketing” with “an unsolicited consumer agreement”	To bring in line with the ACL.	Q11
2.4 (1)	Amend to remove application to unsolicited customer agreements”.	Remove duplication with the ACL.	Q18
	Insert reference to “gas marketing agent”. Delete references to “marketer”. Insert references to “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
2.4(2)	Delete references to “marketer” and “marketing representative”. Insert references to “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
2.4(2)(a)	Delete subclause (i).	Trading licences no longer require retailers to prepare Customer Service Charter	Q8 and Q27
	Amend (ii) to include Compendium.	To differentiate between the Compendium and the Code.	Q27
2.4(2)(c)	Replace references to “marketer” and “marketing representative” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
2.4(2)(e)	Amend to make subclause relate to residential customers only.	Streamline with the Electricity Code – to reflect that concessions currently available to residential customers only.	Q4

2.4 (2)(g)	Amend to make subclause relate to residential customers only.	Streamline with the Electricity Code – to reflect that language and TTY services relate to residential customers only.	Q2
2.4 (2)(j)	Amend to remove application to unsolicited consumer agreements.	Remove duplication with the ACL	Q19
2.4 (3)	Amend and consolidate with subclause 2.4(4).	Streamline with the Electricity Code – limit circumstances under which written copies of contract must be provided.	Q6
2.4 (4)	Delete subclause 2.4(4) in its entirety.	Simplify provisions (old subclause 2.4(4) incorporated into subclause 2.4(3) above).	Q6
2.4(5)	Insert a new subclause 2.4(5) which limits requirements to provide information to customers.	Streamline with the Electricity Code – limit circumstances under which written copies of contract must be provided.	Q18
2.5 (1)	Delete subclause	To remove duplication with the ACL.	Q20
2.5 (2)	Delete subclause.	To remove duplication with the ACL.	Q21
2.5 (3)	Delete references to “marketing representative”. Insert references to “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
	Amend to make subclause relate to residential customers only.	Streamline with the Electricity Code – to reflect that concessions currently available to residential customers only.	Q4
2.5 (4)	Delete references to “marketing representative”. Insert references to “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
	Amend to limit application to solicited consumer agreements only.	Remove duplication with the ACL.	Q22
2.5 (5)	Delete references to “marketer”. Insert references to “retailer or other party”.	Streamline with the Electricity Code – marketing terms.	Q2
2.6 (1)	Delete clause 2.6(1) in its entirety.	Remove duplication with the Telemarketing Industry Std and the Spam Act.	Q23 and Q12

2.6 (2)	<p>Delete reference to “marketing representative”. Insert “gas marketing agent”.</p> <p>Delete reference to “marketer”. Insert reference to “other party”.</p> <p>Delete reference to “marketer’s”. Insert reference to “gas marketing agent’s”.</p>	Streamline with the Electricity Code – marketing terms.	Q2
2.6 (3)	<p>Delete reference to “marketing representative”. Insert reference to “gas marketing agent”</p> <p>Delete references to “marketer”. Insert references to “other party”.</p> <p>Delete reference to “marketer” in subclause (c)(v). Insert reference to “the retailer of other party on whose behalf the contact is being made”.</p>	Streamline with the Electricity Code – marketing terms.	Q2
	Amend (a) to limit application to “solicited consumer agreements” only.	Remove duplication with the ACL.	Q24
2.6 (4)	Delete clause 2.6(4) in its entirety.	To remove duplication of, and bring into line with, the ACL and the Telemarketing Industry Std.	Q25
2.6 (5) and 2.6 (6)	Delete 2.6 (5) & 2.6 (6) in their entirety.	To remove duplication with the ACL, Telemarketing Industry Std and Spam Act.	Q14 and Q15
2.6 (7)	<p>Replace reference to “marketer” with “retailer or other party”.</p> <p>Replace reference to “marketing representative” with “gas marketing agent”.</p>	Streamline with the Electricity Code – marketing terms.	Q2
	Delete subclause (a)(iv) which applies to contact by electronic means.	Limit application of the Code to contact which is face to face and or over the telephone.	Q12
2.6 (8)	Delete reference to “marketer”. Insert reference to “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.	Q2
2.7	Delete clause 2.7 in its entirety.	To remove duplication with the ACL, the DNCR Act and the Spam Act.	Q26 and Q12
2.8	Delete clause 2.8 in its entirety	To remove duplication with the National Privacy Principals.	Q27
2.11	Delete references to “marketer”. Insert	Streamline with the Electricity Code –	Q2

	references to "gas marketing agent".	marketing terms.	
	Insert "within 28 days of receiving the request" into subclause 2.11 (1).	Streamline with the Electricity Code.	Q7

