

# Draft Decision

Proposed amendments to the *Gas Marketing Code of Conduct 2017*

30 May 2019

Economic Regulation Authority

WESTERN AUSTRALIA

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## Draft Decision

1. Following consideration of the Gas Marketing Code Consultative Committee's 2018 Final Review Report, the Economic Regulation Authority (ERA) proposes to amend the Gas Marketing Code of Conduct.
2. A copy of the proposed new Code, both with tracked changes (Appendix 1) and without tracked changes (Appendix 2), is attached to this Draft Decision.

## Background

3. The Code regulates and controls the conduct of the holders of trading licences (gas retailers) 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.
4. Under section 11ZPO of the *Energy Coordination Act 1994*, the ERA is required to establish a committee to advise it on matters relating to the Code. This committee is known as the Gas Marketing Code Consultative Committee (GMCCC).
5. Under section 11ZPV of the Act, the GMCCC must carry out a review of the Code as soon as practicable after the first anniversary of its commencement and after the expiry of each 2 yearly interval after that anniversary. The object of a review is to re-assess the suitability of the provisions of the Code for the purposes of section 11ZPM(2) of the Act.
6. The review of the Code commenced in October 2018.
7. The Act requires that the GMCCC undertake consultation with interested parties before it provides its advice to the ERA. The GMCCC published its Draft Review Report on 5 February 2019 and commenced consultation by promoting the public consultation period via an email to those registered with the ERA as interested parties and by releasing a notice on the ERA's website. The closing date for submissions on the Draft Review Report was 25 February 2019.
8. Three submissions were received, from Alinta, AGL and Synergy.
9. The submissions form Appendix 2 of the GMCCC's [Final Review Report](#), which is available on the ERA's website.
10. Following receipt of the submissions, the GMCCC considered the issues raised and subsequently approved the Final Review Report to be submitted to the ERA. The Final Review Report was provided to the ERA on 9 April 2019.

## Recommendations

11. The GMCCC made five recommendations to the ERA. Each recommendation and the ERA's response to the recommendations is set out in item 12 below.
12. The ERA agrees with all the GMCCC's recommendations, which are as follows:

### Recommendation 1

Amend clause 2.3(2) to allow a retailer to provide the customer with the information in subclause 2.3(2)(d)-(l) on or with the customer's first bill, rather than before entering into the non-standard contract.

The Code details the information that a retailer must provide to a customer before entering into a non-standard contract. The GMCCC's Final Review Report states that some of that information (the information in subclause 2.3(2)(d)-(l)) is not particularly relevant to the customer at the time they enter into a non-standard contract and is unlikely to inform the customer's decision as to whether or not to enter into the contract. Therefore the GMCCC recommended the Code be amended to allow retailers to provide that information on or with the customer's first bill. This is equal to the protection afforded to customers entering into a standard form contract under the Code.

### **Recommendation 2**

Delete the note at the end of clause 2.10.

The note at the end of this clause refers to clause 13.1(1) of the *Compendium of Gas Customer Licence Obligations*. As part of the 2014 review of the Compendium of Gas Customer Licence Obligations, the record keeping obligations under clause 13 of the Compendium were removed.

### **Recommendation 3**

Delete clauses 2.2(2)(i) and 2.3(2)(l) from the Code.

These clauses require a retailer to give a customer general information on the retailer's gas customer safety awareness programme. Under the new Australian Standard *AS-NZS 4645.1:2018 Gas distribution networks Network management (AS 4645)*, a gas distributor has an obligation to have a safety and operating plan. The standard places the responsibility for ensuring consumers receive appropriate safety awareness material on the distributor. The Code no longer needs to require a retailer or gas marketing agent to give customers information on the retailer's gas customer safety awareness programme, because this information must be given to customers under AS 4645.

### **Recommendation 4**

Amend clauses 2.2(2)(e) and 2.3(2)(h) to be consistent with the wording of clause 4.5(1)(h) of the Gas Compendium.

Under the Code, a retailer must inform a customer of the concessions that may apply the customer, but the retailer does not have to tell the customer where to find information on their eligibility. The Compendium requires a retailer to inform a residential customer that they may be eligible to receive concessions and how the customer may find out their eligibility for those concessions. This requires retailers to refer the customer to an information source where the customer can find out more about their eligibility (for example the retailer could refer a customer to the retailer's website or to ConcessionsWA).

### **Recommendation 5**

Amend clauses 2.2(2)(g) and 2.3(2)(j) to be consistent with the wording of clause 4.5(1)(z) & 4.5(1)(aa) of the Compendium.

