



# Gas Marketing Code Consultative Committee

2013 Review of the Gas Marketing Code of Conduct

Draft Review Report

14 June 2013

A full copy of this document is available from the Economic Regulation Authority website at [www.erawa.com.au](http://www.erawa.com.au).

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# 1 INVITATION FOR SUBMISSIONS

This Draft Review Report (**report**) presents the preliminary findings of the statutory review of the *Gas Marketing Code of Conduct 2012* (**Code**) carried out by the Gas Marketing Code Consultative Committee (**GMCCC**).

The *Energy Coordination Act 1994* (**Gas 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 Gas 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)'. Section 11ZPM(2) relates to the objective of the code which is to:

...regulate and control the conduct of gas trading licensees and gas marketing agents with the object of protecting customers from undesirable marketing conduct and defining standards of conduct in the marketing of gas to customers.

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

The GMCCC invites written submissions from interested parties.

Submissions should be addressed to:

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Submissions may be provided in hard-copy or electronic form and must be received by the close of business on Monday 8 July 2013.

Should you require further information, please contact Dr David Leith, A/Assistant Director, Customer Protection on (08) 6557 7900.

## Confidentiality

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

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

## 2 Executive Summary

The Authority is required by the Gas Act to establish a committee, the GMCCC, to advise it on matters relating to the Code. The GMCCC must review the Code every two years. The GMCCC is required to undertake public consultation as part of the review and to report the review findings to the Authority.

This report outlines the proposed recommendations of the GMCCC's 2013 review of the Code. The report is a draft. After considering the issues raised in submissions, the GMCCC will prepare a Final Review Report for the Authority.

The GMCCC proposes the following recommendations:

**Recommendation 1** – Delete the definition of 'Do Not Call Register Act' from clause 1.5 of the Code.

**Recommendation 2** – Replace reference to 'Do Not Call Register Act' in the explanatory note under clause 1.7 of the Code with 'Do Not Call Register Act 2006 (Cth)'.

**Recommendation 3** – Delete the definition of 'telemarketing calls' from clause 1.5 of the Code.

**Recommendation 4** – Delete the definition of 'Telemarketing Industry Standard' from clause 1.5 of the Code.

**Recommendation 5** – Replace reference to 'Telemarketing Industry Standard' in the explanatory note under clause 1.7 of the Code with 'Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007'.

**Recommendation 6** – Amend the definition of 'TTY' in clause 1.5 of the Code to read 'teletypewriter'.

**Recommendation 7** – Insert the words 'entered into' between 'contract' and 'in accordance with' in clause 2.3(2) of the Code.

**Recommendation 8** – Insert the words 'entered into' between 'contract' and 'other than' in clause 2.3(3) of the Code.

**Recommendation 9** – Delete the word 'all' from clause 2.5(2) of the Code.

**Recommendation 10** – Renumber clause 2.8(2) to become a separate clause 2.10.

**Recommendation 11** – Insert the heading 'Records to be kept' in new clause 2.10:.

**Recommendation 12** – Insert the following explanatory note under new clause 2.10:

[Note: Clause 13.1(1) of the *Compendium* sets out the record keeping obligations that apply to retailers in relation to records to be kept under this Code.]

**Recommendation 13** – Amend clause 2.4(2)(j) of the Code as follows:

~~for agreements that are not unsolicited 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**.

**Recommendation 14** – Amend the definition of ‘cooling-off period’ in clause 1.5 as follows:

means the period specified in the **contract** as the cooling-off period.

**Recommendation 15** – Delete reference to ‘distributor’ from clause 2.4(2)(c) of the Code.

**Recommendation 16** – Delete clause 2.4(2)(i) of the Code and delete the definition of ‘gas customer safety awareness program’ from clause 1.5.

**Recommendation 17** – Amend clause 2.4(3)(a) as follows:

for a **standard form contract** that is not an unsolicited consumer agreement, no later than with or on the **customer’s** first bill

**Recommendation 18** – Insert the following new clause (clause 2.7):

**No canvassing or advertising signs**

A **retailer** or **gas marketing agent** who visits a person’s **premises** for the purposes of **marketing** must comply with any signs at a person’s **premises** indicating –

- (a) canvassing is not permitted at the **premises**; or
- (b) no advertising or similar material is to be left at the **premises** or in a letterbox or other receptacle at, or associated with, the **premises**.

**Recommendation 19** – Replace reference to ‘Electronic Transactions Act 2003’, in the note under clause 2.2, with ‘Electronic Transactions Act 2011’.

**Recommendation 20** – Delete clauses 1.6(a) and (c) from the Code.

**Recommendation 21** – Delete reference to ‘distributors’ from clause 1.7 of the Code.

**Recommendation 22** – Replace reference to ‘non standard form contract’ with ‘non-standard contract’ in clause 2.4(3)(b) of the Code.

**Recommendation 23** – Amend instances of ‘retailers’ and instances of ‘gas marketing agents’ to ‘retailers and gas marketing agents’ as appropriate throughout the Code.

**Recommendation 24** – Delete all instances of ‘other party’ from the Code.

The GMCCC poses the following two questions:

**Question 1** – Should a new clause be included requiring gas marketing agents and retailers to create a ‘no contact list’ and refrain from contacting customers on the list for a period of 2 years?

**Question 2** – Should the different levels of protection for different types of contract, as currently provided for under clauses 2.2, 2.3 and 2.4, be rationalised and, if so, how should they be rationalised?

**Appendix 1** is a mark-up version, and **Appendix 2** a clean version, of the Code incorporating the GMCCC’s draft recommendations.

## 3 Background

### 3.1 The Gas Market in Western Australia

The Authority is responsible for issuing gas trading licences. These licences permit a person ('the retailer') to supply gas in one or more supply areas, or one or more parts of one or more supply areas.

The Governor is responsible for the making, amendment and cancellation of gas supply areas, with advice provided by the Public Utilities Office. **Appendix 3** shows the eight gas supply areas in WA.

In 2011/12, there were five licensed gas retailers:

- Alinta Sales Pty Ltd (t/a **Alinta Energy**);
- Perth Energy Pty Ltd (**Perth Energy**);
- Electricity Retail Corporation (t/a **Synergy**);
- Wesfarmers Kleenheat Gas Pty Ltd (**Kleenheat Gas**); and
- WorleyParsons Asset Management Pty Ltd (**WorleyParsons**).

In WA, the market for gas is contestable. This means that gas retailers may sell gas to any customer within their supply area regardless of the customer's consumption level. There is one exception: Synergy may only sell gas to customer who consume more than 0.18TJ of gas per year.<sup>1</sup>

Further, customers who consume less than 1TJ of gas per year (**small use customers**)<sup>2</sup> are entitled to additional protection. When selling gas to a small use customer, a gas retailer must comply with the minimum standards prescribed in the Code and the *Compendium of Gas Customer Licence Obligations* (**Compendium**).

At 30 June 2012, the WA gas retail market comprised approximately 637,944<sup>3</sup> residential and non-residential small use customers.

Historically, the retail market has dominated by Alinta Energy, which holds a licence to retail gas in the Coastal, Goldfields-Esperance and Great Southern supply areas. As at 30 June 2012, Alinta Energy supplied 99.8% of all small use customer accounts.

The remaining 0.2% of small use customers are shared between Kleenheat Gas, WorleyParsons and Synergy.

Like Alinta Energy, Synergy and Kleenheat Gas hold a licence to supply gas in the Coastal, Goldfields-Esperance and Great Southern supply areas.<sup>4</sup> Synergy has been supplying gas to business customers in competition with Alinta Energy since 2007.

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<sup>1</sup> This equates to an annual gas bill of approximately \$6,200.

<sup>2</sup> This equates to an annual gas bill of approximately \$32,200.

<sup>3</sup> Economic Regulation Authority, *2011/12 Annual Performance Report Energy Retailers*, February 2013, pg 6 (table 6)

Kleenheat Gas has historically only supplied reticulated LPG in Margaret River and Albany. However, on 24 March 2013, Kleenheat Gas also commenced the supply of gas to residential and business customers in the Coastal supply area in competition with both Alinta Energy and Synergy. This may result in the historical market shares changing for 2013.

WorleyParsons only supplies gas in Esperance, while Perth Energy has as yet not commenced the supply of gas to small use customers.

## 3.2 Gas Marketing Code of Conduct

The Code is made under section 11ZPM of the Gas Act. The Code regulates and controls the conduct of gas trading licensees and gas marketing agents with the object of protecting small use customers from undesirable marketing conduct and defining standards of conduct in the marketing of gas to customers (section 11ZPM(2) of the Gas Act).

The initial Code was approved by the Minister for Energy and commenced operation on 31 May 2004. Under the Gas Act, the GMCCC is required to review the Code and provide its findings to the Authority. A review is required to be undertaken every two years.

The object of the review is to re-assess the suitability of the provisions of the Code for the purposes of section 11ZPM(2) of the Gas Act.<sup>5</sup>

Since the initial approval, the GMCCC has undertaken two reviews of the Code. The most recent version of the Code, the *Gas Marketing Code of Conduct 2012*, took effect on 1 July 2012.

