



**GAS MARKETING CODE
CONSULTATIVE COMMITTEE
(GMCCC)**

16 September 2011


Mr Lyndon Rowe
Chairman
Economic Regulation Authority
Level 6
197 St Georges Terrace
PERTH WA 6000

Dear Mr Rowe

2011 Review of the Gas Marketing Code of Conduct – Final Review Report

As required by section 11ZPV of the *Energy Coordination Act 1994*, the Gas Marketing Code Consultative Committee (GMCCC) has completed the biennial statutory review of the *Gas Marketing Code of Conduct*.

As required under the Act, the GMCCC undertook a period of public consultation which allowed interested parties to make comment. Copies of the submissions received are attached to the report.

The GMCCC has made a number of recommendations to the Authority to amend the Code. A copy of the proposed amended Code is attached to the report.

I note that if the Authority decides to propose amendments to the Code, the Authority will refer the proposed amendments to the GMCCC for advice.

If you have any queries please contact me.

Yours sincerely

A large black rectangular redaction box covering the signature of Paul Kelly.

Paul Kelly
Chairman



Gas Marketing Code Consultative Committee
2011 Review of the Gas Marketing Code of Conduct
Final Review Report

14 September 2011

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

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Executive Summary

This Final Review Report (**report**) presents the 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.

In undertaking the 2011 review the GMCCC was 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 was the major area of deliberation for the GMCCC.

As required under section 11ZPV of the Act, the GMCCC provided interested parties an opportunity to make comment during the review by publishing a Draft Review Report on 2 June 2011 and allowing a seven week public consultation period. A total of five submissions were received.

Following consideration of the issues raised in submissions and their deliberations the GMCCC make the following recommendations:

Recommendation 1 – The GMCCC proposes that the Authority 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 – The GMCCC proposes that the Authority add a sentence as a note in the Code that states: 'These are not the only compliance obligations in relation to marketing, other State and Federal laws apply to marketing activities'.

Recommendation 3 – The GMCCC proposes that the Authority amend clause 2.4(1) to read: ...must, at the time the contract is entered into, or as soon as possible thereafter, 'but no more than 28 days later', give or make available to the customer a copy of the contract'.

Recommendation 4 – The GMCCC proposes that the Authority amend the definition of 'marketing' to read:

“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 with a customer or potential customer, for the purpose of entering into or varying, 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.

Recommendation 5 – The GMCCC proposes that the Authority write to the Office of Energy to draw their attention to the lack of clarity within the definition of “marketing” in the *Energy Coordination Act 1994* and the potential for the definition to be interpreted to capture all customer contact.

Recommendation 6 – The GMCCC proposes that the Authority amend remaining provisions to achieve, where appropriate, consistency with the *Code of Conduct for the Supply of Electricity to Small Use Customers*.

Recommendation 7 - The GMCCC proposes that the Authority writes to the Minister for Energy to alert the Minister to the fact that the *Energy Coordination (Customer Contracts) Regulations 2004* should be amended to remove reference to the Australian Gas Association Customer Service Code.

Recommendation 8 - The GMCCC proposes that the Authority notes that there is uncertainty in relation to the legality of the obligation to offer the standard form contract in gas and that as a result there is uncertainty in relation to clause 2.3(1)(a) of the Code.

Recommendation 9 – The GMCCC proposes that the Authority note the National Energy Customer Framework which will apply in the National Energy Market from 1 July 2012 but does not propose that the Authority make 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, along with all of the amendments proposed as a result of the above recommendations, are detailed in the table attached (**Attachment 1**).