The Code requires retailers to give residential customers information on how to access interpreter services. The Compendium also requires retailers to give residential customers information on how to access interpreter services, but the Compendium requires the information to include the National Interpreter Symbol next to the telephone number for interpreter services. For non-English speakers, having the National Interpreter Symbol

next to the telephone number for interpreter services is likely clearer than text on how to access interpreter services.

13. The ERA proposes three additional amendments to the Code, as follows:

#### **Recommendation 6**

Amend clause 2.3(1)(a) to require a retailer or gas marketing agent to obtain and make a record of the customer's verifiable consent to entering into the non-standard contract.

This recommendation has been made because the current drafting may be interpreted to require the retailer to obtain the customer's verifiable consent after the contract is entered into. As part of standard contractual procedure, consent should be obtained to enter into the contract, not subsequently.

#### **Recommendation 7**

Amend clause 2.3(4) to require a customer's verifiable confirmation, rather than verifiable consent, that the information has been given. This recommendation will include inserting a definition of 'verifiable confirmation' in clause 1.5.

This recommendation has been made because it does not make sense to require a customer's consent to information being given. It is more appropriate for the clause to require the retailer or gas marketing agent to obtain the customer's confirmation that the information was given.

#### **Recommendation 8**

Amend clause 2.3(4) to require a customer's verifiable confirmation only for the information in 2.3(2)(a)-(c). This will remove the requirement for the retailer or gas marketing agent to obtain the customer's verifiable confirmation that the information in clauses 2.3(2)(d)-(l) has been given.

This recommendation has been made because the GMCCC considered that the information in clauses 2.3(2)(d)-(l) is not particularly relevant to the customer at the time they enter into a non-standard contract and is unlikely to inform the customer's decision as to whether or not to enter into the contract. If the Code is amended in line with the GMCCC's recommendation, the information in 2.3(2)(d)-(l) will be given to the customer before or at the time of the customer's first bill.

14. The ERA is required, under section 11ZPU of the Act to refer the proposed amendments to the Code (set out in Appendix 1) to the GMCCC for advice.
15. The ERA will write to the GMCCC requesting its advice on the ERA's proposed amendments.
16. The Act requires that the GMCCC provide interested parties with an opportunity to comment before providing its advice to the ERA.
17. Following receipt of the GMCCC advice, the ERA will consider the advice and make a final decision regarding amendments to the Code.

## **Appendix 1 Proposed new Code (with tracked changes)**

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# **Gas Marketing Code of Conduct Amendment Code 2019**

## **Confidential Consultation Draft**

This document sets out proposed amendments to the *Gas Marketing Code of Conduct 2017* in mark-up form. A formal amending instrument will be prepared once consultation is complete and the proposed changes are settled.



# Gas Marketing Code of Conduct Amendment Code 2019

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## Gas Marketing Code of Conduct Amendment Code 2019

Approved by the Economic Regulation Authority.

### 1. Citation

This code is the *Gas Marketing Code of Conduct Amendment Code 2019*.

### 2. Commencement

This code comes into operation as follows —

- (a) clauses 1 and 2 — on the day on which this code is published in the *Gazette (gazettal day)*;
- (b) the rest of the code —
  - (i) if gazettal day is before 1 July 2019 — on 1 July 2019; or
  - (ii) if gazettal day is, or is after, 1 July 2019 — on the day after gazettal day.

### 3. Code amended

This code amends the *Gas Marketing Code of Conduct 2017*.

*[The following text is the relevant provisions of the Gas Marketing Code of Conduct 2017 showing proposed amendments in track changes. A formal amending instrument will be prepared once consultation is completed and the proposed amendments are settled.]*

#### 1.5. Definitions

In the *Code*, unless the contrary intention appears —

cl. 1.5

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**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.

**business day** means any day except a Saturday, Sunday or **public holiday**.

**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 2017* made under section 11ZPM of the **Act** as amended by the **Authority** under Part 2C of the **Act**.

**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**.

**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**;

cl. 1.5

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- (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 a **retailer** —
  - (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 for this definition:

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**.

**public holiday** means a public holiday in Western Australia.

**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 confirmation** means confirmation that is given —

(a) expressly;

(b) in writing or orally; and

(c) by the **customer** or a nominated person competent to give the confirmation on the **customer's** behalf.