## 3.3 What is 'Marketing'

The Code defines marketing as:

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

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

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

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<sup>4</sup> Kleenheat Gas's licence also authorises the supply of gas in the Wheatbelt supply area.

<sup>5</sup> Section 11ZPV(2) of the Gas Act.

## 3.4 Gas Marketing Code Consultative Committee

In 2013 the Authority approved amendments to the GMCCC Terms of Reference (**Appendix 4**).

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

- a Chairperson (from the Authority's Secretariat), who has no voting rights;
- an executive officer (from the Authority's Secretariat), who has no voting rights;
- a government agency representative from the Department of Commerce;
- a government agency representative from the Public Utilities Office;
- three consumer organisation representatives; and
- three industry representatives.

Current members of the GMCCC are:

- Mr Paul Kelly, Economic Regulation Authority (chairman)
- Dr David Leith, Economic Regulation Authority (executive officer)
- Mr Gerry Milford, Department of Commerce (government agency representative)
- Mr Alex Kroon, Public Utilities Office (government agency representative)
- Mr Andrew Canion, Small Enterprise Network (Chamber of Commerce & Industry) (consumer representative)
- Mr Brent Savage, Western Australian Council of Social Service (consumer representative)
- Mr Charles Brown, Financial Counsellors' Association of WA (consumer representative)
- Ms Catherine Rousch, Alinta Energy (industry representative)
- Mr Simon Thackray, Synergy (industry representative)
- Mr Brendan McColl, Wesfarmers Kleenheat Gas (industry representative)

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

## 3.5 Review Process & Code Amendment Requirements

The Secretariat of the Authority prepared a Discussion Paper for the consideration of the GMCCC in April 2013. The GMCCC met to discuss the issues outlined in the Discussion Paper and after considering a draft, has approved this report.

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

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

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

Upon receipt of the GMCCC's advice, the Authority will make its final decision.

## 4 Outstanding issues from 2011 Code Review

In its Final Review Report on the 2011 Review of the Gas Marketing Code of Conduct, the GMCCC recommended that the Authority write to the Minister for Energy regarding the following three issues.

### 4.1 Energy Coordination (Customer Contracts) Regulations 2004 – Australian Gas Association Customer Service Code

During the 2011 Review of the Code, one of the GMCCC members noted that the *Energy Coordination (Customer Contracts) Regulations 2004 (contract regulations)* contain multiple references to the Australian Gas Association (**AGA**) Customer Service Code (**AGA Code**). The AGA ceased publishing the AGA Code in 2002 and handed responsibility to Standards Australia which has not released a replacement code. It is widely recognised in the gas industry that the AGA Code has been defunct since that time and contains provisions that are no longer current or relevant to the gas market in Australia.

The GMCCC member proposed that references to the AGA Code be removed from the contract regulations so as not to cause confusion in relation to obligations within the Code. The GMCCC agreed that the continuing reference to the AGA Code is an issue and recommended that the Authority write to the Minister for Energy regarding the issue.<sup>6</sup>

Consistent with the GMCCC's recommendation, the Authority wrote to the Minister for Energy expressing its support for amendments to the contract regulations. The GMCCC understands the issue is currently under consideration.

### 4.2 Energy Coordination Act 1994 – Definition of 'marketing'

During the 2011 Review of the Code, a number of gas licensees argued that the definition of marketing included in the Code captures an overly broad spectrum of contact with the customer. They expressed concern that the definition did not only capture contact for the purpose of marketing, but also routine contact, such as checking a customer's concession eligibility.

The GMCCC recommended that the Authority narrow the definition of 'marketing' within the Code 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 in respect of 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

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<sup>6</sup> Gas Marketing Code Consultative Code, *2011 Review of the Gas Marketing Code of Conduct – Final Review Report*, 14 September 2011, p.14 (recommendation 7)

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

The Authority rejected the recommendation on the basis that any amendment to the definition should first occur in the superior legislation before amendment of the subsidiary legislation is considered.

The Authority resolved to raise the issue with the Minister for Energy. In December 2011, the Authority wrote to the Minister for Energy encouraging the Minister to consider the issues associated with the definition of 'marketing' in section 11ZPL of the Gas Act. The GMCCC understands the issue is currently under consideration.

### 4.3 Energy Coordination (Tariff) Regulations 2000 – Obligation to offer to supply under a standard form contract

Clause 2.3 of the Code relates to the information to be given to the customer before entering into a contract and includes subclause (1) which states:

(1) Before arranging a contract, a marketing representative must give a customer the following information —

(a) that the customer is free to choose the standard form contract offered by the retailer;

The same clause was amended in the *Code of Conduct for the Supply of Electricity to Small Use Customers (Electricity Code)*. The clause now only applies to Synergy and Horizon Power as the obligation to offer the standard form contract under Regulation 40 of the *Electricity Industry (Customer Contracts) Regulations 2005* only applies to Synergy and Horizon Power and not all electricity retailers.

In preparation for the 2011 Review of the Code, the Authority considered whether clause 2.3(1)(a) could be deleted from the Code. In doing so the Authority sought legal advice regarding the obligation to offer the standard form contract in gas. The advice indicated that it is uncertain whether a requirement to offer a standard form contract exists within the gas industry.

The Authority wrote to the Minister for Energy regarding this issue. The GMCCC understands the issue is currently under consideration.

## 5 Recommendations

### 5.1 Achieving Consistency with the Electricity Code

The Electricity Code Consultative Committee (**ECCC**) reviewed the *Code of Conduct for the Supply of Electricity to Small Use Customers (Electricity Code)* in 2011/12. Upon consideration of the ECCC's advice, the Authority made a number of amendments to the Electricity Code. Some of the amendments related to Part 2 of the Electricity Code, which addresses the marketing of electricity.

The majority of the amendments to Part 2 of the Electricity Code were made to achieve consistency with the *Gas Marketing Code of Conduct 2012*. However, some of the amendments made to Part 2 of the Electricity Code are not currently reflected in the Code.

The GMCCC recommends the following amendments be made to the Code to ensure consistency between the Code and Electricity Code.

#### 5.1.1 Definition – Do Not Call Register Act

The Electricity Code does not include a definition of the 'Do Not Call Register Act'. The definition is currently only used in the explanatory note under clause 1.7 of the Code.

##### Recommendation 1

Delete the definition of 'Do Not Call Register Act' from clause 1.5 of the Code.

##### Recommendation 2

Replace reference to 'Do Not Call Register Act' in the explanatory note under clause 1.7 of the Code with 'Do Not Call Register Act 2006 (Cth)'.

#### 5.1.2 Definition – Telemarketing calls

The Electricity Code does not include a definition of 'telemarketing calls'. The definition is currently not used in the Code.

##### Recommendation 3

Delete the definition of 'telemarketing calls' from clause 1.5 of the Code.

#### 5.1.3 Definition – Telemarketing Industry Standard

The Electricity Code does not include a definition of the 'Telemarketing Industry Standard'. The definition is currently only used in the explanatory note under clause 1.7 of the Code.

##### Recommendation 4

Delete the definition of 'Telemarketing Industry Standard' from clause 1.5 of the Code.

##### Recommendation 5

Replace reference to 'Telemarketing Industry Standard' in the explanatory note under clause 1.7 of the Code with 'Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007'.

#### 5.1.4 Definition – TTY

The definition of 'TTY' in the Electricity Code has been amended to read 'teletypewriter'. The definition in the Code still refers to 'telephone typewriter'.

#### Recommendation 6

Amend the definition of 'TTY' in clause 1.5 of the Code to read 'teletypewriter'.

#### 5.1.5 Clause 2.3(2) – 'entered into'

Clause 2.3(2) of the Electricity Code was amended to correct a grammatical error. The clause now reads as follows:

For a standard form contract that is not an unsolicited consumer agreement or for a non-standard contract entered into 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.

#### Recommendation 7

Insert the words 'entered into' between 'contract' and 'in accordance with' in clause 2.3(2) of the Code.

#### 5.1.6 Clause 2.3(3) – 'entered into'

Clause 2.3(3) of the Electricity Code was amended to correct a grammatical error. The clause now reads as follows:

For a standard form contract that is an unsolicited consumer agreement or a non-standard contract entered into 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.

#### Recommendation 8

Insert the words 'entered into' between 'contract' and 'other than' in clause 2.3(3) of the Code.

#### 5.1.7 Clause 2.4(3)(b) – Provision of information

The GMCCC notes that clause 2.4(3)(b) of the Code and clause 2.4(3)(b) of the Electricity Code differ. The GMCCC considers that clause 2.4(3)(b) of the Electricity Code contains a grammatical error and, therefore, does not recommend any changes to the Code.

#### 5.1.8 Clause 2.5(2) – 'all'

Clause 2.5(2) of the Code includes the word 'all' while this word has been deleted from clause 2.5(2) of the Electricity Code. For reasons of consistency, the GMCCC proposes that the word 'all' is also deleted from the Code. The clause would then read as follows:

A gas marketing agent must ensure that **all** non-standard contracts that are not unsolicited consumer agreements are in writing.