Appendix 3 – Table of Code provisions not duplicated by other legislation

Summary of existing provisions in Gas Marketing Code of Conduct 2008 not covered by the ACL or other legislation

Clause	Summary of provision	Rationale
Division 1 (Clause 2.1)	Retailer obligations Retailers responsible for ensuring compliance with the Code by gas marketing agents (GMA).	This is not dealt with in other legislation and should be retained in the Code
Division 2 (Clause 2.2)	Entering into contracts (which are solicited consumer agreements) Non-standard form contracts must be signed by customer, except if customer initiated contract in which case only customer's verifiable consent is required. Standard form contracts are not required to be signed by customer but date must be recorded. Terms and conditions must be made available to customer at request (free of charge)	This clause now only applies to 'solicited consumer agreements', as this is not covered in the ACL. <i>(NB query whether distinction between standard form contracts and non standard form contracts needs to be retained given advice that non-standard form contracts currently exist only in relation to pre-payment meters)</i>
Division 3 (Clauses 2.3 and 2.4)	Information to be provided to a customer <i>Information to be provided before entering into contract (clause 2.3)</i> Customer to be provided the following information: <ul style="list-style-type: none"> • It may choose standard form contract • Difference between standard form and non standard form contract • How and when terms of contract given/made available • Customer entitled to written contract when requested For standard form contracts (that are solicited consumer agreements) and non-standard form contracts that are initiated by customer, customer's verifiable consent to receipt of information is required. For standard form contracts (that are unsolicited consumer agreements) or non-standard form contracts that are not initiated by customer, customer's written acknowledgement to receipt of	These clauses will continue to apply to all contracts as this is not covered in other legislation. <i>(NB query whether distinction between standard form contracts and non standard form contracts needs to be retained given advice that non-standard form contracts currently exist only in relation to pre-payment meters)</i>

	<p>information must be obtained.</p> <p><i>Information to be provided at time of or after entering into a contract (clause 2.4)</i></p> <p>Retailer or GMA must at the time of entering into new agreement offer to give/make available a copy of contract to customer.</p> <p>Customer to be provided the following information before entering into contract:</p> <ul style="list-style-type: none"> • How customer can obtain copy of the Code and Compendium, scope of the Code and the parties that must comply with the Code • Customer concessions • How retailer may assist customer in financial hardship • Distributor's 24 hour telephone number for faults emergencies • Residential customer's access to multi lingual and TTP services • How to make a complaint, gas customer safety awareness program • cooling off period (solicited consumer agreements) <p>Information is to be provided:</p> <ul style="list-style-type: none"> • no later than with or on the customer's first bill (standard form contracts) • before the customer has entered into the contract, GMA must obtain customer's written acknowledgement of receipt (non-standard contracts or standard form contracts which are unsolicited consumer agreements) <p>No requirement to provide the above information if provided in the past 12 months or customer has been informed how to obtain the information.</p>	
<p>Division 4</p> <p>(Clauses 2.5 and 2.6)</p>	<p>Marketing conduct</p> <p><i>Standards of conduct (clause 2.5)</i></p> <p>Residential customers are to be advised of inclusion</p>	<p>Requirement to advise customers about concessions is retained as it is not covered in other legislation (but as it is not relevant to business customers</p>

	<p>and exclusion of concessions.</p> <p>Non-standard form contracts (solicited consumer agreements) are required to be in writing.</p> <p>Retailer must ensure that customers are able to contact them by telephone during business hours.</p> <p><i>Contact for the purposes of marketing (clause 2.6)</i></p> <p>GMA who makes contact with a customer for marketing must, on request, provide complaints telephone number and marketing ID number.</p> <p>GMA who meets customer face to face for marketing must:</p> <ul style="list-style-type: none"> • When negotiating a contract that is solicited consumer agreement tell customer the purpose of contact • Wear clearly visible and legible identity – name, photo, ID number, name of retailer • As soon as practicable provide in writing name, marketing ID, name retailer, complaints telephone number, ABN <p>When a Retailer or other party initiates contact with a customer for marketing, it must keep a record of name, address of contact and premises and type of contact made, name of GMA who made contact and date and time (except if the GMA contacts a customer in response to a customer request).</p>	<p>it has been limited to residential customers)</p> <p>Requirement for contracts to be in writing is retained in respect of solicited consumer agreements, as this is not dealt with in the ACL.</p> <p>Requirements in relation to contacting a customer for marketing purposes will continue to apply to all contracts. However, to remove duplication with the ACL, the Telemarketing Industry Standard and the Spam Act, these provisions will now only apply to face to face and telephone contact.</p>
<p>Division 5</p> <p>(Clauses 2.10 and 2.11)</p>	<p>Miscellaneous</p> <p>There is a presumption that a person who carries out marketing activity in the name, or for the benefit, of a retailer or GMA is employed by the retailer or GMA</p> <p>A GMA must keep a record of all marketing complaints and provide this information (on request) to the gas ombudsman within 28 days. Information regarding marketing complaints must be kept for 2 years.</p>	<p>This is not dealt with in other legislation and should be retained in the Code.</p>

Appendix 4 – Proposed new Code (with track changes)

Gas Marketing Code of Conduct 2008

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Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct*.