**verifiable consent** means consent that is given —

(a) expressly;

(b) in writing or orally;

cl. 1.6

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- (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 for this clause:

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 *Fair Trading Act 2010* (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* (Cth) 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 and information to be provided to customers

#### 2.2. Entering into a standard form contract

- (1) When entering into a *standard form contract* that is not an *unsolicited consumer agreement*, a retailer or *gas marketing agent* must —
  - (a) record the date the *standard form contract* was entered into;
  - (b) give, or make available to the *customer* at no charge, a copy of the *standard form contract* —
    - (i) at the time the *standard form contract* is entered into, if the *standard form contract* was not entered into over the *telephone*; or
    - (ii) as soon as possible, but not more than 5 *business days* after the *standard form contract* was entered into, if the *standard form contract* was entered into over the *telephone*.
- (2) Subject to subclause (3), ~~a~~ if a customer enters into a contract described in subclause (1), the retailer or gas marketing agent must give the following information to ~~the~~ a customer ~~no later than on or with~~ before or at the time of giving the *customer's* first bill —
  - (a) how the *customer* may obtain —
    - (i) a copy of the *Code* and *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*~~; a statement that the *residential customer* may be eligible to receive *concessions* and how the *residential customer* may find out about their eligibility for those *concessions*;
  - (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) the *telephone* number for interpreter services, identified by the National Interpreter Symbol and the words "Interpreter Services"; and
    - (ii) the *telephone* number for *TTY* services;
      - ~~(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) general information on the *retailer's gas customer safety awareness program*.~~
- (3) For the purposes of subclause (2) a *retailer* or *gas marketing agent* is taken to have given the *customer* the required information if —

- (a) the *retailer* or *gas marketing agent* has provided the information to that *customer* within the preceding 12 months; or
- (b) the *retailer* or *gas marketing agent* has informed the *customer* how the *customer* may obtain the information, unless the *customer* requests to receive the information.

### 2.3. Entering into a non-standard contract

- (1) When entering into a *non-standard contract* that is not an *unsolicited consumer agreement*, a *retailer* or *gas marketing agent* must —
  - (a) obtain and make a record of the *customer's verifiable consent* ~~that to entering into~~ the *non-standard contract* ~~has been entered into, and; and~~ that to entering into the *non-standard contract* has been entered into, and; and
  - (b) give, or make available to the *customer* at no charge, a copy of the *non-standard contract* —
    - (i) at the time the *non-standard contract* is entered into, if the *non-standard contract* was not entered into over the *telephone*; or
    - (ii) as soon as possible, but not more than 5 *business days* after the *non-standard contract* was entered into, if the *non-standard contract* was entered into over the *telephone*.
- (2) Before entering into a *non-standard contract*, a *retailer* or *gas marketing agent* must give the *customer* the following information —
  - (a) that the *customer* is able to choose the *standard form contract* offered by the *retailer*;
  - (b) the difference between the *non-standard contract* and the *standard form contract*;
  - (c) details of any right the *customer* may have to rescind the *non-standard contract* during a *cooling-off period* and the charges that may apply if the *customer* rescinds the *non-standard contract*.

(2A) Subject to subclause (3), if a customer enters into a non-standard contract, the retailer or gas marketing agent must give the following information to the customer before or at the time of giving the customer's first bill —

- (~~da~~) 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*;
- (~~eb~~) the scope of the *Code*;
- (~~fc~~) that a *retailer* and *gas marketing agent* must comply with the *Code*;
- (~~gd~~) how the *retailer* may assist if the *customer* is experiencing *payment difficulties* or *financial hardship*;
- (~~he~~) with respect to a *residential customer*, ~~the concessions that may apply to the residential customer;~~ a statement that the residential customer may be eligible to receive concessions and how the residential customer may find out about their eligibility for those concessions;
- (~~if~~) the *distributor's* 24 hour *telephone* number for faults and emergencies;
- (~~ig~~) with respect to a *residential customer*, ~~how the residential customer may access the retailer's — —~~
  - (i) the telephone number for interpreter services, identified by the National Interpreter Symbol and the words "Interpreter Services"; and
  - (ii) the telephone number for TTY services;
  - ~~(i) multi-lingual services (in languages reflective of the retailer's customer base); and~~
  - ~~(ii) TTY services;~~
- (~~kh~~) how to make an enquiry of, or *complaint* to, the *retailer*; ~~and.~~

- ~~(1) general information on the *retailer's gas customer safety awareness program*.~~
- (3) For the purposes of ~~subclauses (2)(d)–(f)~~ subclause (2A), a *retailer* or *gas marketing agent* is taken to have given the *customer* the required information if —
- (a) the *retailer* or *gas marketing agent* has provided the information to that *customer* within the preceding 12 months; or
  - (b) the *retailer* or *gas marketing agent* has informed the *customer* how the *customer* may obtain the information, unless the *customer* requests to receive the information.
- (4) Subject to subclause (3), a *retailer* or *gas marketing agent* must obtain the *customer's verifiable* ~~consent~~ confirmation that the information ~~in clause 2.3(2)~~ referred to in subclause (2) has been given.

