



Gas Marketing Code Consultative Committee

2013 Review of the Gas Marketing Code of Conduct

Final Review Report

13 September 2013

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1 Executive Summary

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

Under the Gas Act, the GMCCC must give any interested person an opportunity to offer comments relevant to the review. The GMCCC published a Draft Review Report for public consultation on 14 June 2013. The public consultation period closed on 8 July 2013. A total of three submissions were received.

Following consideration of the issues raised in submissions, the GMCCC makes the following recommendations:

Recommendation 1 – That the Authority deletes the definition of 'Do Not Call Register Act' from clause 1.5 of the Code.

Recommendation 2 – That the Authority replaces 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 – That the Authority deletes the definition of 'telemarketing calls' from clause 1.5 of the Code.

Recommendation 4 – That the Authority deletes the definition of 'Telemarketing Industry Standard' from clause 1.5 of the Code.

Recommendation 5 – That the Authority replaces 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 (Cth)'.

Recommendation 6 – That the Authority amends the definition of 'TTY' in clause 1.5 of the Code to read 'teletypewriter'.

Recommendation 7 – That the Authority renumbers clause 2.8(2) to become a separate clause (clause 2.9).

Recommendation 8 – That the Authority inserts the heading 'Records to be kept' in new clause 2.9.

Recommendation 9 – That the Authority inserts the following explanatory note under new clause 2.9:

[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 10 – That the Authority amends 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 11 – That the Authority inserts the following new clause (clause 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**.

Recommendation 12 – That the Authority develops a new webpage regarding the use of do-not-knock stickers.

Recommendation 13 – That the Authority writes to all gas retailers advising them that:

- (i) the GMCCC saw merit in the development of standardised energy price fact sheets;
- (ii) the GMCCC at this time did not make a recommendation to make the development of energy price fact sheets mandatory but will reconsider the need for mandatory fact sheets as part of the next Code review;
- (iii) the Authority encourages gas retailers to prepare pricing information in accordance with the AER’s Retail Pricing Information Guideline; and
- (iv) the Authority encourages gas retailers to make this information available to customers before they enter into a new contract.

Recommendation 14 – That the Authority deletes clauses 2.2, 2.3 and 2.4 from the Code and inserts instead the following new clauses:

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 **customer's** the **standard form contract** was entered into, if the **standard form contract** was entered into over the **telephone**.

(2) Subject to subclause (3), a **retailer** or **gas marketing agent** must give the following information to a **customer** no later than on or with 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**, 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) 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 the **non-standard contract** has been entered into, 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**;
 - (d) 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**;
 - (e) the scope of the **Code**;
 - (f) that a **retailer** and **gas marketing agent** must comply with the Code;
 - (g) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
 - (h) with respect to a **residential customer**, the **concessions** that may apply to the **residential customer**;
 - (i) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (j) 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;
 - (k) how to make an enquiry of, or **complaint** to, the **retailer**; and
 - (l) general information on the **retailer's gas customer safety awareness program**.
- (3) For the purposes of subclauses (2)(d)-(l), 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), the **retailer** or **gas marketing agent** must obtain the **customer's verifiable consent** that the information in clause 2.3(2) has been given.

Recommendation 15 – That the Authority replaces ‘the holder of a trading licence’ with ‘a retailer’ in the definition of ‘gas marketing agent’ in clause 1.5 of the Code.

Recommendation 16 – That the Authority deletes clauses 1.6(a) and (c) from the Code.

Recommendation 17 – That the Authority deletes reference to ‘distributors’ from clause 1.7 of the Code.

Recommendation 18 – That the Authority replaces ‘Australian Consumer Law’ with ‘*Fair Trading Act 2010 (WA)*’ in the explanatory note under clause 1.7.

Recommendation 19 – That the Authority deletes clause 2.5(2) from the Code.

Recommendation 20 – That the Authority deletes clause 2.6(2)(a) from the Code.

Recommendation 21 – That the Authority deletes clauses 2.6(3) and (4) from the Code.

Recommendation 22 – That the Authority replaces references to ‘retailers’ and references to ‘gas marketing agents’ with ‘retailers and gas marketing agents’ as appropriate throughout the Code.

Recommendation 23 – That the Authority deletes all instances of ‘other party’ from the Code.

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

2 Background

2.1 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.¹

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.²

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.

2.2 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)

¹ Section 11ZPM(2) of the Gas Act

² Section 11ZPV(2) of the Gas Act

- 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)
- Ms Melanie Gordon, Wesfarmers Kleenheat Gas (industry representative)

Industry representative Mr Brendan McColl resigned in July 2013 and was replaced by Ms Melanie Gordon from Wesfarmers Kleenheat Gas.

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

2.3 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 as well as other issues raised by GMCCC members and subsequently approved the Draft Review Report.

As required by the Gas Act, the GMCCC sought comment from interested parties on the Draft Review Report. On 14 June 2013, the report was published on the Authority's website and an email was sent to all those registered with the Authority as interested parties. On 19 June, an advertisement seeking written submissions on the Draft Review Report was placed in *The West Australian*.

The closing date for submissions on the Draft Review Report was 8 July 2013.

Submissions were received from:

- WACOSS (**Appendix 4**)
- Synergy (**Appendix 5**)
- Alinta Energy (**Appendix 6**)

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

After consideration of this report the Authority may decide to propose amendments to the Code. Part 2C of the Gas Act sets out the Code amendment process.

3 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.

3.1 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.³

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.

3.2 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
- (b) advertising, promotion, market research or public relations in relation to the supply of gas to customers.

³ Gas Marketing Code Consultative Code, *2011 Review of the Gas Marketing Code of Conduct – Final Review Report*, 14 September 2011, p.14 (recommendation 7)

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.

3.3 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.

4 Recommendations

4.1 Achieving Consistency with the Electricity Code

In 2012, the Authority made a number of amendments to the *Code of Conduct for the Supply of Electricity to Small Use Customers (Electricity Code)*. Some of the amendments related to Part 2 of the Electricity Code which addresses the marketing of electricity.

The GMCCC agreed to recommend that the following amendments be made to the Code to ensure consistency between the marketing provisions included in the Code and the Electricity Code.

4.1.1 Definition – Do Not Call Register Act

Recommendation 1

That the Authority deletes the definition of ‘Do Not Call Register Act’ from clause 1.5 of the Code.

Recommendation 2

That the Authority replaces 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)’.

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.

4.1.2 Definition – Telemarketing calls

Recommendation 3

That the Authority deletes the definition of ‘telemarketing calls’ from clause 1.5 of the Code.

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

4.1.3 Definition – Telemarketing Industry Standard

Recommendation 4

That the Authority deletes the definition of ‘Telemarketing Industry Standard’ from clause 1.5 of the Code.

Recommendation 5

That the Authority replaces 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 (Cth)’.

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.

4.1.4 Definition – TTY

Recommendation 6

That the Authority amends the definition of ‘TTY’ in clause 1.5 of the Code to read ‘teletypewriter’.

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

4.1.5 Clause 2.8(2) – Record keeping

Recommendation 7

That the Authority renumbers clause 2.8(2) to become a separate clause (clause 2.9).

Recommendation 8

That the Authority inserts the heading ‘Records to be kept’ in new clause 2.9.

Recommendation 9

That the Authority inserts the following explanatory note under new clause 2.9:

[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*.]

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 types of records.

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

4.2 Achieving Consistency with the Australian Consumer Law

Recommendation 10

That the Authority amends the definition of ‘cooling-off period’ in clause 1.5 as follows:

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

The Australian Consumer Law (**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.