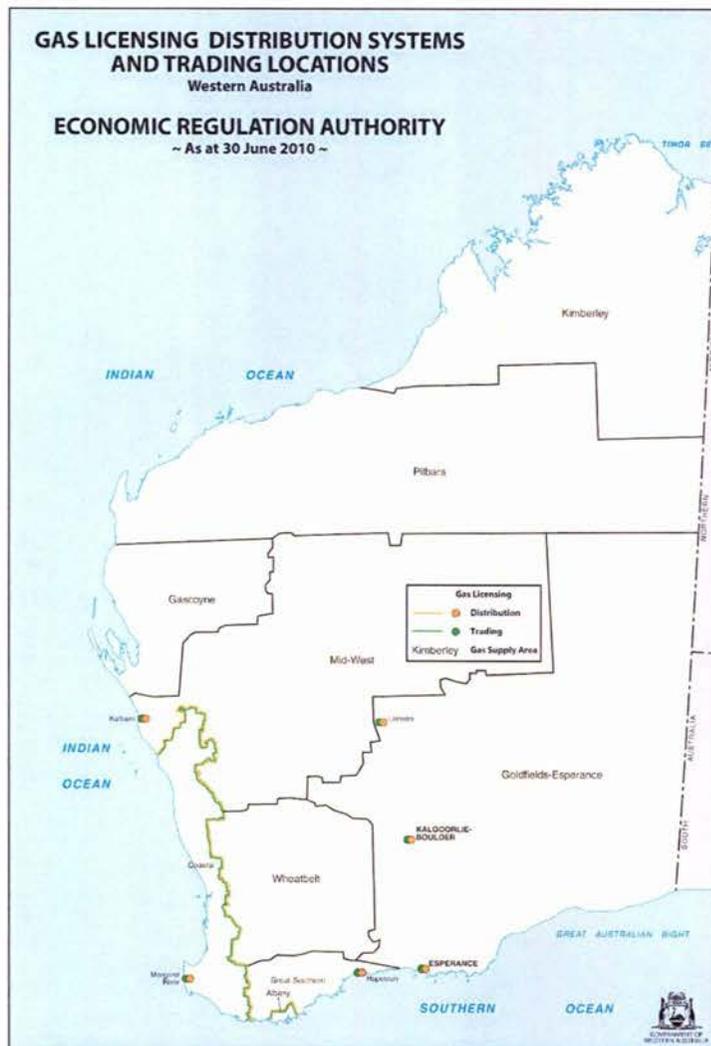
Copies of the proposed new Code showing track changes (**Attachment 2**) and a clean version (**Attachment 3**) are attached to this report.

Background

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 1TJ of gas is equal to a bill of 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 was granted a gas trading licence in 2009. However, Perth Energy does not currently have any gas customers.

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 it with the *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.

In 2008, the Authority also decided to make a new Code to ensure that the marketing provisions in gas were as close as possible those contained in the Electricity Code.

The Authority also has the power to make and amend the Electricity Code 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. The 2011 review of the Code is due to commence shortly.

What is 'Marketing'

The Code currently 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**.

Gas Marketing Code Consultative Committee

In late 2010 the Authority approved new Terms of Reference for the GMCCC (**Attachment 4**).

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
- Mr Simon Thackray – Synergy
- Mr Brendan McColl – Wesfarmers

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 (until August 2011)

Government representatives:

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

Authority staff:

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

Consumer representative Ms Julie Abela resigned in August 2011 and has since been replaced by Mr Charles Brown from the Financial Counsellors Association of WA.

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

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, approved the Draft Review 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 published the Draft Review Report on 3 June 2011 and promoted the public consultation period via an email to those registered with the Authority as interested parties and an advertisement in *The West Australian*.

The closing date for submissions on the Draft Review Report was 22 July 2011.

Submissions were received from the following:

- Synergy (**Attachment 5**)
- WACOSS (**Attachment 6**)
- Alinta Sales (**Attachment 7**)
- Energy Ombudsman WA (**Attachment 8**)
- Department of Commerce (**Attachment 9**)

Following receipt of submissions the GMCCC met to consider the issues raised and subsequently approved this report.

After consideration of this 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.

Recommendations

Remove duplication with other legislation

Recommendation 1

That the Authority 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 Code 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 should 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 licensees 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.

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.

The *Privacy Act 1988 (Privacy Act)* protects the privacy of individuals within Australia. The Privacy Act 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.

Inclusion of a notation

Recommendation 2

That the Authority amends the Code by adding a note that reads: 'These are not the only compliance obligations in relation to marketing, other State and Federal laws apply to marketing activities'.

Submissions received from both WACOSS and the Department of Commerce on the Draft Review Report recommended that notations, a foreword or footnotes be added to the Code to draw attention to the fact that other legislation, such as the ACL, is relevant to marketing and should be read in conjunction with this Code.