### Division 3 — Marketing conduct

#### 2.4. 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 a *customer* is able to *contact* the *retailer* or *gas marketing agent* on the *retailer's* or *gas marketing agent's* contact details, including *telephone* number, during the normal business hours of the *retailer* or *gas marketing agent* for the purposes of enquiries, verifications and *complaints*.

#### 2.5. 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* on whose behalf the *contact* is being made;
  - (b) provide the *customer* with the *telephone* number of the *gas ombudsman*; and
  - (c) 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) 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* on whose behalf the *contact* is being made; and
  - (b) 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* on whose behalf the *contact* is being made;
    - (iv) the complaints *telephone* number of the *retailer* on whose behalf the *contact* is being made;
    - (v) the business address and Australian Business or Company Number of the retailer on whose behalf the *contact* is being made; and
    - (vi) the *telephone* number of the *gas ombudsman*;as soon as practicable following a request by the *customer for the information*.

**2.6. 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 clearly visible 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 4 — Miscellaneous**

**2.7. Compliance**

- (1) A *gas marketing agent* who contravenes a provision of this *Code* commits an offence.

Penalty —

- (a) for an individual, \$5 000;
- (b) for a body corporate, \$20 000.

- (2) If a *gas marketing agent* of a *retailer* contravenes a provision of this *Code*, the *retailer* commits an offence.

Penalty —

- (a) for an individual, \$5 000;
- (b) for a body corporate, \$20 000.

- (3) It is a defence to a prosecution for a contravention of subclause (2) if the *retailer* proves that the retailer used reasonable endeavours to ensure that the *gas marketing agent* complied with this *Code*.

**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 for this clause:~~

~~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*.~~

Approved by the Economic Regulation Authority

## Appendix 2 Proposed new Code (clean)

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# **Gas Marketing Code of Conduct Amendment Code 2019**

## **Confidential Consultation Draft**

This document sets out the relevant provisions of the *Gas Marketing Code of Conduct 2017* as it will be if and when the proposed amendments are approved by the Authority. A formal amending instrument will be prepared once consultation is complete and the proposed changes are settled.



# Gas Marketing Code of Conduct Amendment Code 2019

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## Gas Marketing Code of Conduct Amendment Code 2019

*[The following text is the relevant provisions of the Gas Marketing Code of Conduct 2017 as it will be if and when the proposed amendments are approved by the Authority. A formal amending instrument will be prepared once consultation is completed and the proposed changes are settled.]*

### 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;

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- (f) clothing; and
- (g) medical and dental expenses.

**business day** means any day except a Saturday, Sunday or **public holiday**.

**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 2017* made under section 11ZPM of the *Act* as amended by the **Authority** under Part 2C of the *Act*.

**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*.

**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 a **retailer** —
  - (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

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- (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 for this definition:

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*.

**public holiday** means a public holiday in Western Australia.

**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 confirmation** means confirmation that is given —

- (a) expressly;
- (b) in writing or orally; and
- (c) by the **customer** or a nominated person competent to give the confirmation on the **customer's** behalf.

**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 for this clause:

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 *Fair Trading Act 2010* (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* (Cth) 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 and information to be provided to customers**

**2.2. Entering into a standard form contract**

- (1) When entering into a *standard form contract* that is not an *unsolicited consumer agreement*, a retailer or *gas marketing agent* must —
  - (a) record the date the *standard form contract* was entered into;

- (b) give, or make available to the *customer* at no charge, a copy of the *standard form contract* —
  - (i) at the time the *standard form contract* is entered into, if the *standard form contract* was not entered into over the *telephone*; or
  - (ii) as soon as possible, but not more than 5 *business days* after the *standard form contract* was entered into, if the *standard form contract* was entered into over the *telephone*.
- (2) Subject to subclause (3), if a *customer* enters into a contract described in subclause (1), the *retailer* or *gas marketing agent* must give the following information to the *customer* before or at the time of giving the *customer's* first bill —
  - (a) how the *customer* may obtain —
    - (i) a copy of the *Code* and *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*, a statement that the *residential customer* may be eligible to receive *concessions* and how the *residential customer* may find out about their eligibility for those *concessions*;
  - (f) the *distributor's* 24 hour *telephone* number for faults and emergencies;
  - (g) with respect to a *residential customer* —
    - (i) the *telephone* number for interpreter services, identified by the National Interpreter Symbol and the words “Interpreter Services”; and

- (ii) the *telephone* number for *TTY* services;
  - (h) how to make an enquiry of, or *complaint* to, the *retailer*.
- (3) For the purposes of subclause (2) a *retailer* or *gas marketing agent* is taken to have given the *customer* the required information if —
  - (a) the *retailer* or *gas marketing agent* has provided the information to that *customer* within the preceding 12 months; or
  - (b) the *retailer* or *gas marketing agent* has informed the *customer* how the *customer* may obtain the information, unless the *customer* requests to receive the information.