### Recommendation 9

Delete the word 'all' from clause 2.5(2) of the Code.

## 5.1.9 Clause 2.8(2) – Record keeping

Clause 2.8(2) addresses the issue of record keeping. It requires a gas marketing agent to keep records or other information that the gas marketing agent is required to keep under the Code for at least 2 years.

Although clause 2.8(2) is included under the heading 'Gas marketing agent complaints', the clause does not only relate to complaints but to any type of records.

The GMCCC recommends that clause 2.8(2) become a stand-alone clause to clarify the general nature of the record-keeping obligation and that a new heading be inserted.

### Recommendation 10

Re-number clause 2.8(2) to become a separate (clause 2.10).

### Recommendation 11

Insert the heading 'Records to be kept' in new clause 2.10.

### Recommendation 12

Insert the following explanatory note under new clause 2.10:

[Note: Clause 13.1(1) of the *Compendium* sets out the record keeping obligations that apply to retailers in relation to records to be kept under this Code.]

## 5.1.10 Clause 2.8(2) – Record keeping

The equivalent of clause 2.8(2) in the Electricity Code is clause 2.9(2). Unlike clause 2.8(2) of the Code, clause 2.9(2) of the Electricity Code contains two subclauses.

The GMCCC has reviewed clauses 2.9(2)(a) and (b) of the Electricity Code and considers they address the same issue. Therefore, the GMCCC does not propose any changes to clause 2.8(2) of the Code.

## 5.2 Achieving Consistency with the Australian Consumer Law

On 1 January 2011 the Australian Consumer Law (**ACL**) commenced. The ACL is Schedule 2 to the *Competition and Consumer Act 2010*. During the 2011 Review of the Code, the GMCCC proposed a significant number of amendments to the Code to ensure consistency with the ACL.

The ACL prescribes a cooling-off period of 10 business days for all unsolicited consumer agreements. For door-to-door contracts, the contract regulations provide for a cooling-off period of 10 days.

Since the ACL and the contract regulations will apply, in order to comply with both obligations door-to-door contracts that may be considered unsolicited consumer agreements will be subject to a cooling-off period of 10 days and 10 business days. Practically this means that door-to-door contracts that may be considered unsolicited consumer agreements will be subject to a cooling-off period of 10 business days. Door-to-door contracts that are not unsolicited consumer agreements continue to be subject to the 10 day cooling-off period.

To reflect that a different cooling-off period applies for door-to-door contracts that are not unsolicited consumer agreements, clause 2.4(2)(j) of the Code currently provides that details of the 10 day cooling-off period only need to be provided in relation to these types of contracts. This is causing some confusion.

The GMCCC proposes amendments to the Code to ensure that all customers are advised of any cooling-off periods that may be applicable under their contract regardless of whether the cooling-off period is prescribed under the ACL or the Code.

#### Recommendation 13

Amend clause 2.4(2)(j)<sup>7</sup> of the Code as follows:

~~for agreements that are not unsolicited 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**.

#### Recommendation 14

Amend the definition of 'cooling-off period' in clause 1.5 as follows:

means the period specified in the **contract** as the cooling-off period.

## 5.3 The National Energy Customer Framework

The Ministerial Council on Energy (**MCE**) (now Standing Council on Energy and Resources or **SCER**) has developed the National Energy Customer Framework (**NECF**). The NECF is a set of laws and rules governing retail and distribution non-price regulation in the National Energy Market (**NEM**). Whilst the WA Government participates in the SCER the GMCCC understands that there is no intention of implementing the NECF in WA at this stage.

The NECF was originally scheduled to be implemented on 1 July 2012 by all States and Territories, with the exception of Western Australia and the Northern Territory. Although Tasmania and the ACT implemented the NECF on 1 July 2012 as scheduled, all other States opted to delay the implementation of the NECF.

South Australia subsequently implemented the NECF on 1 February 2013. The Secretariat understands that New South Wales aims to commence the NECF on 1 July

<sup>7</sup> Recommendation 16 will result in clause 2.4(2)(j) becoming clause 2.4(2)(i).

2013<sup>8</sup>, while Victoria will commence the NECF as soon as is practicable and Queensland is yet to consider its application of the NECF.<sup>9</sup>

During the 2011 Review of the Code, the GMCCC considered the provisions of NECF that related to marketing and whether any of these provisions should be implemented through the Code. The GMCCC agreed that, given the fact that the NECF had not yet been implemented, it would be premature to propose anything other than noting the NECF changes.

As the NECF has now taken effect in some jurisdictions, the GMCCC has reconsidered the issue whether any NECF provisions that relate to marketing should be implemented through the Code.

**Appendix 5** contains a detailed comparative overview between the NECF and Code marketing requirements.

The following paragraphs discuss some of the main differences between the NECF and the Code.

### 5.3.1 Provision of information before entering into a contract

Both the NECF<sup>10</sup> and the Code<sup>11</sup> require a retailer to advise a customer<sup>11</sup> that the customer is free to choose the retailer's standard form contract (standing offer). The Code further requires a retailer to explain to a customer the difference between a standard form contract and a non-standard contract.

Unlike the NECF, the Code also requires a retailer to obtain the customer's verifiable consent<sup>12</sup> or written acknowledgement<sup>13</sup> that this information has been provided.

The GMCCC considered whether the requirement to provide verifiable consent or written acknowledgement could be removed from the Code. The GMCCC agreed to retain the requirement and proposes no changes to clause 2.2 of the Code at this stage.

### 5.3.2 Provision of information when entering into a contract

Clause 2.4 of the Code lists the information that must be given to a customer at the time of or after entering into a standard form contract or a non-standard contract.

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<sup>8</sup> New South Wales Government – Trade & Investment, *National Energy Customer Framework: consultation on implementation in NSW*, <http://www.energy.nsw.gov.au/customers/necf> (accessed Thursday, 9 May 2013).

<sup>9</sup> Australian Government, Department of Resources, Energy & Tourism, *National Energy Customer Framework*, [http://www.ret.gov.au/energy/energy\\_markets/national\\_energy\\_customer\\_framework/Pages/NationalEnergyCustomerFramework.aspx](http://www.ret.gov.au/energy/energy_markets/national_energy_customer_framework/Pages/NationalEnergyCustomerFramework.aspx) (accessed Thursday, 11 April 2013).

<sup>10</sup> Rule 16 of the National Energy Retail Rules

<sup>11</sup> Clause 2.3(1) of the Gas Marketing Code of Conduct

<sup>12</sup> Standard form contracts that are not unsolicited consumer agreements or non-standard contracts in accordance with clause 2.2(2).

<sup>13</sup> Standard form contracts that are unsolicited consumer agreements or non-standard contracts other than in accordance with clause 2.2(2).

The NECF also requires a retailer to provide certain information to customers at the time the customer enters into a contract with the retailer. However, the information requirements differ depending on the type of contract the retailer and the customer agree to enter into.

**Appendix 6** provides a comparative overview of the information requirements under the NECF and the Code.

### *Code & Compendium*

Clauses 2.4(2)(a)(i), (b) and (c) of the Code require a retailer and gas marketing agent to advise a customer how the customer may obtain a copy of the Code and the Compendium. The retailer or gas marketing agent must further advise a customer of the scope of the Code and that a retailer, distributor and gas marketing agent must comply with the Code.

The NECF does not require retailers to inform customers about the existence of the National Energy Retail Rules.<sup>14</sup>

The GMCCC proposes no changes to clauses 2.4(2)(a)(i) and (b) of the Code.

The GMCCC notes that clause 2.4(2)(c) of the Code requires a retailer or gas marketing agent to advise a customer that a distributor must comply with the Code. As the Code does not place any obligations on distributors, the GMCCC recommends that the reference to distributors be removed from this clause.

### **Recommendation 15**

Delete reference to 'distributor' from clause 2.4(2)(c) of the Code .

### *Fault & Emergencies*

Clause 2.4(2)(f) of the Code requires a retailer or gas marketing agent to advise a customer of the distributor's 24 hour telephone number for faults and emergencies.

No equivalent provision is included in the NECF.

The GMCCC proposes no changes to clauses 2.4(2)(f) of the Code.

### *Gas Customer Safety Awareness Program*

Clause 2.4(2)(i) of the Code requires a retailer or gas marketing agent to provide a customer with general information on the retailer's gas customer safety awareness program. No equivalent provision exists in the Electricity Code.

No equivalent provision is included in the NECF.

The GMCCC recommends deletion of clause 2.4(2)(i) of the Code.

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<sup>14</sup> Rule 19(1)(b) does require a retailer to provide a customer with a description of the retailer's and customer's respective rights and obligations concerning the sale of energy under the Law and these Rules. This requirement is different from the requirement under the Code, as it requires a retailer to advise a customer about the customer's rights and obligations – not about the existence of the National Energy Retail Rules.

**Recommendation 16**

Delete clause 2.4(2)(i) of the Code and delete the definition of 'gas customer safety awareness program' from clause 1.5.