The GMCCC noted that historically the Authority had moved to remove such notations from the codes.

The GMCCC also noted that it was likely that protections afforded to consumers in relation to marketing would be included in more detail when *Switched On: A Guide for Electricity & Gas Customers* is next updated.

The GMCCC agreed that it would be useful to have one sentence alerting the reader to the fact that other laws apply to the marketing of gas.

Provision of Information – ‘solicited contracts’

Recommendation 3

That the Authority amend clause 2.4(1) to read:

...must, at the time the contract is entered into, or as soon as possible thereafter, but **no more than 28 days later**, give or make available to the customer a copy of the contract.

The Code currently requires that a copy of the contract be given or made available to the customer at the time the contract is entered into or as soon as possible thereafter.

In their submission WACOSS requested that the provision be amended to remove the words ‘as soon as possible’ and replace with a requirement that the contract be made available or given within 28 days.

The GMCCC considered the fact that 28 days is arguably longer than “as soon as possible” and that rather than removing “as soon as possible” recommended that an addition could be made to state that the information had to be provided “in any event no later than 28 days”.

Change the definition of ‘marketing’ in the Code

Recommendation 4

That the Authority amend the definition of ‘marketing’ to read:

“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 with a customer or potential customer, for the purpose of entering into or varying, 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.

The definition of ‘marketing’ in the *Energy Coordination Act 1994* and the Code currently is:

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

- (a) negotiations for, or dealings in respect of, a contract for the supply of gas to a customer;
- (b) advertising, promotion, market research or public relations in relation to the supply of gas to customers.

In their submission, Synergy argued that the current definition of marketing is too broad and results in retail activities beyond those undertaken for the purposes of entering into a gas supply contract being subject to Code obligations as a marketing activity.

For example, clause 2.6(7) of the existing Code obliges a retailer (as a marketer) to keep a record each time it initiates contact with a customer for the purposes of “marketing”, which, as defined, includes “dealings in respect of a contract for the supply of gas”. Whilst retailers may keep a record of interactions with their customers as good business practice, Synergy argues that the matter should not be mandated for all retailer-initiated dealings with their customers (for example, updating customer contact details during a contract).

The GMCCC agreed that it should recommend that the Authority amend the definition to ensure that it is not so broad as to unintentionally capture all contact between a customer and a retailer.

Raise the issue of the ‘marketing’ definition in the Act with the Office of Energy

Recommendation 5

That the Authority writes to the Office of Energy to draw their attention to the lack of clarity within the definition of “marketing” in the *Energy Coordination Act 1994* and the potential for the definition to be interpreted to capture all customer contact.

The GMCCC also agreed to recommend that the Authority write to the Office of Energy to draw their attention to the lack of clarity within the current definition in the Act and the potential for it to be interpreted to capture all customer contact.

Consistency with the Code of Conduct for the Supply of Electricity to Small Use Customers

Recommendation 6

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 considering 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 to these customers).
- Restriction on the number of occasions that a copy of 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.

Amendment of the *Energy Coordination (Customer Contract) Regulations 2004*

Recommendation 7

That the Authority writes to the Minister for Energy regarding the fact that the Australian Gas Association Customer Service Code is redundant and recommending that the *Energy Coordination (Customer Contract) Regulations 2004* be amended.

In their submission to the Draft Review Report, Synergy identified the fact that the reference to the Australian Gas Association Customer Service Code in the *Energy Coordination (Customer Contract) Regulations 2004* is redundant (as that code no longer exists) and should be removed so as not to cause confusion in relation to obligations within the Code.

The GMCCC agreed that the continuing reference to the Australian Gas Association Customer Service Code is an issue and recommended that the Authority writes to the Minister for Energy regarding this issue.

Obligation to offer the standard form contract

Recommendation 8

That the Authority note the issues associated with clause 2.3(1)(a) and the status of any action to address these issues before proposing any amendment to this clause.

Clause 2.3(1)(a) of the Code currently requires that before entering into a contract the customer be informed that they are free to choose the standard form contract.

In the Electricity Code this clause has been removed as the requirement to offer the standard form contract is only upon the electricity corporations (Synergy & Horizon Power) and other licensees are not obliged to offer the standard form contract.