### **2.3. Entering into a non-standard contract**

- (1) When entering into a *non-standard contract* that is not an *unsolicited consumer agreement*, a *retailer* or *gas marketing agent* must —
  - (a) obtain and make a record of the *customer's verifiable consent* to entering into the *non-standard contract*; and
  - (b) give, or make available to the *customer* at no charge, a copy of the *non-standard contract* —
    - (i) at the time the *non-standard contract* is entered into, if the *non-standard contract* was not entered into over the *telephone*; or
    - (ii) as soon as possible, but not more than 5 *business days* after the *non-standard contract* was entered into, if the non-standard contract was entered into over the *telephone*.
- (2) Before entering into a *non-standard contract*, a *retailer* or *gas marketing agent* must give the *customer* the following information —
  - (a) that the *customer* is able to choose the *standard form contract* offered by the *retailer*;

- (b) the difference between the *non-standard contract* and the *standard form contract*;
  - (c) details of any right the *customer* may have to rescind the *non-standard contract* during a *cooling-off period* and the charges that may apply if the *customer* rescinds the *non-standard contract*.
- (2A) Subject to subclause (3), if a customer enters into a *non-standard contract*, the *retailer* or *gas marketing agent* must give the following information to the *customer* before or at the time of giving the *customer's* first bill —
- (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*, a statement that the *residential customer* may be eligible to receive *concessions* and how the *residential customer* may find out about their eligibility for those *concessions*;
  - (f) the *distributor's* 24 hour *telephone* number for faults and emergencies;
  - (g) with respect to a *residential customer* —
    - (i) the *telephone* number for interpreter services, identified by the National Interpreter Symbol and the words “Interpreter Services”; and
    - (ii) the *telephone* number for *TTY* services;
  - (h) how to make an enquiry of, or *complaint* to, the *retailer*.

- (3) For the purposes of subclause (2A), a *retailer* or *gas marketing agent* is taken to have given the *customer* the required information if —
- (a) the *retailer* or *gas marketing agent* has provided the information to that *customer* within the preceding 12 months; or
  - (b) the *retailer* or *gas marketing agent* has informed the *customer* how the *customer* may obtain the information, unless the *customer* requests to receive the information.
- (4) Subject to subclause (3), a *retailer* or *gas marketing agent* must obtain the *customer's verifiable confirmation* that the information referred to in subclause (2) has been given.

### **Division 3 — Marketing conduct**

#### **2.4. 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 a *customer* is able to *contact* the *retailer* or *gas marketing agent* on the *retailer's* or *gas marketing agent's* contact details, including *telephone* number, during the normal business hours of the *retailer* or *gas marketing agent* for the purposes of enquiries, verifications and *complaints*.

#### **2.5. 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* on whose behalf the *contact* is being made;

- (b) provide the *customer* with the *telephone* number of the *gas ombudsman*; and
  - (c) 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) 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* on whose behalf the *contact* is being made; and
  - (b) 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* on whose behalf the *contact* is being made;
    - (iv) the complaints *telephone* number of the *retailer* on whose behalf the *contact* is being made;
    - (v) the business address and Australian Business or Company Number of the retailer on whose behalf the *contact* is being made; and
    - (vi) the *telephone* number of the *gas ombudsman*;as soon as practicable following a request by the *customer* for the information.

**2.6. 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 clearly visible 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 4 — Miscellaneous**

**2.7. Compliance**

- (1) A *gas marketing agent* who contravenes a provision of this *Code* commits an offence.

Penalty —

- (a) for an individual, \$5 000;
- (b) for a body corporate, \$20 000.

- (2) If a *gas marketing agent* of a *retailer* contravenes a provision of this *Code*, the *retailer* commits an offence.

Penalty —

- (a) for an individual, \$5 000;
- (b) for a body corporate, \$20 000.

- (3) It is a defence to a prosecution for a contravention of subclause (2) if the *retailer* proves that the retailer used reasonable endeavours to ensure that the *gas marketing agent* complied with this *Code*.

**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*.

Approved by the Economic Regulation Authority