In its Draft Review Report, the GMCCC recommended that the definition of cooling-off period be amended to read ‘the period specified in the contract as the cooling-off period’. The amendment ensures that the definition captures both the cooling-off period under the ACL and under the contract regulations.

In its submission, WACOSS argued that the cooling-off period should be set at 10 business days for all contracts.

The GMCCC agreed that the Code should not set the cooling-off period at 10 business days for all contracts as this would be inconsistent with the contract regulations. The GMCCC believes that this matter ought to be addressed by the Public Utilities Office as part of its review of the contract regulations (also see Section 3.1 of this report).

4.3 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 and New South Wales implemented the NECF on 1 February 2013 and 1 July 2013 respectively. The Secretariat understands that Victoria will implement the NECF, subject to the resolution of state-specific issues, while Queensland aims to implement the NECF in 2014, subject to SCER agreeing to state-specific variations to support customers outside of south east Queensland.⁴

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 reconsidered the issue whether any NECF provisions that relate to marketing should be implemented through the Code.

4.3.1 Clause 2.4(2)(i) – 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 either the Electricity Code or the NECF.

In its Draft Review Report, the GMCCC recommended the deletion of clause 2.4(2)(i) of the Code.

One of the GMCCC members requested that the GMCCC reconsider the deletion of this clause. The member argued that it should not be onerous on retailers to provide information on their safety program to customers when they enter into a new contract as

⁴ SCER, *National Energy Customer Framework*, <http://www.scer.gov.au/workstreams/energy-market-reform/national-energy-customer-framework/> (accessed 4 September 2013)

licensees must have a safety program under the Compendium and make information on it available to customers in any event.

The GMCCC agreed to recommend that clause 2.4(2)(i) of the Code be retained.

4.3.2 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.

The 2008 version of the Code contained a clause that prescribed a retailer's and gas marketing agent's conduct when a customer does not wish to be contacted. The clause was deleted as part of the 2011 Review of the Code to remove any duplication with the ACL, the Do Not Call Register Act and the Spam Act. However, it is arguable whether the ACL, the Do Not Call Register Act and the Spam Act provide customers with the same rights as previously included in this clause.

In its Draft Review Report, the GMCCC invited comments on whether a new clause should be included in the Code requiring retailers and gas marketing agents to create a 'no contact list' and refrain from contacting customers on the list for a period of two years.

The GMCCC received submissions from Synergy and Alinta Energy on this issue. Both Synergy and Alinta Energy opposed the re-introduction of 'no contact lists'. According to Alinta Energy, the use of 'do-not-knock' stickers is a more efficient and effective option which provides customers with the same level of choice but at a much lower cost to industry. Synergy further noted that there is no evidence of market failure in this area to warrant the costs associated with establishing a 'no contact list'.

Synergy also expressed concern that the current wide definition of marketing (see Section 3.2 of this report) would mean that retailers and gas marketing agents would not only not be allowed to contact customers for the purpose of entering into a contract, but also for any other 'dealings in respect of a contract' such as to confirm contact details.

The GMCCC agreed that as there is no evidence that door-to-door marketing (in person) is currently an issue in WA, no recommendation for amendment should be made at this stage. The GMCCC further agreed to reconsider this issue as part of the next Code review.

4.3.3 No canvassing or advertising signs

Recommendation 11

That the Authority inserts the following new clause (clause 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**.

Recommendation 12

That the Authority develops a new webpage regarding the use of do-not-knock stickers.

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.⁵

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 that specifically prohibit canvassing or leaving of advertising material.

In its Draft Review Report, the GMCCC recommended 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.

The GMCCC received submissions from Alinta Energy and Synergy regarding this recommendation. Alinta Energy supported the recommendation but proposed that guidelines be developed regarding the appearance and use of do-not-knock stickers.

Synergy did not support the recommendation. According to Synergy, there is no evidence that WA retailers are deliberately ignoring do-not-knock stickers. Synergy also expressed concern regarding the costs involved in complying with this recommendation.

The GMCCC agreed to recommend that a new clause on 'no canvassing and advertising signs' should be included in the Code.

In response to Alinta Energy's request that guidelines be developed regarding the appearance and use of do-not-knock stickers, the GMCCC agreed to include the words 'clearly visible' into the proposed new clause. The GMCCC further agreed to recommend that the Authority develop a new webpage regarding the use of do-not knock stickers. This webpage could, for example, include a link to the ACCC's website from which customers can download a copy of the ACCC's do-not-knock sticker. The webpage could also provide guidance on where customers should consider placing their sticker and what the use of the sticker means for them.

4.3.4 Energy Price Fact Sheets

Recommendation 13

That the Authority writes to all gas retailers advising them that:

- (i) the GMCCC saw merit in the development of standardised energy price fact sheets;
- (ii) the GMCCC at this time did not make a recommendation to make the development of energy price fact sheets mandatory but will reconsider the need for mandatory fact sheets as part of the next Code review;

⁵ Rule 66 of the National Energy Retail Rules.

- (iii) the Authority encourages gas retailers to prepare pricing information in accordance with the AER's Retail Pricing Information Guideline; and
- (iv) the Authority encourages gas retailers to make this information available to customers before they enter into a new contract.

WACOSS proposed in its submission that retailers be required to produce a critical information fact sheet and provide a copy of the fact sheet to customers before they enter into a new contract.

Under the NECF, retailers must produce an Energy Price Fact Sheet for each standing offer or market offer that the retailer offers to new small customers. The Australian Energy Regulator's [AER Retail Pricing Information Guideline](#) specifies what information must be included in an Energy Price Fact Sheet and the manner and form in which this information must be presented by retailers. Energy Price Fact Sheets aim to make it easy for customers to compare different offers of the same or different retailers.

The GMCCC agreed that there would be value in retailers developing a standardised fact sheet and agreed to reconsider during the next Code review whether the development of standardised fact sheets should be made mandatory.

In the interim, the GMCCC agreed to recommend that the Authority write to all gas retailers advising them that the GMCCC will reconsider the need for mandatory energy price fact sheets as part of the next Code review. The GMCCC further recommends that in its letter the Authority also encourages retailers to prepare pricing information in accordance with the AER's Retail Pricing Information Guidelines and to make this information available to customers before they enter into a new contract.

4.4 Level of protection

Recommendation 14

That the Authority deletes clauses 2.2, 2.3 and 2.4 from the Code and inserts instead the following new clauses:

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 **retailer** or **gas marketing agent** must give the following information to a **customer** no later than on or with 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**, 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) 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 the **non-standard contract** has been entered into, 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**;
 - (d) 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**;
 - (e) the scope of the **Code**;
 - (f) that a **retailer** and **gas marketing agent** must comply with the **Code**;
 - (g) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
 - (h) with respect to a **residential customer**, the **concessions** that may apply to the **residential customer**;
 - (i) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (j) 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;
 - (k) how to make an enquiry of, or **complaint** to, the **retailer**; and
 - (l) general information on the **retailer's gas customer safety awareness program**.
- (3) For the purposes of subclauses (2)(d)-(l), 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), the **retailer** or **gas marketing agent** must obtain the **customer's verifiable consent** that the information in clause 2.3(2) has been given.

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

In its Draft Review Report, the GMCCC expressed the interim view that the current provisions should remain as is. The GMCCC invited submissions as to whether the obligations included in clauses 2.2, 2.3 and 2.4 could be rationalised and, if so, how they ought to be rationalised.

The GMCCC received submissions from Alinta Energy and Synergy on the issue of rationalisation.

Alinta Energy recognised in its submission that different levels of protection may be necessary depending on the type of contract involved. It proposed that rationalisation should be considered as the gas market further develops. Alinta Energy also queried the wording of some clauses.