There is legal uncertainty as to whether gas licensees are currently obliged to offer the standard form contract. This issue had been brought to the attention of the Office of Energy by the Secretariat of the Authority.

The GMCCC noted the issue and understands that the Office of Energy is working to address this situation. The GMCCC agreed that it was premature to recommend amendment of the Code at this stage but that the Authority should look at this issue further when considering this report.

National Energy Customer Framework

Recommendation 9

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.

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.

Other issues raised in submissions

A number of other issues were raised in submissions and following consideration the GMCCC has decided not to make any recommendations to the Authority. These issues are detailed below.

'Basic Living Needs' Definition

The WACOSS submission proposed the addition of 'gas' to the list of utilities covered under the definition of 'basic living needs'. The Secretariat's legal adviser confirmed that this would create a 'circular' reference. In effect, the definition of financial hardship would then read that the customer 'could not pay their gas bill without affecting their capacity to pay their gas bill'.

Following consideration the GMCCC agreed that no recommendation for amendment should be made.

Information about concessions

The Code currently requires that the customer be provided with information about 'concessions that may apply to the residential customer'.

In their submission WACOSS requested that the clause be amended to state: 'with respect to a residential customer, the eligibility requirements for any concessions, rebates or grants.'

WACOSS stated that the proposal intends to ensure that all customers get information about concessions and that people do not have to reveal their personal financial information before receiving this information.

It was noted that there are no concessions in gas (except for the Hardship Utilities Grants Scheme).

It was agreed that it is appropriate for concession information to be provided if the customer is or could be eligible for a concession and that it would be irritating to customers who are not eligible to receive information that was irrelevant to them.

Following consideration the GMCCC agreed that no recommendation for amendment should be made.

Limitation on frequency of information provision

Clause 2.4(4)(a) of the Code has the effect of removing the requirement on the retailer to automatically provide prescribed information if the retailer has, within the past 12 months, provided the information.

In their submission WACOSS proposed that this limitation be removed to ensure that customers received information.

It was noted that the rationale for the provision was to prevent a retailer from being required to provide the same information on multiple occasions if a customer moves supply addresses on several occasions during a 12 month period.

Retailers present confirmed that if the customer requested the information the retailer would provide it.

Following consideration the GMCCC agreed that no recommendation for amendment should be made.

APPENDICES

Appendix 1 – Table of Proposed Code Amendments & Rationale

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
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.
1.4(7)	Delete subclause 1.4(7) in its entirety.	Streamline with the Electricity Code – marketing terms.
1.5		
	Insert definition of " Australian Consumer Law (WA) "	Remove duplication with the ACL.
	Insert definition of " Compendium ".	To differentiate between the Compendium and the Code.
	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.
	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.
	Move definition of " contract " to correct alphabetical order.	Corrects formatting error.
	Amend definition of " cooling off period ".	Remove overlap of provisions

Delete the words "in relation to a door to door contract or non-standard contract".	with ACL.
Delete definition of " Customer Service Charter ".	Retailers no longer required to maintain customer service charters - see subclause 2.4(2)(a).
Insert definition for " Do Not Call Register Act ".	Remove overlap of provisions with the DNCR Act.
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.
Delete definition of " electronic means ".	Limit application of the Code to contact which is face to face and or over the telephone.
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
Amend definition of " marketing " to remove electronic means. Delete the words "in respect of" in sub-clause (a) and replace with the words "or dealings with a customer or potential customer for the purposes of entering into or varying,"	Limit application of the Code to contact which is face to face and or over the telephone. The amendment ensures contact during the period of the contract is not covered by the definition of marketing.
Amend definition of " marketing identification number ". Replace reference to "marketer" with "retailer or other party". Replace reference to "marketing representative" with "gas	Streamline with the Electricity Code – marketing definitions.