***Duration & Termination***

The NECF requires retailers to provide customers with information on the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the customer moves out during the term of the contract.<sup>15</sup>

The Code does not include an equivalent provision. However, the Code does provide that extensive information is given about the contract and the regulatory regime.<sup>16</sup>

The GMCCC proposes no changes to the Code.

**5.3.3 *When information must be provided******Copy of the contract***

Both the Code and the NECF contain provisions as to how and when a retailer must provide or make available a copy of the contract to the customer.

The main difference between the Code and the NECF relates to the provision of copies of 'solicited' non-standard contracts. Under the NECF a retailer must always provide a customer with a copy of a market retail contract, while under the Code a retailer only has to offer to make a copy of the contract available to the customer.

The GMCCC proposes no changes to the Code.

***Information*****Market retail contracts & Non-standard contracts**

Under the NECF, a retailer may provide the 'required information' either before or as soon as practicable after the formation of a market retail contract.<sup>17</sup>

Information provided after the formation of the contract must be provided in a single written disclosure statement. Information provided before the formation of the contract may be provided electronically, verbally or in writing. Any information that has been provided electronically or verbally must again be provided after formation of the contract in a single written disclosure statement.<sup>18</sup>

Under the Code, a gas marketing agent must give the required information before the customer enters into a non-standard contract. In addition, the gas marketing agent must obtain the customer's written acknowledgement that the required information has been given.<sup>19</sup>

<sup>15</sup> Rule 64(1)(b) of the National Energy Retail Rules.

<sup>16</sup> Clause 2.3 and clause 2.4 of the Code.

<sup>17</sup> Rule 62 of the National Energy Retail Rules.

<sup>18</sup> Rule 63 of the National Energy Retail Rules.

<sup>19</sup> Clause 2.4(3)(b) of the Code.

The GMCCC proposes no changes to the Code.

### Standing offer contracts & Standard form contracts

In relation to standing offer contracts requested by a customer, the NECF requires retailers to provide the information specified in Rule 19 'as soon as practicable'.<sup>20</sup>

In relation to standard form contracts, the Code includes two obligations:

- *standard form contracts*: Clause 2.4(3)(a) provides that any required information must be given no later than with or on the customer's first bill.
- *standard form contracts that are unsolicited consumer agreements*: Clause 2.4(3)(b) requires that any required information be given before the customer enters into the contract. Further, the gas marketing agent must obtain the customer's written acknowledgement that the information has been given.

At present, standard form contracts that are unsolicited consumer agreements must comply with both clauses 2.4(3)(a) and (b) of the Code.

For reasons of transparency, the GMCCC recommends that the scope of clause 2.4(3)(a) be limited to standard form contracts that are not unsolicited consumer agreements.

#### Recommendation 17

Amend clause 2.4(3)(a) as follows:

for a **standard form contract** that is not an unsolicited consumer agreement, no later than with or on the **customer's** first bill

### 5.3.4 No contact lists

Rule 65 of the National Energy Retail Rules requires a retailer to create a 'no contact list' of customers who have indicated that they wish to be placed on the list. Retail marketers are not allowed to make contact with small customers whose names are on the no contact list for a period of 2 years.

The Rule only applies to marketing in person at a customer's premises or marketing by mail. It does not apply to telemarketing calls or e-marketing activities as these forms of marketing are covered by the Do Not Call Register Act and the Spam Act.

Clause 2.7 which specified a retailer's and gas marketing agent's conduct when a customer does not wish to be contacted, was deleted from the Code during the 2011 Review. The rationale for the deletion was to remove duplication with the Australian Consumer Law, the Do Not Call Register Act and the Spam Act.

It is arguable whether the Australian Consumer Law, the Do Not Call Register Act and the Spam Act provide customers with the same rights as previously included in clause 2.7 of the Code.

At present, WA gas retailers are not required to create a 'no contact list' and refrain from contacting customers in person on the list for a period of 2 years.

<sup>20</sup> Rule 19 of the National Energy Retail Rules.

The GMCCC considered whether the obligation to create a 'no contact list' should be reinserted into the Code. The GMCCC's interim view is that there is no indication that door to door marketing, in person, is an issue in the WA gas market at this stage.

The GMCCC welcomes submissions regarding the need, if any, to include a requirement in the Code for gas marketing agents and retailers to create a 'no contact list'.

#### Question 1

Should a new clause be included requiring gas marketing agents and retailers to create a 'no contact list' and refrain from contacting customers on the list for a period of 2 years?

### 5.3.5 No canvassing or advertising signs

Under the NECF, a retailer must comply with any signs at a customer's premises indicating that canvassing is not permitted at the premises, or that no advertising or similar material is to be left at the premises.<sup>21</sup>

A similar clause was included in the *Gas Marketing Code of Conduct 2008*. The clause was removed as part of the 2011 Review of the Code.

The Australian Consumer Law does not include provisions regarding canvassing or advertising.

The GMCCC proposes that a new clause be inserted in the Code which requires a gas marketing agent or retailer to comply with any signs at a person's premises indicating that canvassing is not permitted at the premises; or that no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at or associated with the premises.

#### Recommendation 18

Insert the following new clause (clause 2.7):

##### No canvassing or advertising signs

A **retailer** or **gas marketing agent** who visits a person's **premises** for the purposes of **marketing** must comply with any signs at a person's **premises** indicating –

- (a) canvassing is not permitted at the **premises**; or
- (b) no advertising or similar material is to be left at the **premises** or in a letterbox or other receptacle at, or associated with, the **premises**.

### 5.3.6 Record keeping

Under the NECF, retailers must keep records of their marketing activities for a period of 12 months. If a small customer makes a complaint or refers a dispute to the energy ombudsman during that time, the retailer must retain the records for the period the complaint or dispute remains unresolved.

<sup>21</sup> Rule 66 of the National Energy Retail Rules.

Clause 2.8(2) of the Code requires a gas marketing agent to keep records for at least 2 years. There is no distinction between general records and those related to complaints. The GMCCC proposes no changes to the Code.

## 5.4 Other

### 5.4.1 *Electronic Transactions Act 2003*

The note under clause 2.2 of the Code refers to the 'Electronic Transactions Act 2003'. The 2003 version of the Act has been repealed and replaced with the 'Electronic Transactions Act 2011'.

#### **Recommendation 19**

Replace reference to 'Electronic Transactions Act 2003', in the note under clause 2.2, with 'Electronic Transactions Act 2011'.

### 5.4.2 *Clauses 1.6(a) and (c) – Application*

Clauses 1.6(a) and (c) of the Code provide that the Code applies to customers and distributors.

Section 11ZPM(2) of the Act provides that the Code is to regulate and control the conduct of retailers and gas marketing agents. As currently drafted, the Code does not impose any obligations upon customers or distributors.

The GMCCC recommends the deletion of clauses 1.6(a) and (c) of the Code.

#### **Recommendation 20**

Delete clauses 1.6(a) and (c) from the Code.

### 5.4.3 *Clause 1.7 – Purpose*

Clause 1.7 of the Code provides that the Code regulates and controls the conduct of gas marketing agents, retailers and distributors.

Section 11ZPM(2) of the Act provides that the Code is to regulate and control the conduct of retailers and gas marketing agents; it does not include reference to distributors. As currently drafted, the Code does not impose any obligations upon distributors.

The GMCCC recommends reference to 'distributors' be deleted from clause 1.7 of the Code.

#### **Recommendation 21**

Delete reference to 'distributors' from clause 1.7 of the Code.

### 5.4.4 *Non standard form contract*

Clause 2.4(3)(b) of the Code refers to a 'non standard form contract'. This is a grammatical error. The correct term is 'non-standard contract', as defined in clause 1.5 of the Code.

**Recommendation 22**

Replace reference to 'non standard form contract' with 'non-standard contract' in clause 2.4(3)(b) of the Code.

#### **5.4.5 Clarification of provisions that apply to the retailer and the gas marketing agent**

The GMCCC was concerned that certain references in the Code to retailers apply to retailers and gas marketing agents. Conversely, certain references to gas marketing agents apply to gas marketing agents and retailers.

The Code has been reviewed accordingly and amendments made to rectify incorrect references.

**Recommendation 23**

Amend instances of 'retailers' and instances of 'gas marketing agents' to 'retailers and gas marketing agents' as appropriate throughout the Code.

#### **5.4.6 References to 'other party'**

The GMCCC sought to clarify provisions in the Code that apply to retailers and the gas marketing agents. A related matter is the references to 'other party' in the Code. These references appear to be a hangover from when the Code purported to apply to consumer representatives (i.e. marketers who act on behalf of consumers rather than retailers). These have been removed, as the definition of 'gas marketing agent' no longer includes consumer representatives. Further, there is an issue with enforcement. It is difficult to see how the Authority could meaningfully enforce the Code against a party other than a retailer.

The GMCCC recommends references to 'other party' be deleted from the Code.

**Recommendation 24**

Delete all instances of 'other party' from the Code.

#### **5.4.7 Social media**

Retailers are increasingly using social media, such as Facebook and Twitter, as a means of communicating with their customers. The GMCCC considered the safeguards that are currently in place around the use of social media, in particular the Spam Act.