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**.

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, 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*.

“**alternative tariff**” means a tariff other than the tariff under which the **customer** is currently supplied gas.

“**Australian Consumer Law (WA)**” means *schedule 2 to the Competition and Consumer Act 2010 (Cth) as modified by section 36 of the Fair Trading Act (WA) 2010*.

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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.

“**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 as amended by the **Authority**.

“**Compendium**” means the Compendium of Gas Customer Licence Obligations.

“**complaint**” means an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.

“**concession**” means a concession, rebate, subsidy or grant related to the supply of gas, which is available to residential customers only.

“**contact**” means contact that is face to face or by telephone.

“**contract**” means a standard form contract or a non-standard contract.

“**cooling-off period**” means the period of 10 days commencing on and including the day on which the contract is made.

“**customer**” means a customer who consumes less than 1 terajoule per annum.

“**distributor**” means a person who holds a distribution licence under Part 2A of the **Act**.

“**Do Not Call Register Act**” means the Do Not Call Register Act 2006 (Cth).

“**door to door marketing**” means the **marketing** practice under which –

- (a) a gas marketing agent goes from place to place seeking out persons who may be prepared to enter, as customers, into contracts; and
- (b) the gas marketing agent or some other gas marketing agent then or subsequently enters into negotiations with those prospective **customers** with a view to arranging contracts on behalf of, or for the benefit of, a retailer or party other than the customer.

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“**Customer Service Charter**” means the customer service charter that the **retailer** is required to prepare as a condition of its trading licence.

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<#>uses **electronic means**, ¶

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“**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 programme**” means a programme 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**;
- (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 marketing agent**” means –

- (a) a person who acts on behalf of the holder of a trading licence —
 - (i) for the purpose of obtaining new **customers** for the licensee; or
 - (ii) in dealings with existing **customers** in relation to **contracts** for the supply of gas by the licensee; or
- (b) a representative, agent or employee of a person referred to in paragraph (a);
- (c) is not a person who is a customer representative.

“**gas ombudsman**” means the ombudsman appointed under the scheme approved by the **Authority** pursuant to section 11ZPZ of the **Act**.

[Note: The energy ombudsman Western Australia is the gas ombudsman appointed under the scheme approved by the Authority pursuant to section 11ZPZ of the Act.]

“**marketing**” includes engaging or attempting to engage in any of the following activities by any means, including door to door or by **telephone** –

- (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** or other party to each **gas marketing agent** acting on its behalf.

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“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**.

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<#>a person who is referred to in paragraph (a) of the definition of **gas marketing agent** and who is an employee of a **retailer**; or¶
<#>a representative, agent or employee of a person in paragraph (a).¶

“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**.

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<#>for the purposes of **telephone** and personal contact other than at customers premises between –¶
<#>9.00 a.m. and 8.00 p.m. Mondays to Fridays (other than public holidays); and¶
<#>9.00 a.m. and 5.00 p.m. Saturdays;¶
<#>for the purposes of contact at customers premises between –¶
<#>9.00 a.m. and 7.00 p.m. Mondays to Fridays (other than public holidays); and¶
<#>9.00 a.m. and 5.00 p.m. Saturdays.¶

“residential customer” means a **customer** who consumes gas solely for domestic use.

“retailer” means a person who holds a trading licence under Part 2A of the **Act**.

“solicited consumer agreement” is an agreement other than an **unsolicited consumer agreement**.

“standard form contract” means a contract that is approved by the **Authority** under section 11WF of the **Act**.

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“telemarketing calls” is defined in section 5 of the **Do Not Call Register Act**.

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“Telemarketing Industry Standard” means the **Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007**.

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“telephone” means a device which is used to transmit and receive voice frequency signals.

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“TTY” means telephone typewriter.

“unsolicited consumer agreement” is defined in section 69 of the **Australian Consumer Law**.

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“verifiable consent” means consent that is given –

- (a) expressly;
- (b) in writing or orally;
- (c) after the **retailer** or **gas marketing agent (whichever is relevant)** has in plain language appropriate to that **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.