	marketing agent”.	
	Delete definition of “ marketing representative ”.	Streamline with the Electricity Code – marketing terms.
	Delete definition of “ permitted call times ”.	Remove duplication with the ACL and the Telemarketing Industry Std.
	Insert definition for “ solicited consumer agreement ”.	Remove duplication with the ACL.
	Insert definition for “ telemarketing calls ”	Adopts definition in DNCR Act.
	Insert definition for “ Telemarketing Industry Standard ”	Remove duplication with the Telemarketing Industry Standard.
	Insert definition for “ telephone ”.	Streamline with the Electricity Code.
	Insert definition for “ unsolicited consumer agreement ”.	Remove duplication with the ACL. – adopts definition in ACL.
	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.
1.7	Include a note that states “The Code is not the only compliance obligations in relation to marketing, other State and Federal laws apply to marketing activities”.	Protections afforded to consumers in relation to marketing would be included in more detail when <i>Switched On: A Guide for Electricity & Gas Customers</i> is next updated.
Div. 1	Replace reference to “marketers” with “retailers” in heading.	Streamline with the Electricity Code – marketing terms.
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.
2.2 (1)	Replace reference to “marketer” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.
	Amend to remove application to unsolicited consumer agreements	To remove duplication with the ACL.

2.2 (2)	Replace references to “marketer” with the term “gas marketing agent”.	Streamline with the Electricity Code –marketing terms.
	Amend to remove application to unsolicited consumer agreements	To remove duplication with the ACL.
	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.
2.2 (3)	Replace reference to “marketer” with the term “gas marketing agent”.	Streamline with the Electricity Code –marketing terms.
	Amend to remove application to unsolicited consumer agreements.	To remove duplication with the ACL.
2.2 (4)	Amend and remove application to “door to door” marketing.	To remove duplication with the ACL.
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.
2.3 (1)	Replace reference to “marketing representative” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.
2.3 (2)	Replace reference to “marketing representative” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.
	Amend to remove application to unsolicited consumer agreements.	To remove duplication with the ACL.
2.3 (3)	Replace reference to “marketing representative” with the term “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.
	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.
2.4 (1)	Amend to remove application to unsolicited customer agreements”.	Remove duplication with the ACL.
	Insert reference to “gas marketing agent”. Delete references to “marketer”. Insert references to “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.
2.4(2)	Delete references to “marketer” and “marketing representative”. Insert references to “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.
2.4(2)(a)	Delete subclause (i).	Trading licences no longer require retailers to prepare Customer Service Charter

	Amend (ii) to include Compendium.	To differentiate between the Compendium and the Code.
2.4(2)(c)	Replace references to "marketer" and "marketing representative" with the term "gas marketing agent".	Streamline with the Electricity Code – marketing terms.
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.
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.
2.4 (2)(j)	Amend to remove application to unsolicited consumer agreements.	Remove duplication with the ACL.
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.
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).
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.
2.5 (1)	Delete subclause	To remove duplication with the ACL.
2.5 (2)	Delete subclause.	To remove duplication with the ACL.
2.5 (3)	Delete references to "marketing representative". Insert references to "gas marketing agent".	Streamline with the Electricity Code – marketing terms.
	Amend to make subclause relate to residential customers only.	Streamline with the Electricity Code – to reflect that concessions currently available to residential customers only.
2.5 (4)	Delete references to "marketing representative". Insert	Streamline with the Electricity

	references to "gas marketing agent".	Code – marketing terms.
	Amend to limit application to solicited consumer agreements only.	Remove duplication with the ACL.
2.5 (5)	Delete references to "marketer". Insert references to "retailer or other party".	Streamline with the Electricity Code – marketing terms.
2.6 (1)	Delete clause 2.6(1) in its entirety.	Remove duplication with the Telemarketing Industry Std and the Spam Act.
2.6 (2)	Delete reference to "marketing representative". Insert "gas marketing agent". Delete reference to "marketer". Insert reference to "other party". Delete reference to "marketer's". Insert reference to "gas marketing agent's".	Streamline with the Electricity Code – marketing terms.
2.6 (3)	Delete reference to "marketing representative". Insert reference to "gas marketing agent" Delete references to "marketer". Insert references to "other party". Delete reference to "marketer" in subclause (c)(v). Insert reference to "the retailer of other party on whose behalf the contact is being made".	Streamline with the Electricity Code – marketing terms.
	Amend (a) to limit application to "solicited consumer agreements" only.	Remove duplication with the ACL.
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.
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.
2.6 (7)	Replace reference to "marketer" with "retailer or other party". Replace reference to "marketing representative" with "gas marketing agent".	Streamline with the Electricity Code – marketing terms.
	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.
2.6 (8)	Delete reference to “marketer”. Insert reference to “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.
2.7	Delete clause 2.7 in its entirety.	To remove duplication with the ACL, the DNCR Act and the Spam Act.
2.8	Delete clause 2.8 in its entirety	To remove duplication with the National Privacy Principals.
2.11	Delete references to “marketer”. Insert references to “gas marketing agent”.	Streamline with the Electricity Code – marketing terms.
	Insert “within 28 days of receiving the request” into subclause 2.11 (1).	Streamline with the Electricity Code.