One of the GMCCC members expressed concern regarding the endorsement by celebrities of products and services where the celebrity does not disclose he or she receives a benefit, financial or otherwise, for promoting those products or services.

The GMCCC notes that the use of social media in the marketing of products and services is not limited to the marketing of gas. Therefore, the GMCCC is of the view that any rules

or regulations in this regard should not be limited to gas marketing, but should be considered on a state-wide or national basis.

The GMCCC further notes that the Code and Spam Act provide well-defined safeguards for the use of social media by gas marketing agents and retailers in their communications with (prospective) customers.

The GMCCC proposes no changes to the Code.

#### 5.4.8 *Level of protection*

The Code offers different levels of protection depending on whether the contract is a standard form contract, a non-standard contract, an unsolicited contract or a 'solicited' contract.

For example, when entering into a:

- **Unsolicited consumer agreements**, the agreement must be signed. [Australian Consumer Law]
- **Unsolicited non-standard contract** (that is not an unsolicited consumer agreement), the contract must be signed. [clause 2.2(1) of the Code]
- **'Solicited' non-standard contract**, 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. [clause 2.2(2) of the Code]
- **Standard form contract** (that is not an unsolicited consumer agreement), the gas marketing agents must record the date the contract was entered into.

Similar distinctions can be found in clauses 2.3 and 2.4 of the Code.

One of the members of the GMCCC proposed to amend the Code whereby all customers receive the same protections regardless of their contract type.

The GMCCC recognises the complexity of the current requirements. However, to apply the same level of protection to all customers would either require a 'reduction' in the rights of customers entering into a non-standard contract or unsolicited agreement, or an 'increase' in the rights of customers entering into a standard form contract or 'solicited' agreement.

The GMCCC is concerned that by 'increasing' the level of protection for standard form contracts and 'solicited' agreements, retailers will no longer be able to process account applications over the phone. For example, the information requirements set out in clause 2.4 would have to be provided to the customer *before* the contract is entered into. The gas marketing agent or retailer would furthermore have to obtain the customer's written acknowledgement that the information has been given.

If the level of protection for non-standard and unsolicited agreements were 'reduced', customers entering into these types of contact would, for example, no longer be required to sign the contract. As the terms and conditions of non-standard contracts have not been approved by the Authority, the GMCCC considers it appropriate that a gas marketing agent or retailer must obtain a customer's signature for the contract to take effect.

The GMCCC's interim view is that the current provisions should remain as is. However, the GMCCC welcomes submissions as to whether the obligations included in clauses 2.2, 2.3 and 2.4 can be rationalised and, if so, how they ought to be rationalised.

**Question 2**

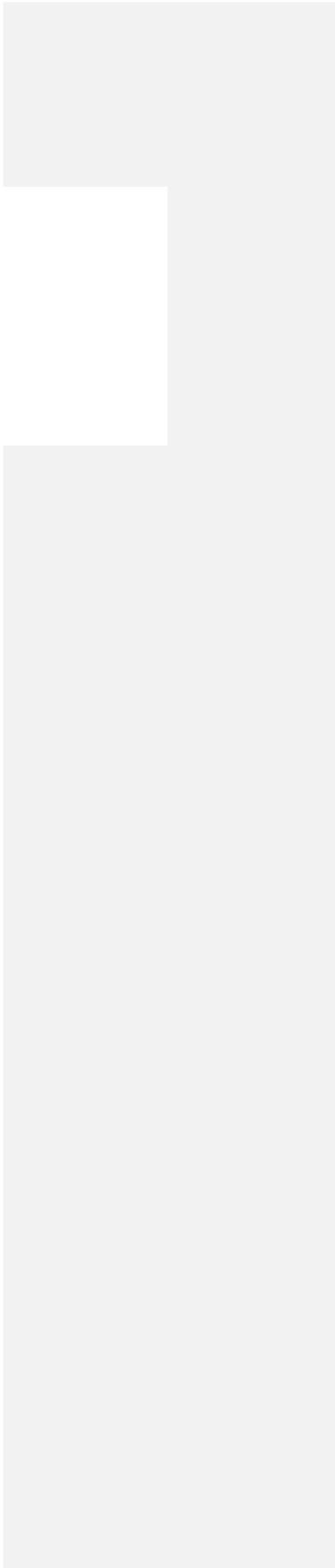
Should the different levels of protection for different types of contract, as currently provided for under clauses 2.2, 2.3 and 2.4, be rationalised and, if so, how should they be rationalised?

# APPENDICES

## **Appendix 1 – Proposed new Code (with track changes)**

**DRAFT**

***Gas Marketing Code of Conduct 2012***



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## Part 1 Preliminary

### 1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 2012*.

### 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 2012* 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, by **telephone** or by post, facsimile or electronic communication.

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

“**cooling-off period**” means the period specified in the contract as the cooling-off 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 of gas 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) the retailer or 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 retailer or 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~~ the **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 program**” means a program 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) not a person who is a **customer** representative.

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“**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** or other electronic means –

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

“marketing identification number” means a unique number assigned by a ~~retailer or other party~~ to each **gas marketing agent** acting on its behalf.

“non-standard contract” means a contract entered into between a **retailer** and a **customer**, or a class of **customers**, that is not a **standard form contract**.

“payment difficulties” means a state of immediate financial disadvantage that results in a **residential customer** being unable to pay an outstanding amount as required by a **retailer** by reason of a **change in personal circumstances**.

“premises” means premises owned or occupied by a new or existing **customer**.

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

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

“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~~ teletypewriter.

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

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

## 1.7 Purpose

The **Code** regulates and controls the conduct of **gas marketing agents**, [and retailers](#) ~~and distributors~~.

[Note: This **Code** is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities including, but not limited to, the *Australian Consumer Law* (WA), the *Spam Act 2003* (Cth), the *Spam Regulations 2004* (Cth), the *Do Not Call Register Act 2006* (Cth), the [Telecommunications \(Do Not Call Register\) \(Telemarketing and Research Calls\) Industry Standard 2007](#), ~~Telecommunications Industry Standard 2007~~ and the *Privacy Act 1988* (Cth).]

## 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 and 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 **retailer or gas marketing agent** must, in the course of arranging a **non-standard contract**, other than in accordance with subclause (2), ensure that the **contract** is signed by the **customer**.

[Note: Under the *Electronic Transactions Act 2003* ~~2011~~, 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** 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** need not be signed by the **customer** but the date of the **customer** entering into the **standard form contract** must be recorded by the **retailer or gas marketing agent**.
- (4) The terms and conditions of a **standard form contract** must be made available to the **customer** on request at no charge.
- (5) Clauses 2.2(1) to (4) inclusive do not apply in relation to contracts that are **unsolicited consumer agreements**.

### 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 **retailer or gas marketing agent** must give a **customer** the following information –
- that the **customer** is free to choose the **standard form contract** offered by the **retailer**;
  - 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 not an **unsolicited consumer agreement** or for a **non-standard contract entered into** in accordance with clause 2.2(2) above, the **retailer or 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 entered into** other than in accordance with clause 2.2(2) above, the **retailer or 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 the time of or after entering into a contract

- (1) When a **customer** enters into a new **contract** that is not an **unsolicited 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**; [and](#)

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

~~(j)(i) for agreements that are not **unsolicited 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** ~~that is not an **unsolicited consumer agreement**~~, no later than with or on the **customer's** first bill; and

(b) for a ~~**non-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 **retailer or 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 or gas marketing agent** is not obliged to provide the information in subclause (2) to a **customer** if –

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

(b) when the **retailer or gas marketing agent** is obliged to provide the information to the **customer** pursuant to subclause (3), the **retailer or gas marketing agent** 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 **retailer or 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 **retailer or gas marketing agent** must ensure that ~~all~~ **non-standard contracts** that are not **unsolicited consumer agreements** are in writing.

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

### 2.6 Contact for the purposes of marketing

(1) A **retailer or 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 gas marketing agent** ~~or other party~~ on whose behalf the **contact** is being made; and

- (b) for contact by a gas marketing agent, provide the **customer** with the **gas marketing agent's marketing identification number**.
- (2) A retailer or gas marketing agent who meets with a **customer** face to face for the purposes of **marketing** must –
- (a) when negotiating a contract that is not an **unsolicited 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** (for contact by a gas marketing agent); and
    - (iv) the name of the **retailer** or gas marketing agent ~~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** (for contact by a gas marketing agent);
    - (iii) the name of the **retailer** or gas marketing agent ~~other party~~ on whose behalf the **contact** is being made;
    - (iv) the complaints **telephone** number of the **retailer** or gas marketing agent ~~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 gas marketing agent ~~other party~~ on whose behalf the **contact** is being made.
- (3) A **retailer** or gas marketing agent ~~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 retailer or 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 retailer or gas marketing agent **contacts** a **customer** in response to a **customer** request or query.