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1.6 Application

The **Code** applies to –

- (a) **customers**;
- (b) **retailers**;
- (c) **distributors**; and
- (d) **gas marketing agents**.

1.7 Purpose

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

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 & Review

- (1) The **Code** will be amended in accordance with Part 2C of the **Act**.

Part 2 Marketing

Division 1 – Obligations particular to **retailers**

2.1 **Retailers** to ensure representatives comply with this Part

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

Division 2 – Contracts

2.2 Entering into contracts

- (1) A **gas marketing agent** must, in the course of arranging a **non-standard contract that is a solicited consumer agreement** other than in accordance with subclause (2), ensure that the **contract** is signed by the **customer**.

[Note: Under the *Electronic Transactions Act 2003*, any documents or signatures that must be provided under the Code may also be provided electronically (subject to the terms and conditions set out in the *Electronic Transactions Act 2003*.)]

- (2) If a **customer** initiates a request to a **retailer or gas marketing agent** for a **non-standard contract that is a solicited consumer agreement** the contract need not be signed but the **retailer or gas marketing agent** must obtain and make a record of the **customer's verifiable consent** that the contract has been entered into.
- (3) A **standard form contract** that is a **solicited consumer agreement** need not be signed by the **customer** but the date of the **customer** entering into the **standard form contract** must be recorded by the **gas marketing agent**.
- (4) The terms and conditions of a **standard form contract** that is a **solicited consumer agreement** must be made available to the **customer** on request at no charge.

Division 3 - Information to be provided to customers

2.3 Information to be given before entering into a contract

- (1) Before arranging a **contract**, a **gas marketing agent** must give a **customer** the following information –
- (a) that the **customer** is free to choose the **standard form contract** offered by the **retailer**;
- (b) the difference between a **standard form contract** and a **non-standard contract**;

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Deleted: <#>negotiations leading to the formation of the **contract** (whether or not they are the only negotiations that precede the formation of the **contract**) take place between the **marketing representative** and the **customer** in each other's presence in Western Australia at a place other than trade premises of the **marketer**; and¶
<#>the **marketing representative** attends at that place –¶
<#>in the course of **door to door marketing**; and¶
<#>otherwise than at the unsolicited invitation of the **customer**.¶

For the purposes of subclause (5)(b), in determining whether an invitation is solicited or unsolicited –

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<#>if an invitation arises from a communication initiated by the **marketing representative** (other than as described in paragraph (a)) the invitation is not to be regarded as unsolicited.¶

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(c) how and when the terms of the **contract** will be given or made available to the **customer**, and

(d) that the **customer** is entitled to a written copy of the **contract** when requested.

(2) For a **standard form contract** that is a solicited consumer agreement, or a **non-standard contract** in accordance with clause 2.2(2) above, the **gas marketing agent** must obtain and make a record of the **customer's verifiable consent** that the information in subclause (1) has been given.

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(3) For a **standard form contract** that is an unsolicited consumer agreement, or a **non-standard contract** other than in accordance with clause 2.2(2) above, the **gas marketing agent** must obtain the **customer's** written acknowledgement that the information in subclause (1) has been given.

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2.4 Information to be given at time of or after entering into a contract

(1) When a **customer** enters into a new **contract** that is a solicited consumer agreement with a **retailer or gas marketing agent**, a **retailer** or **gas marketing agent** must, at the time the **contract** is entered into, offer to give or make available to the **customer** a copy of the **contract**. If the **customer** accepts the offer, the **retailer** or **gas marketing agent** must, at the time the **contract** is entered into, or as soon as possible thereafter, give or make available to the **customer** a copy of the **contract**.

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(2) A **retailer** or **gas marketing agent** must give the following information to a **customer** –

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(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**;

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(b) the scope of the **Code**;

(c) that a **retailer, distributor** and **gas marketing agent** must comply with the **Code**;

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(d) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;

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(ii) **TTY** services;

(h) how to make an enquiry of, or **complaint** to, the **retailer**;

(i) general information on the **retailer's gas customer safety awareness programme**; and

(j) for solicited consumer agreements, the details of any right the customer may have to rescind the contract during a cooling-off period and the charges that may apply if the customer rescinds the contract.

(3) Subject to subclause (4), the information in subclause (2) must be given:

(a) for a standard form contract, no later than with or on the customer's first bill; and

(b) for a non standard form contract or a standard form contract that is an unsolicited consumer agreement, before the customer has entered into the contract and the gas marketing agent must obtain the customer's written acknowledgement that the information in subclause (2) has been given.

(4) Despite subclause (3), the retailer is not obliged to provide the information in subclause (2) to a customer if:

(a) the retailer has provided the information to that customer within the preceding 12 months; or

(b) when the retailer is obliged to provide the information to the customer pursuant to subclause (3), the retailer informs the customer how the customer may obtain the information in subclause (2) and, if requested, gives the information to the customer.