Appendix 2 – Proposed new Code (Track Changes)

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Gas Marketing Code of Conduct

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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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“**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 with a customer or potential customer, for the purpose of entering into or varying 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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as an intermediary between one or more customers and a licensee.

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<#>a retailer who engages in marketing; or¶
<#>a gas marketing agent, other than a marketing representative.¶

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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.

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

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“verifiable consent” means consent that is given –

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- (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**.

Note: *This Code is not the only compliance obligations in relation to marketing. Other State and Federal laws apply to marketing activities.*

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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

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

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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: <#>any solicitation by way of advertisement addressed to the public or a substantial section of the public is to be disregarded; but¶ <#>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.
- (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, but no more than 28 days later, 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** –

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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**;
- (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

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- (i) 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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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 3 – Proposed new Code (clean copy)

Gas Marketing Code of Conduct

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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 with a customer or potential customer, for the purpose of entering into or varying, 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**.

Note: *This **Code** is not the only compliance obligations in relation to marketing. Other State and Federal laws apply to marketing activities.*

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

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, but no more than 28 days later, 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

- (i) 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 4 – GMCCC Terms of Reference

Appendix 4 – GMCCC 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 5 – Submission - Synergy

Our ref: 3430509

22 July 2011

Ms Lanie Chopping
Assistant Director Customer Protection
Economic Regulation Authority
Level 6
197 St Georges Terrace
PERTH WA 6000

Dear Lanie

**GAS MARKETING CODE CONSULTATIVE COMMITTEE (GMCCC) – 2011
REVIEW OF THE GAS MARKETING CODE OF CONDUCT (CODE)**

I refer to the above draft review report issues published by the Economic Regulation Authority (**Authority**) on 3 June 2011 for public review.

Synergy welcomes the opportunity to provide comment on the draft review report and supports the GMCCC's four recommendations. In addition there is a small number of matters Synergy considers should be amended or considered further.

Definition of marketing

Currently "marketing" is defined under the Authority's proposed draft Code as:

"**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**. "

Synergy submits the current definition of marketing is too broad and results in retail activities beyond those undertaken for the purposes of entering into a gas supply contract being subject to Code obligations as a marketing activity.

For example, clause 2.6(3) of the draft Code (clause 2.6(7) of the existing Code) obliges a retailer (as a marketer) to keep a record each time it initiates contact with a customer for the purposes of "marketing", which, as defined, includes "dealings in respect of a contract for the supply of gas". Whilst retailers may well keep a record of interactions with their customers as good business practice, the matter should not be mandated for all retailer-initiated contractual dealings with their customers.

Synergy notes this issue does not arise in New South Wales, Victoria or South Australia as each of the relevant regulatory Codes define marketing in the context of *entering into* a supply arrangement. For example, under the South Australian energy marketing code, marketing is defined as:

"marketing" includes, but is not limited to, advertising, sales, promotions, market research, public relations, discussions or negotiations by any means in the nature of a personal contact with a **small customer** whether solicited or unsolicited for the purposes of entering into a **customer sale contract**.

Synergy recommends the definition of marketing under the Code is limited to marketing activities for the purposes of *entering into* a small use gas standard form or non-standard contract. By doing so Synergy does not consider customer protections afforded to gas customers are diluted given the existence of the Gas Customer Service Code, which governs the supply of gas to customers once a supply arrangement exists.

Miscellaneous

- The definitions of "Australian Consumer Law" and "Telemarketing Industry Standard" are bold in entirety.
- Reference to "solicited consumer agreement" and "unsolicited consumer agreement" within the draft Code should be italicised.
- Synergy notes the *Energy Coordination (Customer Contracts) Regulations 2005* will require amendment to reflect the amended Code, the Gas Customer Service Code and remove references to the AGA Code.