## **2.7 No canvassing or advertising signs**

A **retailer** or **gas marketing agent** who visits a person's **premises** for the purposes of **marketing** must comply with any signs at a person's **premises** indicating –

- (a) canvassing is not permitted at the **premises**; or
- (b) no advertising or similar material is to be left at the **premises** or in a letterbox or other receptacle at, or associated with, the **premises**.

## **Division 5 – Miscellaneous**

### **2-72.8 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.

### **2-82.9 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**; and
- (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**.

### **2.10 Records to be kept**

~~(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**.

[Note: Clause 13.1(1) of the *Compendium* sets out record keeping obligations that apply to retailers in relation to records to be kept under this Code.]

## **Appendix 2 – Proposed new Code (clean copy)**

***Gas Marketing Code of Conduct 2012***

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## Part 1 Preliminary

### 1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 2012*.

### 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 2012* 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, by **telephone** or by post, facsimile or electronic communication.

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

“**cooling-off period**” means the period specified in the **contract** as the cooling-off period.

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

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

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

- (a) the **retailer** or **gas marketing agent** goes from place to place seeking out persons who may be prepared to enter, as **customers**, into **contracts**; and
- (b) the **retailer** or 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, the **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 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) 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** or other electronic means –

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

**“marketing identification number”** means a unique number assigned by a **retailer** 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**.

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

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

“**TTY**” means teletypewriter.

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

“**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) **retailers**; and
- (b) **gas marketing agents**.

## 1.7 Purpose

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

[Note: This **Code** is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities including, but not limited to, the *Australian Consumer Law (WA)*, the *Spam Act 2003 (Cth)*, the *Spam Regulations 2004 (Cth)*, the *Do Not Call Register Act 2006 (Cth)*, the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007* and the *Privacy Act 1988 (Cth)*.]

## 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 and 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 **retailer** or **gas marketing agent** must, in the course of arranging a **non-standard contract**, other than in accordance with subclause (2), ensure that the **contract** is signed by the **customer**.

[Note: Under the *Electronic Transactions Act 2011*, 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** 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** need not be signed by the **customer** but the date of the **customer** entering into the **standard form contract** must be recorded by the **retailer** or **gas marketing agent**.
- (4) The terms and conditions of a **standard form contract** must be made available to the **customer** on request at no charge.
- (5) Clauses 2.2(1) to (4) inclusive do not apply in relation to contracts that are **unsolicited consumer agreements**.

### 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 **retailer** or **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 not an **unsolicited consumer agreement** or for a **non-standard contract** entered into in accordance with clause 2.2(2) above, the **retailer** or **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** entered into other than in accordance with clause 2.2(2) above, the **retailer** or **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 the time of or after entering into a contract

- (1) When a **customer** enters into a new **contract** that is not an **unsolicited 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** 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**; and

- (i) 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** that is not an **unsolicited consumer agreement**, no later than with or on the **customer's** first bill; and
  - (b) for a **non-standard contract** or a **standard form contract** that is an **unsolicited consumer agreement**, before the **customer** has entered into the **contract** and the **retailer** or **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** or **gas marketing agent** is not obliged to provide the information in subclause (2) to a **customer** if –
- (a) the **retailer** or **gas marketing agent** has provided the information to that **customer** within the preceding 12 months; or
  - (b) when the **retailer** or **gas marketing agent** is obliged to provide the information to the **customer** pursuant to subclause (3), the **retailer** or **gas marketing agent** 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 **retailer** or **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 **retailer** or **gas marketing agent** must ensure that **non-standard contracts** that are not **unsolicited consumer agreements** are in writing.
- (3) A **retailer** or **gas marketing agent** must ensure that a **customer** is able to **contact** the **retailer** or **gas marketing agent** on the **retailer's** or **gas marketing agent's telephone** number during the normal business hours of the **retailer** or **gas marketing agent** for the purposes of enquiries, verifications and **complaints**.

### 2.6 Contact for the purposes of marketing

- (1) A **retailer** or **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 **gas marketing agent** on whose behalf the **contact** is being made; and
  - (b) for contact by a **gas marketing agent**, provide the **customer** with the **gas marketing agent's marketing identification number**.
- (2) A **retailer** or **gas marketing agent** who meets with a **customer face to face** for the purposes of **marketing** must –

- (a) when negotiating a contract that is not an **unsolicited 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** (for contact by a **gas marketing agent**); and
    - (iv) the name of the **retailer** or **gas marketing agent** 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** (for contact by a **gas marketing agent**);
    - (iii) the name of the **retailer** or **gas marketing agent** on whose behalf the **contact** is being made;
    - (iv) the complaints **telephone** number of the **retailer** or **gas marketing agent** on whose behalf the **contact** is being made; and
    - (v) the business address and Australian Business or Company Number of the **retailer** or **gas marketing agent** on whose behalf the **contact** is being made.
- (3) A **retailer** or **gas marketing agent** 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 **retailer** or **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 **retailer** or **gas marketing agent** **contacts** a **customer** in response to a **customer** request or query.

## 2.7 No canvassing or advertising signs

A **retailer** or **gas marketing agent** who visits a person's **premises** for the purposes of **marketing** must comply with any signs at a person's **premises** indicating –

- (a) canvassing is not permitted at the **premises**; or

- (b) no advertising or similar material is to be left at the **premises** or in a letterbox or other receptacle at, or associated with, the **premises**.

## Division 5 – Miscellaneous

### 2.8 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.

### 2.9 Gas marketing agent complaints

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**, and
- (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**.

### 2.10 Records to be kept

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**.

[Note: Clause 13.1(1) of the *Compendium* sets out record keeping obligations that apply to retailers in relation to records to be kept under this *Code*.]

## **Appendix 3 – GMCCC Terms of Reference**



## Electricity Code Consultative Committee and Gas Marketing Code Consultative Committee Terms of Reference

### 1. Preamble

The Electricity Code Consultative Committee (**ECCC**) is established by the Economic Regulation Authority (**Authority**) under section 81 of the *Electricity Industry Act 2004* (**EI Act**).

The Gas Marketing Code Consultative Committee (**GMCCC**) is established by the Authority under section 11ZPO of the *Energy Coordination Act 1994* (**EC Act**).

### 2. Purpose of the Committees

The ECCC and GMCCC are established for the purpose of:

- a. advising the Authority on matters relating to the *Code of Conduct for the Supply of Electricity to Small Use Customers* (**Electricity Code**) and *Gas Marketing Code of Conduct* (**Gas Marketing Code**) respectively;
- b. undertaking reviews of the Electricity Code and Gas Marketing Code at least once every two years; and
- c. advising the Authority on any proposed amendment to, or replacement of, the Electricity Code or Gas Marketing Code.

### 3. Appointment of Members

Membership of the ECCC shall comprise:

- a. a Chairperson from the Authority with no voting right;
- b. four members\* from consumer representative organisations (with one of these from a regional, rural or remote area if possible);
- c. four members\* from industry or industry representative organisations;
- d. two members from government agencies;
- e. an executive officer from the Authority with no voting right.

The Authority may discharge, alter or reconstitute the ECCC at its discretion as provided for under section 81(2)(b) of the EC Act.

Membership of the GMCCC shall comprise:

- a. a Chairperson from the Authority with no voting right;
- b. three members\* from consumer representative organisations;
- c. three members\* from industry or industry representative organisations;
- d. two members from government agencies; and
- e. an Executive Officer from the Authority with no voting right.

The Authority may discharge, alter or reconstitute the GMCCC at its discretion as provided for under section 11ZPO(2)(b) of the EC Act.

\* The Authority shall appoint these members following a public call for expressions of interest.

All voting rights shall be equal.

Membership terms are two years or, in the case of an appointment to fill a casual vacancy, until the expiry of the retiring member's term.

#### **4. Payments to Members**

The Authority may pay a non-government consumer organisation representative a remuneration, allowance or reimbursement, the rate of which will be determined by the Minister for Public Sector Management.

#### **5. Support from the Authority**

The Authority shall provide reasonable support services necessary for the ECCC and GMCCC to carry out their functions.

#### **6. Committee Governance**

The ECCC and GMCCC may adopt procedures, consistent with the requirements of the EI Act and the EC Act respectively, for carrying out reviews of the Electricity Code and Gas Marketing Code respectively, and for the provision of advice to the Authority.

The Authority may impose conditions regarding members' use of information it releases to members.

Members shall take all reasonable measures to protect from unauthorised use or disclosure information provided to them by the Authority and indicated by the Authority to be "confidential". This confidentiality clause shall survive the expiration or termination of members' appointments.

Members who believe that any of their external activities would conflict with their position on the ECCC or GMCCC must declare their interest to the Chairperson as soon as practicable after becoming aware of the potential conflict, and in any event within 14 days of becoming aware.

Members shall notify the Chairperson of any change in their circumstances that limits their ability to satisfy these duties.

## 7. Meeting Procedures

The Chairperson shall endeavour to achieve consensus of the members present at a meeting.

If consensus is not possible, decisions shall be by a majority vote of 50% of members plus one.

Members not present may vote out of session subject to the discretion of the Chairperson.

Members unable to attend may send a proxy subject to the discretion and prior approval of the Chairperson.