Division 4 – Marketing Conduct

2.5 Standards of Conduct

(1) A gas marketing agent must ensure that the inclusion of concessions is made clear to residential customers and any prices that exclude concessions are disclosed.

(2) A gas marketing agent must ensure that all non-standard contracts that are solicited consumer agreements are in writing.

(3) A retailer or other party must ensure that a customer is able to contact the retailer or other party on the retailer's or other party's telephone number during the normal business hours of the retailer or other party for the purposes of enquiries, verifications and complaints.

2.6 Contact for the purposes of marketing

(1) A gas marketing agent who makes contact with a customer for the purposes of marketing must, on request by the customer -

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

(b) provide the customer with the gas marketing agent's marketing identification number.

(2) A gas marketing agent who meets with a customer face to face for the purposes of marketing must:

(a) when negotiating a contract that is a solicited consumer agreement, as soon as practicable, tell the customer the purpose of the contact,

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- (b) wear a clearly visible and legible identity card that shows –
 - (i) his or her first name;
 - (ii) his or her photograph;
 - (iii) his or her **marketing identification number**; and
 - (iv) the name of the **retailer or other party** on whose behalf the **contact** is being made; and
- (c) as soon as practicable, provide the **customer**, in writing:
 - (i) his or her first name;
 - (ii) his or her **marketing identification number**;
 - (iii) the name of the **retailer or other party** on whose behalf the **contact** is being made;
 - (iv) the complaints **telephone** number of the **retailer or other party** on whose behalf the **contact** is being made; and
 - (v) the business address and Australian Business or Company Number of the **retailer or other party on whose behalf the contact is being made**;

(3) A **retailer or other party** must keep the following records each time it initiates **contact** with a **customer** for the purposes of **marketing**–

- (a) the name of the **customer** and –
 - (i) if the **contact** was made by **telephone**, the **telephone** number;
 - (ii) if the **contact** was made at the **customer's premises**, the address of the **premises**; and
 - (iii) if the **contact** was made at a place other than the **customer's** premises, the details and address of the location;
- (b) the name of the **gas marketing agent** who made the **contact**; and
- (c) the date and time of the **contact**.

(4) Clause 2.6(3) does not apply where a **gas marketing agent** **contacts** a **customer** in response to a **customer** request or query.

Division 5 – Miscellaneous

2.7 Presumption of authority

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**,

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 activity.

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2.8 Gas marketing agent complaints

- (1) A **gas marketing agent** must —
 - (a) keep a record of each **complaint** made by a **customer**, or person **contacted** for the purposes of **marketing**, about the **marketing** carried out by or on behalf of the **gas marketing agent**;
 - (b) on request by the **gas ombudsman** in relation to a particular **complaint**, give to the **gas ombudsman** **within 28 days of receiving the request**, all information that the **gas marketing agent** has relating to the **complaint**.
- (2) A record or other information that a **gas marketing agent** is required by this **Code** to keep must be kept for at least 2 years after the last time the person to whom the information relates was **contacted** by or on behalf of the **gas marketing agent**;

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Appendix 5 – Proposed new Code (clean copy)

Gas Marketing Code of Conduct 2008

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Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct*.

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**.

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, 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*.

“**alternative tariff**” means a tariff other than the tariff under which the **customer** is currently supplied gas.

“**Australian Consumer Law (WA)**” means schedule 2 to the *Competition and Consumer Act 2010 (Cth)* as modified by section 36 of the *Fair Trading Act (WA) 2010*.

“**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.

“**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 as amended by the **Authority**.

“**Compendium**” means the Compendium of Gas Customer Licence Obligations.

“**complaint**” means an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.

“**concession**” means a concession, rebate, subsidy or grant related to the supply of gas, which is available to **residential customers** only.

“**contact**” means contact that is face to face or by **telephone**.

“**contract**” means a **standard form contract** or a **non-standard contract**,

“**cooling-off period**” means the period of 10 days commencing on and including the day on which the contract is made.

“**customer**” means a customer who consumes less than 1 terajoule per annum.

“**distributor**” means a person who holds a distribution licence under Part 2A of the **Act**.

“**Do Not Call Register Act**” means the *Do Not Call Register Act 2006 (Cth)*.

“**door to door marketing**” means the **marketing** practice under which —

- (a) a **gas marketing agent** goes from place to place seeking out persons who may be prepared to enter, as **customers**, into **contracts**; and
- (b) the **gas marketing agent** or some other **gas marketing agent** then or subsequently enters into negotiations with those prospective **customers** with a view to arranging **contracts** on behalf of, or for the benefit of, a **retailer** or party other than the **customer**.