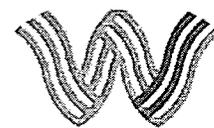
Please contact me on 6212 1433 should you have any queries or comments with respect to the above comments.

Yours sincerely



SIMON THACKRAY
MANAGER RETAIL REGULATORY AND COMPLIANCE

Appendix 6 – Submission – WACOSS



WACOSS

Western Australian
Council of Social Service Inc

*Ways to make
a difference*

22 July 2011

Mr Paul Kelly
GMCCC Chairman
Economic Regulatory Authority
Level 6, 197 St Georges Terrace
PERTH WA 6000

Western Australian
Council of Social Service Inc.
ABN 32 201 266 289

City West Lotteries House
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Western Australia 6005

Phone (08) 9420 7222
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www.wacoss.org.au

Dear Mr Kelly

RE: 2011 REVIEW OF GAS MARKETING CODE OF CONDUCT

The Western Australian Council of Social Service (WACOSS or the Council) is pleased to comment on the Draft Review Report (draft report) of the 2011 Review of the Gas Marketing Code of Conduct (the Code).

As a consumer organisation representative of the Gas Marketing Code Consultative Committee (GMCCC), the Council was involved in a meeting to discuss the review of the Code. The GMCCC identified a number of provisions that are duplicated by other legislation, such as the new, national Australian Consumer Law (ACL), which came into effect on 1 January 2011.

The Council is broadly supportive of the draft report's recommendations on the basis that the amendments do not result in any weakening of consumer protection legislation. In addition, the Council makes the following comments in regards to the preliminary recommendations set out in the draft report.

Part 1 Preliminary

The Council would like to see an explicit reference within the Code to any legislation that applies to the marketing of gas in Western Australia. It is suggested that the Code contain a "Foreword", which states that "the Code must be read in conjunction with the sales practices set out in the Australian Consumer Law and other relevant legislation."

The Council also wishes to see 'gas' included as an example of 'other utilities' under the definition of "basic living needs." Gas is an essential service for low income and vulnerable households, especially for tenants and low income households reliant on gas as a major energy source. Access to gas enables essential functions such as cooking, space and water heating.

Part 2 Marketing - 2.4 Information to be given at time of or after entering into a contract

The Council makes the following suggestions to strengthen the requirements around information provision for residential gas customers:

2.4(1)

Part of this clause states that the 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.

WACOSS recommends that this clause is redrafted to insert a specific time period whereby the retailer or gas marketing agent must make available a copy of the contract. To maintain consistency with clause 2.8(1)(b), the Council suggests that the time period for retailers or gas marketing agents to provide a copy of the contract be specified within 28 days.

2.4(2)(e)

This clause relates to the disclosure requirements about information about concessions. It prescribes that a retailer or gas marketing agent must give information about the 'concessions that *may* apply to the residential customer.'

WACOSS recommends that this clause be amended to "with respect to a residential customer, the eligibility requirements for any concessions, rebates or grants." The intent is to ensure that the onus is on the retailer or gas marketing agent to provide information about concessions upfront rather than the need for a customer to disclose any personal information or proof of their concessions.

2.4(4)(a)

This clause partly states that the retailer is not obliged to provide the information in subclause (2) if "the retailer has provided the information to that customer within the preceding 12 months." It is recommended that this clause is removed as it is not unreasonable for a customer to request information about their contract more than once within a twelve month time period.

Appendix 5 – Proposed New Code (Clean Copy)

The Council supports the removal of provisions that are duplicated in the ACL and other legislation referred to in the draft report's first recommendation. However, there is a need to articulate the application of general consumer protections to an industry specific, gas marketing regulatory instrument.

As the ACL is a new law, there are opportunities to increase the knowledge of rights and obligations amongst gas retailers, marketing agents, consumer advocates and customers. WACOSS recommends that the duplicated elements that have been removed from the Code be included as foot notes. This would ensure that gas marketing requirements for all parties concerned are reasonably accessible in a central source.

If you have any further queries regarding this letter, please contact Amelia Brancato, Senior Policy Co-ordinator, on 9420 7222.