Decisions may be made by email communication at the discretion of the Chairperson.

## 8. Consultation

The ECCC and GMCCC shall give any interested person an opportunity to offer comment relevant to a review of the Electricity Code or Gas Marketing Code respectively, or to any proposed amendment or replacement of the Electricity Code or Gas Marketing Code respectively.

The ECCC and GMCCC shall take into account any comments they receive.

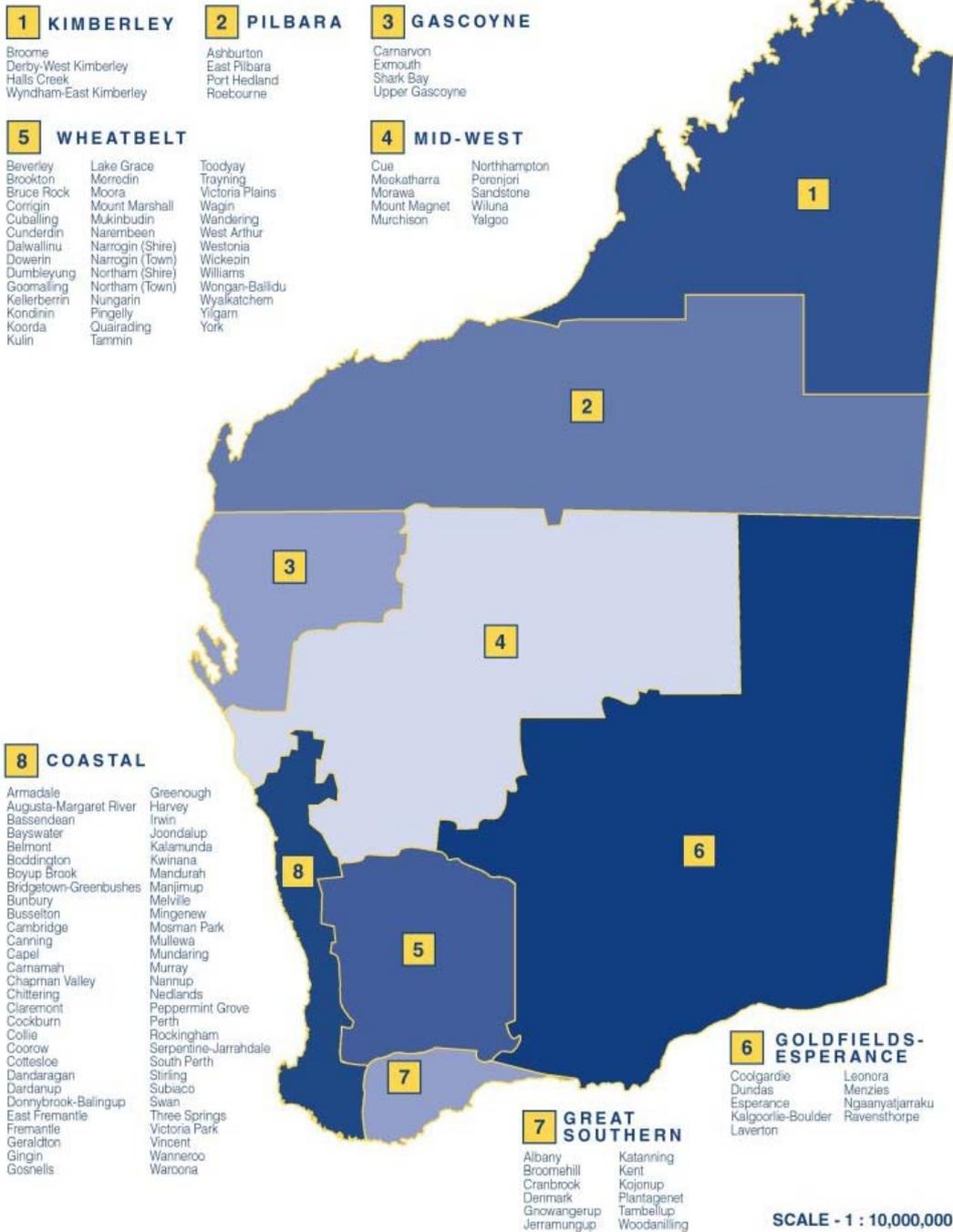
## 9. Code Consistency

The ECCC and GMCCC shall:

- a. endeavour to promote consistency across the Electricity Code and Gas Marketing Code in Western Australia;
- b. keep informed of the trends in code development in the energy sector in other States and promote code consistency at a national level where appropriate;
- c. promote code consistency according to principles of best practice in consumer protection.

## Appendix 4 – WA Gas Supply Areas

### WESTERN AUSTRALIA'S GAS SUPPLY AREAS



NB: Each Supply Area consists of a number of Local Government districts which are specified above.

## Appendix 5 – Comparative overview between the NECF and the Code

NATIONAL ENERGY RETAIL RULES	GAS MARKETING CODE OF CONDUCT 2012
<p><b>16 Pre-contractual duty of retailers</b></p> <p>(1) This rule applies where a retailer is contacted by a small customer who is seeking to purchase energy for premises.</p> <p>(2) If the retailer is the designated retailer for the premises, the retailer—</p> <p>(a) may elect to offer the customer a market retail contract; and</p> <p>(b) must advise the customer of the availability of the retailer's standing offer, unless the customer is a small market offer customer.</p> <p>(3) ...</p>	<p><b>2.3 Information to be given before entering into a contract</b></p> <p>(1) Before arranging a contract, a gas marketing agent must give a customer the following information—</p> <p>(a) that the customer is free to choose the standard form contract offered by the retailer;</p> <p>(b) the difference between a standard form contract and a non-standard contract;</p> <p>(c) ...</p> <p>(2) For a standard form contract that is not an unsolicited consumer agreement or for 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.</p> <p>(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.</p>
<p><b>DIVISION 10 – ENERGY MARKETING</b></p> <p>Note—The <i>Telecommunications Act 1997</i>, the <i>Do Not Call Register Act 2006</i> and the Australian Consumer Law set out in Schedule 2 to the <i>Competition and Consumer Act 2010</i> of the Commonwealth may also apply to retail marketers carrying out energy marketing activities.</p>	<p><b>Note under clause 1.7 of the Code:</b> This Code is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities including, but not limited to, the Australian Consumer Law (WA), the Spam Act 2003 (Cth), the Spam Regulations 2004 (Cth), the Do Not Call Register Act, the Telecommunications Industry Standard 2007 and the Privacy Act 1988 (Cth).</p>
<p><b>SUBDIVISION 1 - PRELIMINARY</b></p> <p><b>60 Application of Division</b> This Division applies to retail marketers carrying out energy marketing activities</p>	<p><b>1.6 Application</b> This Code applies to:</p> <p>(a) customers;</p> <p>(b) retailers;</p> <p>(c) distributors; and</p> <p>(d) gas marketing agents.</p>
<p><b>SUBDIVISION 2 – PROVIDING INFORMATION TO SMALL CUSTOMERS</b></p> <p><i>Subdivision 2 only applies to market retail contracts</i></p>	<p><b>DIVISION 3 – INFORMATION TO BE PROVIDED TO CUSTOMERS</b></p>
<p><b>61 Overview of this Subdivision</b></p> <p>(1) This Subdivision requires a retail marketer to provide specific information to small customers in connection</p>	

<p>with market retail contracts.</p> <p>(2) The information is referred to in this Subdivision as required information.</p>	
<p><b>62 Requirement for and timing of disclosure to small customers</b></p> <p>A retail marketer must provide the required information to a small customer in relation to the market retail contract concerned—</p> <p>(a) before the formation of the contract; or</p> <p>(b) as soon as practicable after the formation of the contract.</p> <p><b>63 Form of disclosure to small customers</b></p> <p>(1) Required information provided to a small customer before the formation of the market retail contract may be provided electronically, verbally or in writing.</p> <p>(2) Required information provided to a small customer after the formation of the market retail contract must be provided in a single written disclosure statement.</p> <p>(3) If required information was provided to a small customer electronically or verbally before the formation of the market retail contract, required information in a single written disclosure statement must also be provided to the customer after the formation of the contract.</p>	<p><i>See clause 2.3 above regarding information to be given before the formation of a contract.</i></p> <p><b>2.4 Information to be given at the time of or after entering into a contract</b></p> <p>(3) Subject to subclause (4), the information in subclause (2) must be given —</p> <p>(a) for a standard form contract, no later than with or on the customer's first bill; and</p> <p>(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.</p> <p>(4) Despite subclause (3), the retailer is not obliged to provide the information in subclause (2) to a customer if —</p> <p>(a) the retailer has provided the information to that customer within the preceding 12 months; or</p> <p>(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.</p>
<p><b>64 Required information</b></p> <p><i>See Appendix 5</i></p>	<p><b>2.4 Information to be given at the time of or after entering into a contract</b></p> <p><i>See Appendix 5</i></p>
<p><b>SUBDIVISION 3 – ENERGY MARKETING ACTIVITIES</b></p>	
<p><b>65 No contact lists</b></p> <p>(1) This rule applies to energy marketing in person at a person's premises or marketing by mail, but does not apply to telemarketing calls or e-marketing activities.</p> <p>(2) A retailer must ensure that a "no contact list" is created and maintained for its retail marketers, whether by the retailer itself or by a person or organisation on behalf of the retailer.</p> <p>(3) A "no contact list" is a list of small customers who indicate they wish to be placed on the list.</p> <p>(4) A small customer may give such an indication by applying (in person, electronically, by telephone or in writing) to the retailer or by communicating directly with a retail marketer.</p> <p>(5) A retail marketer must not make contact with a small customer whose name is on the relevant no contact list.</p>	<p><i>A similar provision was removed from the Code as part of the 2011 Review.</i></p>