“**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 programme**” means a programme 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**;
- (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 marketing agent**” means –

- (a) a person who acts on behalf of the holder of a trading licence —
 - (i) for the purpose of obtaining new **customers** for the licensee; or
 - (ii) in dealings with existing **customers** in relation to **contracts** for the supply of gas by the licensee; or
- (b) a representative, agent or employee of a person referred to in paragraph (a).
- (c) is not a person who is a customer representative.

“**gas ombudsman**” means the ombudsman appointed under the scheme approved by the **Authority** pursuant to section 11ZPZ of the **Act**.

[Note: The energy ombudsman Western Australia is the gas ombudsman appointed under the scheme approved by the Authority pursuant to section 11ZPZ of the Act.]

“**marketing**” includes engaging or attempting to engage in any of the following activities by any means, including door to door or by **telephone** –

- (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** or other party to each **gas marketing agent** acting on its behalf.

“**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**.

“**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**.

“**residential customer**” means a **customer** who consumes gas solely for domestic use.

“**retailer**” means a person who holds a trading licence under Part 2A of the **Act**.

“**solicited consumer agreement**” is an agreement other than an **unsolicited consumer agreement**.

“**standard form contract**” means a contract that is approved by the **Authority** under section 11WF of the **Act**.

“**telemarketing calls**” is defined in section 5 of the **Do Not Call Register Act**.

“**Telemarketing Industry Standard**” means the **Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007**.

“**telephone**” means a device which is used to transmit and receive voice frequency signals.

“**TTY**” means telephone typewriter.

“**unsolicited consumer agreement**” is defined in section 69 of the Australian Consumer Law.

“**verifiable consent**” means consent that is given –

- (a) expressly;
- (b) in writing or orally;
- (c) after the **retailer** or **gas marketing agent** (whichever is relevant) has in plain language appropriate to that **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.

1.6 Application

The **Code** applies to –

- (a) **customers**;
- (b) **retailers**;
- (c) **distributors**; and
- (d) **gas marketing agents**.

1.7 Purpose

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

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 & Review

- (1) The **Code** will be amended in accordance with Part 2C of the **Act**.

Part 2 Marketing

Division 1 – Obligations particular to retailers

2.1 Retailers to ensure representatives comply with this Part

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

Division 2 – Contracts

2.2 Entering into contracts

- (1) A **gas marketing agent** must, in the course of arranging a **non-standard contract** that is a solicited consumer agreement other than in accordance with subclause (2), ensure that the **contract** is signed by the **customer**.

[Note: Under the *Electronic Transactions Act 2003*, any documents or signatures that must be provided under the Code may also be provided electronically (subject to the terms and conditions set out in the *Electronic Transactions Act 2003*).]

- (2) If a **customer** initiates a request to a **retailer** or **gas marketing agent** for a **non-standard contract** that is a solicited consumer agreement the contract need not be signed but the **retailer** or **gas marketing agent** must obtain and make a record of the **customer's verifiable consent** that the contract has been entered into.
- (3) A **standard form contract** that is a solicited consumer agreement need not be signed by the **customer** but the date of the **customer** entering into the **standard form contract** must be recorded by the **gas marketing agent**.
- (4) The terms and conditions of a **standard form contract** that is a solicited consumer agreement must be made available to the **customer** on request at no charge.

Division 3 - Information to be provided to customers

2.3 Information to be given before entering into a contract

- (1) Before arranging a **contract**, a **gas marketing agent** must give a **customer** the following information –
 - (a) that the **customer** is free to choose the **standard form contract** offered by the **retailer**;
 - (b) the difference between a **standard form contract** and a **non-standard contract**;

- (c) how and when the terms of the **contract** will be given or made available to the **customer**; and
 - (d) that the **customer** is entitled to a written copy of the **contract** when requested.
- (2) For a **standard form contract** that is a solicited consumer agreement or a **non-standard contract** in accordance with clause 2.2(2) above, the **gas marketing agent** must obtain and make a record of the **customer's verifiable consent** that the information in subclause (1) has been given.
- (3) For a **standard form contract** that is an unsolicited consumer agreement or a **non-standard contract** other than in accordance with clause 2.2(2) above, the **gas marketing agent** must obtain the **customer's** written acknowledgement that the information in subclause (1) has been given.