Synergy recommended replacing clause 2.3 with Rule 16(2)(b) of the National Energy Retail Rules⁶ (as appropriately modified). According to Synergy, the current requirement under the Code to obtain the customer's verifiable consent to the standard form contract information disclosure is onerous on retailers and an unnecessary cost to customers.

The GMCCC considers the current drafting of clauses 2.2 to 2.4 of the Code to be complex. The GMCCC agreed to recommend the restructure of clauses 2.2 to 2.4 in two new clauses: 2.2 and 2.3.

New clause 2.2 includes the requirements for entering into a standard form contract, while new clause 2.3 includes the requirements for entering into a non-standard contract. These new clauses aim to improve customer protection by creating greater clarity regarding the obligations imposed on retailers and gas marketing agents.

The proposed new clauses are set out in Recommendation 14 above.

In agreeing to recommend new clauses 2.2 and 2.3, recommendations 7, 8, 13, 15, 17, 19 and 22 of the GMCCC's Draft Review Report have become redundant.

As part of the restructure of clauses 2.2 to 2.4, the GMCCC also agreed that some of the obligations in clauses 2.2 to 2.4 required amendment. These amendments can be summarised as follows:

Consent requirements for non-standard contracts

Clause 2.2(1) currently requires non-standard contracts entered into as a result of the internet⁷ to be signed by the customer. All other non-standard contracts require the customer's verifiable consent.⁸

⁶ Rule 16(2)(b) reads as follows:

(2) If the retailer is the designated retailer for the premises, the retailer:

(b) must advise the customer of the availability of the retailer's standing offer, unless the customer is a small market offer customer.

⁷ Clause 2.2(1) of the Code provides that 'a 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'. Subclause (2) applies to non-standard contracts initiated by the customer. Clause 2.2(1) is further subject to subclause (5) which provides that the clause does not apply to non-standard contracts

The GMCCC agreed that the same consent requirements should apply to all non-standard contracts and recommends that the customer's verifiable consent should be required when entering into any non-standard contract.

Providing a copy of the contract to the customer

The Code contains a number of clauses regarding the provision of the contract to customers. The GMCCC agreed to rationalise these clauses into a single obligation and recommends that retailers be required to give, or make available, a copy of the contract at no charge to each customer when entering into a contract.

The new obligation no longer allows a retailer to only provide, or make available, a copy of the contract if the customer accepts the retailer's offer to do so. A copy of the contract must now always be given, or made available, to the customer. The GMCCC does not believe that the amended obligation is substantially more onerous on retailers as the words 'make available' allow a retailer to simply refer a customer to the retailer's website.

The amendment ensures that all customers who enter into a non-standard contract which is not in a 'template' format (and not available from the retailer's website) will always be given a copy of their contract.

When a copy of the contract must be provided to the customer

Clause 2.4(1) currently provides that, if a customer accepts a retailer's offer for a copy of the contract, the retailer must give, or make available, a copy of the contract as soon as possible, but no more than 28 days later.

The GMCCC agreed that the maximum timeframe of 28 days for providing a copy of the contract was excessive. The GMCCC was particularly concerned that for contracts subject to a cooling-off period, this could result in the customer being provided with details of the cooling-off period *after* the cooling-off period had expired.

The GMCCC agreed that the timeframe for giving, or making available, copies of contracts should be consistent with the timeframes specified within the ACL and recommended that for contracts entered into other than by telephone a copy of the contract should be provided at the time the contract is entered into. For contracts entered into over the telephone, the contract should be provided within 5 business days of the customer entering into the contract.

Advising a customer about the availability of a standard form contract

At present, clause 2.3(a) and (b) requires a retailer to tell a customer, before arranging a contract, that the customer is free to choose the retailer's standard form contract and the difference between a standard form contract and a non-standard contract.

The GMCCC agreed there is no need to provide this information to a customer before arranging a standard form contract. In particular, as a retailer is not obliged to offer a customer a non-standard contract, a retailer should not be required to tell a customer

that are unsolicited consumer agreements. In practice, clause 2.2(1) only applies to non-standard contracts entered into as a result of the internet; however this is not apparent from reading the clause.

Clause 2.2(1) is an example of complex drafting within the Code which the GMCCC was keen to simplify.

⁸ Clause 2.2(2) of the Code

about the difference between a standard form contract and a non-standard contract when arranging a standard form contract.

The GMCCC agreed to recommend that the information specified in clause 2.3(a) and (b) should only be provided before a customer enters into a non-standard contract.

Cooling-off periods

Clause 2.4 currently requires a retailer or gas marketing agent to give a customer information on any applicable cooling-off periods. For non-standard contracts, the information has to be provided before the customer entered into the contract unless the information has already been provided to the customer within the preceding 12 months. Alternatively, a retailer or gas marketing agent could opt to tell a customer how the customer could obtain this information.

The GMCCC agreed that it was undesirable that information on cooling-off periods could in some instances be given to a customer after the cooling-off period had ended and recommends that this information should always be provided before a customer enters into a non-standard contract.

In relation to standard form contracts that are not unsolicited consumer agreements, the GMCCC notes that cooling-off periods do not apply to these types of contracts. The GMCCC therefore agreed to recommend deletion of the requirement that retailers must provide information on cooling-periods for these types of contracts.

Information requirements for standard form contracts

Clause 2.4(3)(b) currently requires a retailer or gas marketing agent to provide specified information to customers before they enter into a standard form contract that is an unsolicited consumer agreement. For all other standard form contracts this information may be provided with the customer's first bill.

As the specified information does not affect the terms of the contract, there is no apparent reason as to why this information should be provided *before* a customer enters into a standard form contract that is an unsolicited consumer agreement.

The GMCCC agreed to recommend that the specified information could be provided with the first bill for all standard form contracts.

Consent requirements for the provision of specified information

Clause 2.4(3)(b) further requires a retailer or gas marketing agent to provide the specified information before a customer enters into a non-standard contract and to obtain the customer's written acknowledgement that this information has been provided.

As the specified information does not affect the terms of the contract, the GMCCC agreed to recommend that written acknowledgement could be replaced with verifiable consent. This would ensure consistency in the consent requirements throughout new clause 2.3.

4.5 Other

4.5.1 Definition – Gas marketing agent

Recommendation 15

That the Authority replaces ‘the holder of a trading licence’ with ‘a retailer’ in the definition of ‘gas marketing agent’ in clause 1.5 of the Code.

In its submission, Synergy proposed that the definition of ‘gas marketing agent’ should be amended to exclude a retailer.

The GMCCC understands that the definition of ‘gas marketing agent’ does not include retailers because an agent is defined as ‘a person who acts on behalf of the holder of a trading licence’. The interpretation posed by Synergy would undermine the distinction made between retailer and gas marketing agent throughout the Gas Act and Code. The GMCCC agreed that no recommendation for an amendment should be made.

The GMCCC notes that the definition of ‘gas marketing agent’ refers to ‘the holder of a trading licence’. Throughout the Code, the holder of a trading licence is referred to as a ‘retailer’. For reasons of consistency, the GMCCC agreed to recommend that the reference to ‘the holder of a trading licence’ in the definition of ‘gas marketing agent’ be replaced with ‘a retailer’.

4.5.2 Clauses 1.6(a) and (c) – Application

Recommendation 16

That the Authority deletes clauses 1.6(a) and (c) from the Code.

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 agreed that the Code does not apply to customers and distributors and recommends that clauses 1.6(a) and (c) be deleted from the Code.