<p>(6) An entry for a particular small customer in a no contact list continues for a period of 2 years, but the period is refreshed each time the customer requests inclusion or maintenance of inclusion.</p> <p>(7) A retailer must publish a statement on its website about the existence of its no contact list and the procedures for being placed on the list.</p>	
<p><b>66 No canvassing or advertising signs</b></p> <p>In carrying out energy marketing activities a retail marketer must comply with any signs at a person's premises indicating—</p> <p>(a) canvassing is not permitted at the premises; or</p> <p>(b) no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at or associated with the premises.</p>	<p><i>A similar provision was removed from the Code as part of the 2011 Review.</i></p>
<p><b>67 Duty of retailer to ensure compliance</b></p> <p>A retailer must ensure that a retail marketer who is an associate of the retailer complies with this Subdivision.</p>	<p><b>2.1 Retailers to ensure representatives comply with this Part</b></p> <p>A retailer must ensure that its gas marketing agents comply with this Part.</p>
<p><b>68 Record keeping</b></p> <p>(1) A retailer must ensure that records are kept of all energy marketing activities carried out by it or on its behalf by retail marketers, including details of energy marketing visits that have been conducted, and telephone energy marketing calls that have been placed.</p> <p>(2) The retailer must ensure that each such record is retained—</p> <p>(a) for the period of 12 months; or</p> <p>(b) where a small customer has within that period made a complaint or referred a dispute to the energy ombudsman in relation to energy marketing activities—for the period the complaint or dispute remains unresolved, whichever is the longer period.</p> <p>(3) A retailer must ensure that it and appropriate officers or employees of the retailer, have immediate access, or a right of immediate access, to each such record.</p>	<p><b>2.6 Contact for the purposes of marketing</b></p> <p>(3) A retailer or other party must keep the following records each</p> <p>time it initiates contact with a customer for the purposes of marketing —</p> <p>(a) the name of the customer and —</p> <p>(i) if the contact was made by telephone, the telephone number;</p> <p>(ii) if the contact was made at the customer's premises, the address of the premises; and</p> <p>(iii) if the contact was made at a place other than the customer's premises, the details and address of the location;</p> <p>(b) the name of the gas marketing agent who made the contact; and</p> <p>(c) the date and time of the contact.</p> <p>(4) Clause 2.6(3) does not apply where a gas marketing agent contacts a customer in response to a customer request or query.</p> <p><b>2.8 Gas marketing agent complaints</b></p> <p>(1) A gas marketing agent must —</p> <p>(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; and</p> <p>(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.</p> <p>(2) A record or other information that a gas marketing agent is required by this Code to keep must be kept</p>

	<p>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.</p>
	<p><b>2.2 Entering into contracts</b></p> <p>(1) A gas marketing agent must, in the course of arranging a nonstandard contract, other than in accordance with subclause (2), ensure that the contract is signed by the customer.</p> <p><i>[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).]</i></p> <p>(2) If a customer initiates a request to a retailer or gas marketing agent for a non-standard contract 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.</p> <p>(3) A standard form contract 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.</p> <p>(4) The terms and conditions of a standard form contract must be made available to the customer on request at no charge.</p> <p>(5) Clauses 2.2(1) to (4) inclusive do not apply in relation to contracts that are unsolicited consumer agreements.</p>
	<p><b>2.5 Standards of conduct</b></p> <p>(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.</p> <p>(2) A gas marketing agent must ensure that all non-standard contracts that are not unsolicited consumer agreements are in writing.</p> <p>(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.</p>
	<p><b>2.6 Contact for the purposes of marketing</b></p> <p>(1) A gas marketing agent who makes contact with a customer for the purposes of marketing must, on request by the customer —</p> <ul style="list-style-type: none"> <li>(a) provide the customer with the complaints telephone number of the retailer or other party on whose behalf the contact is being made; and</li> <li>(b) provide the customer with the gas marketing agent's marketing identification number.</li> </ul> <p>(2) A gas marketing agent who meets with a customer face to face for the purposes of marketing must —</p> <ul style="list-style-type: none"> <li>(a) when negotiating a contract that is not an</li> </ul>

	<p>unsolicited consumer agreement, as soon as practicable, tell the customer the purpose of the contact;</p> <p>(b) wear a clearly visible and legible identity card that shows —</p> <ul style="list-style-type: none"><li>(i) his or her first name;</li><li>(ii) his or her photograph;</li><li>(iii) his or her marketing identification number; and</li><li>(iv) the name of the retailer or other party on whose behalf the contact is being made; and</li></ul> <p>(c) as soon as practicable, provide the customer, in writing —</p> <ul style="list-style-type: none"><li>(i) his or her first name;</li><li>(ii) his or her marketing identification number;</li><li>(iii) the name of the retailer or other party on whose behalf the contact is being made;</li><li>(iv) the complaints telephone number of the retailer or other party on whose behalf the contact is being made; and</li><li>(v) the business address and Australian Business or Company Number of the retailer or other party on whose behalf the contact is being made.</li></ul>
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## Appendix 6 – Information requirements under the NECF and the Code

	NECF		Code
	Market retail contracts	Standing offer	All contracts
	<b>64 Required information</b>	<b>19 Responsibilities of designated retailer in response to request for sale of energy (SRC)</b>	<b>2.4 Information to be given at the time of or after entering into a contract</b>
	(1) The required information that a retail marketer is to provide to a small customer is information in relation to the following—	(1) A designated retailer must, as soon as practicable, provide a small customer requesting the sale of energy under the retailer's standing offer with the following information—	(2) A retailer or gas marketing agent must give the following information to a customer—
<b>Tariffs &amp; Concessions</b>	(a) all applicable prices, charges, early termination payments and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;	(c) information about the availability of government funded energy charge rebate, concession or relief schemes;	(a) how the customer may obtain—  (ii) details on all relevant tariffs, fees, charges, alternative tariffs and service levels that may apply to the customer;  (e) with respect to a residential customer, the concessions that may apply to the residential customer;
<b>Duration</b>	(b) the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the customer moves out during the term of the contract;		
<b>Electronic transactions</b>	(c) if any requirement is to be or may be complied with by an electronic transaction—how the transaction is to operate and, as appropriate, an indication that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction;		

<b>Cooling off</b>	(d) the rights that a customer has to withdraw from the contract during the cooling off period, including how to exercise those rights;		(j) for agreements that are not unsolicited 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.
<b>Complaints</b>	(e) the customer's right to complain to the retailer in respect of any energy marketing activity of the retail marketer conducted on behalf of the retailer and, if the complaint is not satisfactorily resolved by the retailer, of the customer's right to complain to the energy ombudsman.	(b) ..., including the retailer's standard complaints and dispute resolution procedures;	(h) how to make an enquiry of, or complaint to, the retailer;
<b>Hardship</b>			(d) how the retailer may assist if the customer is experiencing payment difficulties or financial hardship;
<b>Faults</b>			(f) the distributor's 24 hour telephone number for faults and emergencies;
<b>Multi-lingual &amp; TTY</b>		(d) information in community languages about the availability of interpreter services for the languages concerned and telephone numbers for the services	(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;
<b>Safety</b>			(i) general information on the retailer's gas customer safety awareness program; and
<b>Code &amp; Compendium</b>			(a) how the customer may obtain—  (i) a copy of the Code and the Compendium; and  (ii) [...]  (b) the scope of the Code;  (c) that a retailer, distributor and gas marketing agent must comply with the Code;

<b>General</b>		(b) a description of the retailer's and customer's respective rights and obligations concerning the sale of energy under the Law and these Rules, ...;	
<b>Copy of the contract</b>	(2) The required information, when given in a written disclosure statement, must include or be accompanied by a copy of the market retail contract.	(a) a description of the retailer's standard retail contract that is formed as a result of the customer accepting the standing offer and how copies of the contract may be obtained;	<p><b>2.3 Information to be given before entering into a contract</b></p> <p>(1) Before arranging a contract, a gas marketing agent must give a customer the following information—</p> <p>(a) ...</p> <p>(b) ...</p> <p>(c) how and when the terms of the contract will be given or made available to the customer; and</p> <p>(d) that the customer is entitled to a written copy of the contract when requested.</p> <p><b>2.4 Information to be given at the time of or after entering into a contract</b></p> <p>(1) When a customer enters into a new contract that is not an unsolicited 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.</p>