2.4 Information to be given at time of or after entering into a contract

- (1) When a **customer** enters into a new **contract** that is a solicited consumer agreement with a **retailer or gas marketing agent**, a **retailer** or **gas marketing agent** must, at the time the **contract** is entered into, offer to give or make available to the **customer** a copy of the **contract**. If the **customer** accepts the offer, the **retailer** or **gas marketing agent** must, at the time the **contract** is entered into, or as soon as possible thereafter, give or make available to the **customer** a copy of the **contract**.
- (2) A **retailer** or **gas marketing agent** must give the following information to a **customer** –
- (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, distributor** 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**, the **concessions** that may apply to the **residential customer**;
 - (f) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (g) with respect to a **residential customer**, how the **residential customer** may access the **retailer's**:
 - (i) multi-lingual services (in languages reflective of the **retailer's customer** base); and
 - (ii) **TTY** services;
 - (h) how to make an enquiry of, or **complaint** to, the **retailer**;
 - (i) general information on the **retailer's gas customer safety awareness programme**; and

- (j) for solicited consumer agreements, the details of any right the **customer** may have to rescind the **contract** during a **cooling-off period** and the charges that may apply if the **customer** rescinds the **contract**.
- (3) Subject to subclause (4), the information in subclause (2) must be given:
- (a) for a **standard form contract**, no later than with or on the **customer's** first bill; and
 - (b) for a **non standard form contract** or a **standard form contract** that is an **unsolicited consumer agreement**, before the **customer** has entered into the **contract** and the **gas marketing agent** must obtain the **customer's** written acknowledgement that the information in subclause (2) has been given .
- (4) Despite subclause (3), the **retailer** is not obliged to provide the information in subclause (2) to a **customer** if:
- (a) the **retailer** has provided the information to that **customer** within the preceding 12 months; or
 - (b) when the **retailer** is obliged to provide the information to the **customer** pursuant to subclause (3), the **retailer** informs the **customer** how the **customer** may obtain the information in subclause (2) and, if requested, gives the information to the **customer**.

Division 4 – Marketing Conduct

2.5 Standards of Conduct

- (1) A **gas marketing agent** must ensure that the inclusion of **concessions** is made clear to residential **customers** and any prices that exclude **concessions** are disclosed.
- (2) A **gas marketing agent** must ensure that all **non-standard contracts** that are solicited consumer agreements are in writing.
- (3) A **retailer** or other party must ensure that a **customer** is able to **contact** the **retailer** or other party on the **retailer's** or other party's **telephone** number during the normal business hours of the **retailer** or other party for the purposes of enquiries, verifications and **complaints**.

2.6 Contact for the purposes of marketing

- (1) A **gas marketing agent** who makes **contact** with a **customer** for the purposes of **marketing** must, on request by the **customer** -
 - (a) provide the **customer** with the complaints **telephone** number of the **retailer** or other party on whose behalf the **contact** is being made; and
 - (b) provide the **customer** with the **gas marketing agent's marketing identification number**.
- (2) A **gas marketing agent** who meets with a **customer face to face** for the purposes of **marketing** must:
 - (a) when negotiating a contract that is a solicited consumer agreement, as soon as practicable, tell the **customer** the purpose of the **contact**,

- (b) wear a clearly visible and legible identity card that shows –
 - (i) his or her first name;
 - (ii) his or her photograph;
 - (iii) his or her **marketing identification number**; and
 - (iv) the name of the **retailer** or other party on whose behalf the **contact** is being made; and
- (c) as soon as practicable, provide the **customer**, in writing:
 - (i) his or her first name;
 - (ii) his or her **marketing identification number**;
 - (iii) the name of the **retailer** or other party on whose behalf the **contact** is being made;
 - (iv) the complaints **telephone** number of the **retailer** or other party on whose behalf the **contact** is being made; and
 - (v) the business address and Australian Business or Company Number of the **retailer** or other party on whose behalf the **contact** is being made
- (3) A **retailer** or other party must keep the following records each time it initiates **contact** with a **customer** for the purposes of **marketing-**
 - (a) the name of the **customer** and -
 - (i) if the **contact** was made by **telephone**, the **telephone** number;
 - (ii) if the **contact** was made at the **customer's premises**, the address of the **premises**; and
 - (iii) if the **contact** was made at a place other than the **customer's** premises, the details and address of the location;
 - (b) the name of the **gas marketing agent** who made the **contact**; and
 - (c) the date and time of the **contact**.
- (4) Clause 2.6(3) does not apply where a **gas marketing agent** **contacts** a **customer** in response to a **customer** request or query.

Division 5 – Miscellaneous

2.7 Presumption of authority

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**,

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 activity.