4.5.3 Clause 1.7 – Purpose

Recommendation 17

That the Authority deletes reference to ‘distributors’ from clause 1.7 of the Code.

Recommendation 18

That the Authority replaces ‘Australian Consumer Law’ with ‘Fair Trading Act 2010 (WA)’ in the explanatory note under clause 1.7.

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. The Code itself does not impose any obligations upon distributors.

The GMCCC agreed that the Code does not regulate and control the conduct of distributors and recommends that reference to 'distributors' be deleted from clause 1.7 of the Code.

The GMCCC further agreed to recommend that the reference to the ACL in the explanatory note under clause 1.7 should be replaced with a reference to the '*Fair Trading Act 2010* (WA)' as this is the relevant Act which implements the ACL in WA.

4.5.4 *Clause 2.5(2) – Non-standard contracts to be in writing*

Recommendation 19

That the Authority deletes clause 2.5(2) from the Code.

Clause 2.5(2) of the Code requires a retailer or gas marketing agent to ensure that non-standard contracts that are not unsolicited consumer agreements are in writing. Alinta Energy noted in its submission that clause 2.5(2) may be better placed in *Division 3 – Information to be provided to customers*.

As discussed in Section 4.4, the GMCCC recommends that a copy of the contract is given, or made available, to all customers when entering into a contract. The GMCCC agreed that this effectively requires all non-standard contracts to be in writing, making clause 2.5(2) redundant.

The GMCCC agreed to recommend the deletion of clause 2.5(2) of the Code.

4.5.5 *Clause 2.6(2)(a) – Telling a customer the purpose of the contact*

Recommendation 20

That the Authority deletes clause 2.6(2)(a) from the Code.

Clause 2.6(2)(a) of the Code requires a retailer to tell a customer the purpose of the contact when negotiating a contract that is not an unsolicited consumer agreement with the customer face to face. In practice, the clause only applies to 'solicited' contracts entered into face to face at the retailer's business or trade premises.

The GMCCC agreed that if a customer enters into a 'solicited' contract at the retailer's premises, the purpose of the contact should be readily apparent to the customer. Therefore, the GMCCC agreed to recommend the deletion of clause 2.6(2)(a).

4.5.6 *Clause 2.6(3) & (4) – Record keeping*

Recommendation 21

That the Authority deletes clauses 2.6(3) and (4) from the Code.

Each time a retailer initiates contact with a customer for the purpose of marketing, it must keep a record of the name of the customer, the gas marketing agent involved and the date and time of the contact.

In its submission, Synergy reiterated its concerns with the current definition of marketing. According to Synergy, the current definition of marketing captures an overly broad spectrum of contact by retailers with customers. Synergy proposed that clause 2.6(3) be

amended to reflect that records only need to be kept for contact made for the purpose of entering into a contract.

Synergy also noted that the clause is inconsistent with National Privacy Principle 8⁹ as it makes no allowance for anonymity. According to Synergy it is further impractical for a retailer to comply with clause 2.6(3) in certain circumstances. For example, if a retailer approaches a person at a shopping centre and provides that person with a brochure detailing their product offerings, the retailer is legally obliged to obtain that person's name.

The GMCCC noted Synergy's concerns and considered the purpose for which these records may currently be collected under clause 2.6(3).

The GMCCC could not discern a persuasive reason to require a retailer to keep these types of records. The GMCCC considered whether these records may be necessary for complaints handling purposes. However, clause 2.8(1) of the Code and clause 13.3 of the Compendium already require a gas marketing agent and retailer to keep records of any complaints received.

The GMCCC further sought advice from the Energy Ombudsman as to whether it currently makes use of these records in the resolution of marketing complaints. The Energy Ombudsman advised that deletion of clauses 2.6(3) and (4) would not affect its operations.

The GMCCC agreed to recommend the deletion of clauses 2.6(3) and (4) from the Code.

4.5.7 Clarification of provisions that apply to the retailer and the gas marketing agent

Recommendation 22

That the Authority replaces references to 'retailers' and references to 'gas marketing agents' with 'retailers and gas marketing agents' as appropriate throughout the Code.

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 GMCCC agreed to recommend that amendments should be made to rectify incorrect references.

4.5.8 References to 'other party'

Recommendation 23

That the Authority deletes all instances of 'other party' from the Code.

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

⁹ Where possible, organisations must give individuals the opportunity to do business with them without the individual having to identify themselves.

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 agreed to recommend that references to 'other party' should be deleted from the Code.

5 Other issues raised in submissions

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

5.1 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.

In its Draft Review Report, the GMCCC noted that the use of social media in the marketing of products and services is not limited to the marketing of gas. According to the GMCCC, any rules or regulations in this regard should therefore not be limited to gas marketing, but should be considered on a state-wide or national basis.

The GMCCC further noted 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. Considering the above, the GMCCC did not propose any changes to the Code in its Draft Review Report.

The GMCCC received a submission from WACOSS on the issue of social media. In its submission, WACOSS expressed concern regarding the endorsement by 'independent individuals' of products and services where that individual does not disclose he or she receives a benefit, financial or otherwise, for promoting those products or services.

The GMCCC understands that the behaviour described by WACOSS would be captured under section 18 of the ACL ('A person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive').

The GMCCC agreed not to make a recommendation regarding the use of social media in the marketing of gas.

5.2 Comparator websites

WACOSS raised the issue of comparator websites in its submission. A comparator website generally requires a customer to enter in their usage data and requirements. The site then presents the relevant offers of different providers, and (in some instances) may suggest which deal might be best for the customer.

The revenue of many comparator websites originates from commissions provided by retailers for signing up customers to contracts. According to WACOSS, many people do not realise that there are usually commercial arrangements in place so that certain deals are presented in a more positive light than others.

WACOSS recommended that the GMCCC consider how the Code applies to comparator websites and whether there should be obligations placed on comparator websites to ensure that their marketing practices are fair and transparent and comply with the relevant provisions of the Code.

WACOSS further suggested that the Authority develop its own (official) comparator website.

The GMCCC believes that the role of comparison sites is akin to other advertising mediums, where a person is paid to 'pass-on' information and promote particular products, and as such would fall outside the scope of 'gas marketing agent'.

Further, if a comparison site were to promote itself as being independent while it accepted commissions, or where it provided false or misleading information to represent particular products in a more positive light, the matter would likely be in breach of the ACL and could be reported to the ACCC.

The GMCCC agreed that no recommendation for an amendment should be made.

APPENDICES

Appendix 1 – Proposed new Code (with track changes)

Gas Marketing Code of Conduct ~~2012~~2014

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Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 20122014*.

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.

“**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 2012-2014* 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 ~~a **retailer**~~ 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** ~~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**.

“**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**.

~~“**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-tele~~typewriter.

“**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 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), 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 **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*, 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 **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 – Contracts and Information 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-
- record the date the **standard form contract** was entered into;
 - 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 **retailer** or **gas marketing agent** must give the following information to a **customer** no later than on or with 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**;
 - (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) 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 the **non-standard contract** has been entered into, 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**,
 - (d) how the **customer** may obtain -
 - (iii) a copy of the **Code** and the **Compendium**; and
 - (iv) details on all relevant tariffs, fees, charges, **alternative tariffs** and service levels that may apply to the **customer**,
 - (e) the scope of the **Code**;
 - (f) that a **retailer** and **gas marketing agent** must comply with the **Code**;
 - (g) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
 - (h) with respect to a **residential customer**, the **concessions** that may apply to the **residential customer**,
 - (i) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (j) 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;
 - (k) how to make an enquiry of, or **complaint** to, the **retailer**, and
 - (l) general information on the **retailer's gas customer safety awareness program**.
- (3) For the purposes of subclauses (2)(d)-(l), 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), the **retailer** or **gas marketing agent** must obtain the **customer's verifiable consent** that the information in clause 2.3(2) has been given.