Yours sincerely



Lyn Levy
A/Chief Executive Officer - WACOSS

Appendix 7 – Submission – Alinta Sales



Alinta

Alinta Pty Limited
ABN 38 102 848 055

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www.alinta.net.au

22 July 2011

Mr Paul Kelly
GMCCC Chairman
PO Box 8469
PERTH BC WA 6849

By email: gmccc@erawa.com.au

Dear Paul

DRAFT REVIEW REPORT ON THE GAS MARKETING CODE OF CONDUCT 2008

Alinta Pty Limited (Alinta) appreciates the opportunity to comment upon 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).

Alinta has participated as an industry representative on the GMCCC and is generally supportive of:

- Amending the Code to remove duplication with the Australian Consumer Law; and
- Amending remaining provisions to achieve consistency with the Code of Conduct for the Supply to Small Use Customers; and
- Not amending the Code to at the current point in time to achieve consistency with National Energy Customer Framework.

Yours sincerely

Corey Dykstra
Manager Regulatory Affairs
Alinta Pty Limited

Appendix 8 – Submission – Energy Ombudsman WA

From: [Wayne Mann](#)
To: [gmccc](#)
Subject: Comments on draft Report of the 2011 Review of the Gas Marketing Code of Conduct
Date: Thursday, 21 July 2011 4:59:01 PM

Attention: Mr Paul Kelly, Chairman Gas Marketing Code Consultative Committee

Dear Mr Kelly

Thank you for the opportunity to consider the draft Report of the 2011 Review of the Gas Marketing Code of Conduct.

We have examined the draft Report and considered the proposed amendments to the Code.

From the experience and perspective of the Energy Ombudsman Western Australia, the proposed amendments appear appropriate and we have no further comments.

Yours sincerely

Wayne Mann
Director Energy Ombudsman

Energy Ombudsman, Western Australia
Free, independent and fair dispute resolution
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44 St Georges Terrace
Perth Western Australia 6000

Telephone (08) 9220 7511
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If you receive this e-mail in error please inform the Energy Ombudsman, Western Australia, by return e-mail or telephone on (08) 9220 7588, before deleting this message.

Appendix 9 – Submission – Department of Commerce



Consumer Protection

15 July 2011

Your Ref:

Our Ref: A2463283

Enquiries: Anna O'Brien, (08) 9282 0804

Mr Paul Kelly
Chairman
GMCCC
PO Box 8469
PERTH BC WA 6849

 Economic Regulation Authority Received 19 JUL 2011	
File	ERA/0831
Document No	
Action Officer	LANIE CHOPPING

Dear Mr Kelly

I am writing to you in relation to the 2011 review of the Gas Marketing Code of Conduct (Code).

As you would be aware, on 1 January 2011 the new Australian Consumer Law (ACL) came into effect in Australia. Amongst other things, the ACL introduced a new regulatory regime for unsolicited consumer agreements, replacing Western Australia's *Door to Door Trading Act 1987*.

Prior to the introduction of the ACL, the marketing of gas supply contracts was regulated principally by the Code as gas supply contracts were exempted from the *Door to Door Trading Act 1987*. That exemption became redundant with the introduction of the ACL. The review has since identified provisions in the Code that duplicate provisions in the ACL and other legislation, and recommends that these be removed from the Code.

Although the Code is principally a regulatory tool, it has until now also proved to be a valuable single source of information about consumer rights in respect of gas marketing. Accordingly, while I support the object and intent of the recommendation insofar as it applies to the ACL, I believe that the removal of duplicate provisions could diminish the value of the Code as a source of information.

I believe that this issue could be addressed by including in the Code, references to the ACL in appropriate locations, without necessarily particularising the actual provisions. For example, a note could be included at the start of Division 3 of the Code (Information to be provided to customers) to alert readers to the existence of ACL provisions that impose additional obligations on marketers where consumers enter into unsolicited consumer agreements.

.../2

The Consumer Protection Division of the Department of Commerce would be happy to work with the Gas Marketing Code Consultative Committee to develop an appropriate set of notes if required. The contact officer at the Department on this matter is Anna O'Brien. Ms O'Brien can be contacted on 9282 0804.

Yours sincerely



Anne Driscoll

COMMISSIONER FOR CONSUMER PROTECTION