2.8 Gas marketing agent complaints

- (1) A **gas marketing agent** must —
 - (a) keep a record of each **complaint** made by a **customer**, or person **contacted** for the purposes of **marketing**, about the **marketing** carried out by or on behalf of the **gas marketing agent**;
 - (b) on request by the **gas ombudsman** in relation to a particular **complaint**, give to the **gas ombudsman** within 28 days of receiving the request, all information that the **gas marketing agent** has relating to the **complaint**.
- (2) A record or other information that a **gas marketing agent** is required by this **Code** to keep must be kept for at least 2 years after the last time the person to whom the information relates was **contacted** by or on behalf of the **gas marketing agent**.

Appendix 6 – Comparison between NECF & Code provisions

Provision	Code	NECF
<p>Information provision (before and after contract entered into by contract type)</p>	<p>This is dealt with in clauses 2.3 and 2.4 of the Code.</p> <p>Before arranging a contract marketing representative must give a customer the following information:</p> <ul style="list-style-type: none"> • that it is free to choose the standard form contract; • the difference between a standard form contract and non-standard contract; • how and when the terms of the contract will be given or made available to it; and • that it is entitled to a written copy of the contract when requested. <p>Retailer/marketer must, at time new contract is entered into, offer to give customer copy of the contract (and to do so as soon as possible thereafter if the customer accepts).</p> <p>Retailer/marketer must give customer the following information (in respect of standard form contracts not entered into as a result of door to door marketing - no later than with or on customer's first bill, and in respect of standard form contracts entered into as a result of door to door marketing and non standard form contracts - before the contract is entered into):</p> <ul style="list-style-type: none"> • how customer may obtain copy of the Code and details on all relevant tariffs, fees, charges, alternative tariffs and service levels; • scope of the Code and that the retailer/distributor and marketing representative must comply with the Code; • assistance available in respect of payment difficulties or financial hardship, applicable concessions, access to multi-lingual and TTY 	<p>This is dealt with in sections 62 and 64 of the NECF Rules.</p> <p>Retail marketers must provide the 'required information' to a small customer before the formation of the contract or as soon as practicable after the formation of the contract.</p> <p>'Required information' includes:</p> <ul style="list-style-type: none"> • prices, charges, early termination payments and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these may be changed; • commencement date and duration of the contract, availability of extensions; • how any electronic transaction is to operate; • customer rights to withdraw from contract during cooling off period; and • customer rights to complain in respect of any energy marketing activity including to the ombudsman

	<p>services;</p> <ul style="list-style-type: none"> • the distributor's emergency telephone number; • how to make enquiries or complaints to retailer; • information re gas customer safety awareness program; • details of rights in respect of cooling off period and charges. 	
Method of information provision	This is not dealt with in the Code.	<p>This is dealt with in clause 63 of the NECF Rules.</p> <p>'Required information' provided before the formation of the contract may be provided electronically, verbally or in writing.</p> <p>'Required information' provided after the contract has been entered into must be provided in a single written disclosure statement.</p>
Standards of conduct	<p>This is dealt with in clause 2.5 of the Code.</p> <p>Marketing representative must not engage in misleading or deceptive conduct or exert undue pressure, harass or coerce a customer.</p> <p>The inclusion of concessions must be made clear to customers.</p> <p>Contracts must be in writing.</p> <p>Marketers must be contactable by telephone for the enquiries, verifications and complaints.</p>	This is not dealt with in the NECF.
Contact provisions	<p>This is dealt with in clause 2.6 of the Code.</p> <p>Sets requirements for marketing representative in relation to customers when making face to face contact.</p> <p>Sets out permitted call times.</p> <p>Marketer must keep various records</p>	<p>Requirement for record keeping is dealt with in section 68 of the NECF Rules.</p> <p>The remainder is not dealt with in the NECF.</p>

	when initiating contact with a customer.	
Request no contact	<p>This is dealt with in clause 2.7 of the Code.</p> <p>Applies to contact this is face to face, by telephone, post, facsimile or electronic.</p> <p>If a customer requests not to be contacted again on behalf of the marketer, marketer must ensure he/she is not contacted again in relation to the supply of gas by the retailer for 2 years. Marketer must keep a record of such customers.</p> <p>When engaging in door to door marketing, marketing representative must, to extent practicable, comply with a notice on or near a premises indicating that the customer does not wish to receive unsolicited mail or other marketing information.</p>	<p>This is dealt with in sections 65 and 66 of the NECF Rules.</p> <p>Applies to energy marketing in person at a person's premises or marketing by mail (expressly carves out telemarketing calls and e-marketing activities).</p> <p>Retailer/marketer must create "no contact list" and a retail marketer must not contact a customer on that list for 2 years.</p> <p>In carrying out energy marketing activities, retailer marketer must comply with any signs at a person's premises indicating</p> <ul style="list-style-type: none"> • canvassing is not permitted; or • no advertising or similar material is to be left.