2.3 Information to be given before entering into a contract

1. Before arranging a **contract**, a **gas marketing agent** must give a **customer** the following information—

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

(b) the difference between a **standard form contract** and a **non-standard contract**;

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

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

(2) For a **standard form contract** that is 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.

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

2.4 Information to be given at 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**;~~
 - ~~(i) general information on the **retailer's gas customer safety awareness program**; and~~
 - ~~(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**.~~
- ~~(3) Subject to subclause (4), the information in subclause (2) must be given—~~
- ~~(a) for a **standard form contract**, no later than with or on the **customer's** first bill; and~~
 - ~~(b) for a **non-standard form contract** or a **standard form contract** that is an **unsolicited consumer agreement**, before the **customer** has entered into the **contract** and the **gas marketing agent** must obtain the **customer's** written acknowledgement that the information in subclause (2) has been given.~~
- ~~(4) Despite subclause (3), the **retailer** is not obliged to provide the information in subclause (2) to a **customer** if—~~
- ~~(a) the **retailer** has provided the information to that **customer** within the preceding 12 months; or~~
 - ~~(b) when the **retailer** is obliged to provide the information to the **customer** pursuant to subclause (3), the **retailer** informs the **customer** how the **customer** may obtain the information in subclause (2) and, if requested, gives the information to the **customer**.~~

Division 4.3 – Marketing conduct

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

~~(3)~~(2) A **retailer** or **gas marketing agent** ~~other party~~ must ensure that a **customer** is able to **contact** the **retailer** or **gas marketing agent** ~~other party~~ on the **retailer's** or **gas marketing agent's** ~~other party's~~ **telephone** number during the normal business hours of the **retailer** or **gas marketing agent** ~~other party~~ for the purposes of enquiries, verifications and **complaints**.

2.62.5 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** 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)~~(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** or ~~other party~~ on whose behalf the **contact** is being made; and
 - ~~(c)~~(b) _____ 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 ~~other party~~ on whose behalf the **contact** is being made;
 - (iv) the complaints **telephone** number of the **retailer** or ~~other party~~ on whose behalf the **contact** is being made; and
 - (v) the business address and Australian Business or Company Number of the **retailer** or ~~other party~~ on whose behalf the **contact** is being made.
- ~~(3) A **retailer** or other party must keep the following records each time it initiates **contact** with a **customer** for the purposes of **marketing** –~~
 - ~~(a) the name of the **customer** and~~
 - ~~(i) if the **contact** was made by **telephone**, the **telephone** number;~~
 - ~~(ii) if the **contact** was made at the **customer's premises**, the address of the **premises**; and~~

- (iii) ~~If the **contact** was made at a place other than the **customer's premises**, the details and address of the location;~~
 - (b) ~~the name of the **gas marketing agent** who made the **contact**, and~~
 - (c) ~~the date and time of the **contact**.~~
- (4) ~~Clause 2.6(3) does not apply where a **gas marketing agent contacts** a **customer** in response to a **customer** request or query.~~

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 5.4 – Miscellaneous

2.7 Presumption of authority

A person who carries out any **marketing** activity in the name of or for the benefit of –

- (a) a **retailer**, or
- (b) a **gas marketing agent**,

is to be taken, unless the contrary is proved, to have been employed or authorised by the **retailer** or **gas marketing agent** to carry out that activity.

2.8 Gas marketing agent complaints

- (4) 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**.

2.9 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 2014

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Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 2014*.

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.

“**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 2014* 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 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
- (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**.

“**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 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 *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 **retailer** or **gas marketing agent** must give the following information to a **customer** no later than on or with 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**;

- (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) 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 the **non-standard contract** has been entered into, 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**,
 - (d) 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**,

- (e) the scope of the **Code**;
 - (f) that a **retailer** and **gas marketing agent** must comply with the **Code**;
 - (g) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
 - (h) with respect to a **residential customer**, the **concessions** that may apply to the **residential customer**;
 - (i) the **distributor's** 24 hour **telephone** number for faults and emergencies;
 - (j) 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;
 - (k) how to make an enquiry of, or **complaint** to, the **retailer**; and
 - (l) general information on the **retailer's gas customer safety awareness program**.
- (3) For the purposes of subclauses (2)(d)-(l), 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), the **retailer** or **gas marketing agent** must obtain the **customer's verifiable consent** that the information in clause 2.3(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 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; 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) 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) 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** on whose behalf the **contact** is being made;
 - (iv) the complaints **telephone** number of the **retailer** on whose behalf the **contact** is being made; and
 - (v) the business address and Australian Business or Company Number of the **retailer** on whose behalf the **contact** is being made.

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 Presumption of authority

A person who carries out any **marketing** activity in the name of or for the benefit of –

- (a) a **retailer**; or

- (b) a **gas marketing agent**,

is to be taken, unless the contrary is proved, to have been employed or authorised by the **retailer** or **gas marketing agent** to carry out that activity.

2.8 Gas marketing agent complaints

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**.

2.9 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 – Submission: WACOSS



Mr Paul Kelly
GMCCC Chairman
PO Box 8469
PERTH BC WA 6849
Fax: (08) 6557 7999

Sent electronically to gmccc@erawa.com.au

Dear Mr Kelly

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

City West Lotteries House
2 Delhi Street
West Perth
Western Australia 6005

Phone (08) 9420 7222
Fax (08) 9486 7966
Email info@wacoss.org.au
www.wacoss.org.au

RE: Submission to the 2013 Review of the Gas Marketing Code of Conduct – Draft Review Report

The Council would like to thank the Economic Regulatory Authority for the opportunity to comment on *The Gas Marketing Code of Conduct – Draft Review Report*. The Council broadly supports most of the recommendations made within the report.

We have included some suggestions where we believe The Gas Marketing Code of Conduct (the Code) can be improved, and have comments on the following:

- Definition of cooling-off period
- Duration & Termination
- Social media
- Critical information fact sheet
- Comparator websites

Should you have any queries in relation to this submission or any other matters please do not hesitate to contact Chris Twomey, Director of Social Policy on (08) 9420 7222 or email chris@wacoss.org.au.

Yours Sincerely

Irina Cattalini
CEO

WACOSS Submission

Gas Marketing Code of Conduct



wacoss

Western Australian
Council of Social Service Inc

*Ways to make
a difference*

WA Council of Social Service Inc

City West Lotteries House

2 Delhi Street West Perth

WA 6005

9420 7222

www.wacoss.org.au

Contact:

Chris Twomey, Director Social Policy

(08) 9420 7222

chris@wacoss.org.au

Definition of cooling-off period

The Council notes the cooling off periods vary slightly depending on whether the customer enters into a standard form contract or a non-standard form contract, and that the difference between the two cooling-off periods is negligible (10 days compared to 10 business days). The Council suggests that to reduce complexity that the cooling-off period for both types of contracts could be set at 10 business days. Having the one standard will simplify public education campaigns and the training of consumer advocates on consumer rights. For these reasons, the Council recommends the definition of the 'cooling off period' in clause 1.5 be changed to '10 business days'.

Duration & Termination

The Council believes that provisions should be included in the Code that require retailers to provide customers with information on the commencement date and duration of the contract, on the availability of contract extensions, and on the termination of the contract if the customer moves out during the term of the contract. Customers need to know these details when entering into a contract, and may not necessarily consider these issues at the time they are presented with an offer by the retailer to supply a household or business with gas. Such information should also be presented in an easy to understand format. The Council recommends that the Code introduce a requirement on the retailers to provide a *critical information fact sheet* which contains all the vital information gas customers need (including that on contract duration and termination conditions) when determining which gas offer is best for them. More information on *critical information fact sheets* is provided below.

Social media

Social media is changing the way customers are targeted by marketers. It is therefore important that customers are also protected from undesirable or unethical marketing within the social media realm. Whilst the GMCCC notes that the use of social media in the marketing of products and services is not limited to the marketing of gas, it is within the remit of the GMCCC to undertake the review with the primary objective of the Code in mind – which is '*protecting small use customers from undesirable marketing conduct and defining standards of conduct in the marketing of gas to customers.*'

One example of an undesirable marketing practice is the distribution of information that is presented on social media as an authentic view of an independent individual, but is actually the result of an undeclared commercial arrangement that has come to being as a result the actions of a retailer or gas marketing agent. Such activities deliberately blur the line between individual opinion and commercial advertising. While the Council does not want to stymie gas marketing within the social media realm, the Council would like to see provisions in place that safeguard the general public from inappropriate and undesirable marketing practices. The Council believes that transparency is required so that the public are fully aware when what they are seeing is actually paid-for content. All this would require is disclosure that a commercial arrangement exists, such as 'this is paid content' at the end of a social media comment.

Critical information fact sheets

Recent findings on the literacy and numeracy skills of the Australian population suggest that a significant proportion of the population lack the skills to adequately comprehend the terms and conditions of a typical contract.¹ As energy contracts rely on legal terms and conditions requiring a higher level of literacy and some specific legal knowledge, it is to be expected that most people without a legal background are likely to fail to comprehend the true meaning of their contract obligations. To this end many other jurisdictions have introduced requirements to include a plain language *critical information fact sheet* (sometimes also referred to as an *energy price fact sheet*) when a contract is presented. While a critical information fact sheet won't help people grasp the entirety of a contract, it does enable a better understanding of the most important aspects of a contract to allow those with average levels of literacy to compare offers more easily.

The Council recommends to the committee that the Code introduce a requirement that gas retailers provide potential customers with a critical information fact sheet before they sign onto a new contract (see appendix A - an example of an *energy price fact sheet* that Alinta has produced for the South Australian market).

Critical information fact sheets provide disclosure to all customers about a number of vital provisions of a gas offer. They ensure that customers are fully aware of such things as break/early termination fees, what happens at the end of a contract, other fees and charges that they may face, what happens at the end of the contract and other additional information (like how much and when the usage charges can be increased or how the retailer is allowed to vary their prices at any time).

As energy markets have become more complex such disclosure requirements have become the norm, along with a number of other tools to help customers (such as *energy comparator websites* produced by regulators). Critical information fact sheets have now been introduced in all the markets where reticulated gas is sold in Australia except for Western Australia and the Northern Territory (noting the NT only sells reticulated gas in Alice Springs at a domestic level²). In addition, the telecommunications industry has recently introduced critical information disclosure fact sheets as a means of providing transparency and informing customers about the more important terms of the contract. The Council suggests that Western Australian gas customers should be afforded the same level of protection that other utility customers are afforded across the rest of Australia.

One of the concerns put forth for not adding in extra safeguards is compliance costs, which will ultimately need to be passed on to customers. While the Council acknowledges that cost increases are not in the best interests of customers, we suggest that the costs are likely to be relatively low and the benefits to consumers of having consistent and comparable information are potentially quite

¹ The [preliminary findings of the ABS's Programme for the International Assessment of Adult Competencies survey](#) has found that approximately 7.3 million (44%) Australians aged 15 to 74 years had literacy skills at Levels 1 or 2 (out of 5), the Council believes that any score under 3 would result in the person having difficulty in understanding a contract. See the ABS [Appendix scores and skill levels](#) for more details on what these scores mean.

² See Engineers Australia, [Northern Territory infrastructure report card 2010](#), page 121.

substantial. We envisage that a fact sheet comparable to those in other jurisdictions would be based on a 2 page template that should take the retailer minimal time and effort to compile.

To ensure consumers have access to this information before a contract is signed, the following provisions may need to be added to the Code. When entering a contract the retailer or gas marketing agent should provide the fact-sheet in person to the potential client before the contract is entered into. Customers signing up on-line should be directed to a clear link to an electronic **version** of the fact sheet during the sign-up process. Customers signing up over the phone should have the information provided verbally over the phone and the potential client should be informed that the fact sheet is available for download or by post. These methods will minimise costs while providing vital information to potential clients.

While the costs for introducing energy price fact-sheets will be negligible, the benefits they bring to customers are significant - including consumers making better informed decisions and saving time otherwise spent reviewing the various contracts on offer. Providing information in a standardised, easy to read format before a contract is entered into will help many gas customers choose the best gas offer for their circumstances, which will help support a competitive gas market in Western Australia.

Comparator websites

Comparator websites are offered to customers as a means to find the best deal available to them within a particular market. They may require a customer to enter in their usage data and requirements. The site then presents the relevant offers of different providers, and (in some instances) may suggest which deal might be best for the customer.

The revenue of many comparator websites originates from commissions provided by the retailers for signing up customers to contracts. Many people may not realise there are usually commercial arrangements in place, so that certain deals are presented in a more positive light than others.

While it is unlikely that the Code can extend to directly regulating the conduct of independent operators of comparator websites, however it is able to regulate the marketing conduct of energy retailers. That is, the Code should be able to ensure that when a retailer or gas marketing agent enters into a commercial arrangement with a comparator website operator, that such agreements are bound by the conditions of the Code (i.e. comparator websites might be considered to be gas marketing agents).

The Council recommends that the committee should consider how the Code applies to comparator websites and whether there should be obligations placed on comparator websites to ensure that their marketing practices are fair and transparent and comply with the relevant provisions of the Code.

While outside of the scope of the Code review, the Council would like to suggest that the Western Australian Government and/or the Economic Regulation Authority consider the development of its own official comparator website for electricity, gas and water markets within Western Australia as these markets are progressively opened up to competition. The Council notes that a number of bodies similar

to the ERA in other jurisdictions have introduced their own comparator website³. The presence of a truly independent comparator website that could be trusted by consumers to provide unbiased results may prove beneficial as more offers start becoming available to gas consumers and the WA market becomes more complex.

³ IPART (NSW) has introduced '[My energy offers](#)', Victoria's Essential Services Commission has [YourChoice](#), and the NEM (SA, ACT, Tas) states have the Australian Energy Regulator's [Energy Made easy](#) comparator website.

price fact sheet electricity

This price fact sheet is issued by Alinta Energy Retail Sales Pty Ltd ABN 22 149 658 300 trading as Alinta Energy (us) in accordance with the requirements of the Energy Price Disclosure Code made by the Essential Services Commission of South Australia.

Tariffs under your plan are based on the Alinta Energy Market Tariffs as published on our website and as set out below under the heading "Alinta Energy Market Tariffs" and take effect on 8 October 2012. The tariffs under the heading "Fair Go 15" are inclusive of all conditional discounts outlined over the page.

All estimated costs, discounts, fees or other amounts outlined below are inclusive of GST.

Alinta Energy Electricity Costs	Alinta Energy Market Tariffs	Fair Go 15 (Including All Conditional Discounts)
Estimated annual cost for a residential customer with an annual electricity consumption level of: <input type="text"/>		
	GST inc	GST inc
2MWh (excluding off peak hot water) (\$/year)	\$922.70	\$823.83
5MWh (excluding off peak hot water) (\$/year)	\$1,980.49	\$1,722.95
8.5MWh (excluding off peak hot water) (\$/year)	\$3,324.91	\$2,865.62
1.5MWh of off peak hot water (\$/year)	\$232.49	\$197.61
This assumes consumption is spread evenly over the year.		

Alinta Energy Electricity Rates	Alinta Energy Market Tariffs	Fair Go 15 (Including All Conditional Discounts)
General usage charges (1 April to 31 December inclusive. Summer usage charges apply all other times)		
	GST inc	GST inc
First 3.2877 kWh/day (cents/kWh)	32.043	27.237
Next 7.6712 kWh/day (cents/kWh)	32.648	27.751
Next 16.4384 kWh/day (cents/kWh)	37.367	31.762
Next 27.3973 kWh/day (cents/kWh)	40.535	34.455
Balance (cents/kWh)	40.535	34.455
Summer usage charges (1 January to 31 March inclusive. General usage charges apply all other times)		
First 3.2877 kWh/day (cents/kWh)	33.770	28.705
Next 7.6712 kWh/day (cents/kWh)	36.806	31.285
Next 16.4384 kWh/day (cents/kWh)	41.547	35.315
Next 27.3973 kWh/day (cents/kWh)	44.715	38.008
Balance (cents/kWh)	44.715	38.008
Supply Charge		
Cents/day	72.204	72.204

Off Peak Controlled Load Rates ^

Summer and general usage and supply charge shown above apply, plus the following off peak usage charges

First 21.9178 kWh/day (cents/kWh)	15.499	13.174
Balance (cents/kWh)	16.731	14.221

Daily consumption is the total electricity consumption for the period to which an account relates, divided by the number of days in that period.

*Alinta Energy Electricity Rates apply to all consumption unless Off Peak Controlled Load Rates apply.

^ Off Peak Controlled Load Rates apply for electricity used in permanently installed storage water heaters with a rated delivery of not less than 125 litres, storage space heaters and other approved thermal storage applications during hours which are fixed from time to time with control by a time switch or other means.

plan details

Fair Go 15

Fair Go 15 gives you complete freedom, while allowing you to save on your energy accounts. No fixed term, no early termination fees - and a 15% saving off our Market Tariffs on your usage charges for each account you pay in full and on time.

Fair Go 15 Details

Pay on time discount:	15% off our Market Tariffs for the electricity you have consumed if and only if you pay your account in full by the due date.
Term:	No fixed term.
Early termination fee:	No early termination fee.
Payment method:	Telephone or internet (credit card), quarterly direct debit, monthly payment smoothing via direct debit, BPAY, in person or by mail. Further details set out on your account.
Billing frequency:	Quarterly.
Billing method:	Accounts to be sent to the billing or email address set out in your offer.

Variations in tariffs and other charges

Our Market Tariffs are varied from time to time and published on our website. If we change our Market Tariffs, we will give you 30 days prior notice of any such change.

We may impose an additional charge if there is, or we fairly and reasonably expect there will be, an increase in any of our environmental, market, metering, network and regulatory costs, if that cost increase is specifically or otherwise attributable to you or to the energy we sell you. The amount of the additional charge will be no more than what is required to recover such an increase in costs. There will be no additional charge to the extent that we recover a cost increase through variations in our tariffs.

Price comparison service

This price fact sheet is presented in accordance with the requirements of the Energy Price Disclosure Code made by the Essential Service Commission of South Australia. For information about choosing an energy retailer and to compare energy retail prices, visit www.escosa.sa.gov.au or call 1800 226 100.

Appendix 5 – Submission: Synergy

SUBMISSION TO THE

GAS MARKETING CODE CONSULTATIVE COMMITTEE (GMCCC)

REGARDING THE GMCCC'S DRAFT REVIEW REPORT

7 JULY 2013



Executive Summary

Matter The Gas Marketing Code Consultative Committee's (GMCCC) draft report (GMCCC report) on the review of the Gas Marketing Code of Conduct 2012 (Marketing Code).

Context The GMCCC report presents its preliminary recommendations from its statutory review of the Marketing Code. The report proposes twenty four recommendations for change and seeks stakeholder feedback on two matters.

Scope Synergy provides this submission to assist the GMCCC's deliberations with respect to its recommendations and request for feedback on two matters.

Submission summary

1. Synergy does not support creation of a "not contact list" under the Marketing Code.
2. Synergy recommends clause 2.3 is rationalised.
3. Synergy supports GMCCC recommendations 1-17, 19-24.
4. Synergy does not support GMCCC recommendation 18.
5. Synergy recommends amendments to the definition of "gas marketing agent".
6. Synergy recommends amendments to clause 2.6(3).

1. Background

The GMCCC has released its preliminary views on various matters in response to its statutory review of the Marketing Code. The *Energy Coordination Act 2004 (Act)* requires the ECCC undertake a review of the Marketing Code every 2 years and provide a review report to the Economic Regulation Authority (**Authority**). Synergy provides this submission to assist the GMCCC's deliberations with respect to its recommendations and request for feedback on two matters.



SIMON THACKRAY
MANAGER RETAIL REGULATORY AND COMPLIANCE

2. Matters for consideration

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?

Best practice regulation and policy making should address an identified market failure supported by a robust cost-benefit analysis prior to enacting legislation as customers ultimately pay the cost of regulation in the form of higher energy prices.

The GMCCC's interim view is there is no indication door to door marketing in person is an issue in Western Australia at present. Synergy agrees with this view. Accordingly, Synergy considers it is not in the public interest for customers to incur a gas market cost of establishing and maintaining a do not contact register under the Marketing Code where there is no evidence of market failure to warrant the expenditure.

The GMCCC's report accurately reflects a long-standing problem with the definition of "marketing" under the Act which captures an overly broad spectrum of retailer contact with a customer.

In the event a do not contact register was established under the Gas Marketing Code, based on the current definition of "marketing" under the Act this would prohibit a retailer from contacting a customer on the register in relation to any "dealings in respect of, a contract for the supply of gas to a customer" such as a request to confirm contact details.

Such an outcome is entirely inappropriate and would seriously affect a retailer's legitimate business interests if a retailer was prohibited from contacting their customer in relation to day to day dealings with the customer.

Consequently, Synergy does not support insertion of a new obligation which requires 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?

Synergy recommends clause 2.3 of the Marketing Code is rationalised by adopting section 16(2)(b) of the National Energy Retail Rules (as appropriately modified) which imposes an obligation on a retailer to advise a customer of the retailer's standing offer which in the case of Western Australia is the standard form contract.

The requirement under the Marketing Code to obtain the customer's verifiable consent to the standard form contract information disclosure is erroneous on retailers and an unnecessary cost to customers.

In the event the Marketing Code is amended consistent with section 16(2)(b) of the National Energy Retail Rules there are adequate existing controls in place to ensure a retailer discloses information on its standard form contract to the customer including:

- A retailer's obligation to report to the Authority compliance breaches annually;
- Energy Ombudsman complaints; and
- regular performance audits conducted by independent auditors and submitted to the Authority for its consideration and action. The Authority then publicly discloses the audit reports.

Synergy considers clauses 2.2 and 2.4 of the Gas Marketing Code in their proposed form are appropriate in terms of protecting customers and regulating retailer conduct.

3. GMCCC Recommendations

Recommendations 1-17, 19-24

Synergy supports these recommendations.

Recommendation 18: No canvassing or advertising signs

The GMCCC report notes the above matter was considered by the Committee as part of the 2011 Marketing Code review. At that time the Committee determined to “remove duplication with the SCL, the DNCR Act and the Spam Act.” and therefore deleted the requirement under the Marketing Code for a retailer to comply with no canvassing or advertising notices.

Synergy does not support reintroducing the legislative requirement as there is no evidence in Western Australia (unlike the eastern states) that retailers are deliberately ignoring such notices.

Stakeholders need to be aware by legislating the requirement retailers will be required to incur significant establishment and ongoing costs to demonstrate it has adequate controls (education and training, standard operating procedures etc) in place to comply and monitor the licence requirement and to have those controls assessed for adequacy by an independent auditor, again at the retailer’s expense. These costs in turn will be passed to customers through the gas tariff they pay. Accordingly, it is not in the public interest for customers to incur these costs when there is no evidence of market failure in Western Australia to warrant such costs.

4. Other matters

4.1 Definition of gas marketing agent

For the avoidance of doubt the definition of “gas marketing agent” should be amended to exclude a retailer. For example, in the proposed clause 2.10 it is arguable a retailer and its staff is subject to the obligation under the definition of “gas marketing agent”.

4.2 Record keeping

Clause 2.6(3) of the Marketing Code is very prescriptive in terms of the records to be kept for the purposes of marketing. The GMCCC’s report correctly reflects a current problem with the definition of “marketing” under the Act that captures an overly broad spectrum of contact with a customer.

Given the Act’s definition of “marketing” a retailer is legally obliged to record in the manner prescribed by clause 2.6(3) every contact it has with a customer in terms of “dealings in respect of, a contract for the supply of gas to a customer” which was never the intent. Accordingly, Synergy recommends clause 2.6(3) is amended to reflect a record to be kept for marketing purposes is limited to records which relate to “the purposes of entering into a contract”.

From a retailer and customer perspective there are further opportunities to improve clause 2.6(3). These are:

- The provision contains no allowance for anonymity consistent with National Privacy Principle 8. Some customers may not wish to provide their name when contacted for marketing purposes however, it is obligatory for a retailer to obtain it.
- In certain circumstances it is impractical for a retailer to comply with the requirements in clause 2.6(3). For example, if a retailer approaches a person at a shopping centre and provides that person with a brochure detailing their product offerings the retailer is then legally obliged to obtain the name of the customer.

Synergy recommends clause 2.6(3) is amended to address both of these matters.

Appendix 6 – Submission: Alinta Energy



2013 Review of the Gas Marketing Code of Conduct

Alinta Energy Submission

8 July 2013

1 Introduction

Alinta Sales Pty Ltd (**Alinta Energy**) is pleased to provide comment on the Draft Review Report (**Report**) which 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.

Alinta Energy largely agrees with the recommendations in the Report and will restrict its comments to a few key issues below.

2 Alinta Energy comments

2.1 Question 1 - no contact lists

Section 75(2) of the Australian Consumer Law (**ACL**) requires, should a prospective consumer make such a request, that a marketing agent not contact the prospective consumer for the purpose of negotiating an unsolicited consumer agreement (or for an incidental or related purpose) for at least 30 days after the prospective consumer makes the request. This obligation essentially requires a retailer to administer a “no contact” list.

Alinta Energy does not support the introduction of any additional no contact lists. The requirement for a retailer to administer such a list, which would apply to all direct marketing, including marketing in person at a customer’s premises or marketing by mail, would add to the administrative burden, cost and potential compliance risk of operating door-to-door and other direct energy marketing channels.

Alinta Energy believes that a more efficient and effective option for consumers to exercise choice is the use of “do not knock” stickers or “no canvassing” signs, which provide customers with the same level of choice at a much lower cost to industry.

2.2 Recommendation 18 - no canvassing or advertising signs

Alinta Energy supports the introduction of proposed clause 6.7, which will require a retailer or gas marketing agent to comply with any signs indicating canvassing at a person’s premises, or advertising material, is not permitted.

Alinta Energy notes that the phrasing in the proposed clause is very similar to that in rule 66 of the National Energy Retail Rules.

However, Alinta Energy notes that “do not knock” and “no canvassing” signs introduce a number of issues that warrant further consideration.

On the east coast of Australia, door to door selling is a successful energy marketing channel. However, it also carries with it significant risk, not the least of which is the ACL penalty regime. The key challenge for the energy industry has been how to provide an effective and efficient mechanism for consumers to exercise choice of whether or not they wish to receive door-to-door marketers, whilst also allowing this type of marketing activity to continue as a legitimate sales channel operating in compliance with the ACL.

Alinta Energy holds the view that “do not knock” stickers provide the most cost effective and efficient method for a consumer to express their preference for receiving door-to-door marketing agents. These stickers are readily available and in wide use on the east coast. However, if the Economic Regulation Authority (**Authority**) believes it appropriate to

regulate application of the stickers in Western Australia to ensure better clarity and consistency, Alinta Energy suggests that thought be given to the following issues:

- Guidelines could be established to cover both the appearance and placement of the sticker. Both appearance and placement are key issues in ensuring marketers see the sticker and take appropriate action;
- Stickers should communicate clearly which categories of marketing agents the sticker applies to. A simple “do not knock” sticker would presume to exclude anyone from knocking on the door, including charities and other groups unrelated to the energy industry. This may not be the intent of the occupant, who may be seeking to exclude energy marketers but may be quite happy to receive other marketing agents. Standardisation of stickers, including category exclusion, will provide greater clarity for both consumers and retailers; and
- Customers need to be educated regarding what the use of a sticker means for them. The message to consumers needs to be consistent and easy to understand and should come from a single independent source (e.g. the Authority or Public Utilities Office).

2.3 Question 2 – rationalising requirements

Alinta Energy recognises that different levels of protection for consumers are necessary depending on whether the contract is a standard form contract, a non-standard contract, solicited or not solicited.

Whilst further rationalising of the requirements under clauses 2.2, 2.3 and 2.4 is probably not currently warranted, Alinta Energy believes that this step should be reconsidered as the gas market develops.

Alinta Energy will make the comment, however, that the current reading of clauses 2.2 - 2.4 can be confusing to retailers and perhaps some rewording will make it easier for consumer protection requirements to be understood and complied with.

For example, through the application of clauses 2.2(2) and 2.2(5), it appears that clause 2.2(1) is not applicable at all.

Alinta Energy would also query whether clause 2.5(2) should remain in *Division 4 – Marketing Conduct*, or whether it would sit better under *Division 3 – Information to be provided to customers*.

To aid further discussion in this area, Alinta Energy has prepared a table (see below) which indicates which clauses are applicable to the different types of contracts and consumer agreements.

Table 1: Information to be provided to customers – applicable clauses

Code Reference	Description	Standard form contract		Non-standard contract	
		Not unsolicited consumer agreement	Unsolicited consumer agreement	Not unsolicited consumer agreement	Unsolicited consumer agreement
2.2(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.			Clause 2.2(2) applies.	Clause 2.2(5) applies.
2.2(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.			✓	
2.2(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.	✓	Clause 2.2(5) applies.		
2.2(4)	The terms and conditions of a standard form contract must be made available to the customer on request at no charge.	✓	Clause 2.2(5) applies.		
2.2(5)	Clauses 2.2(1) to (4) inclusive do not apply in relation to contracts that are unsolicited consumer agreements.				
2.3(1)	Before arranging a contract, a retailer or gas marketing agent must give a customer the information in subclauses (a) to (d).	✓	✓	✓	✓
2.3(2)	The retailer or gas marketing agent must obtain and make a record of the customer's verifiable consent that the information in subclause	✓		✓	

Code Reference	Description	Standard form contract		Non-standard contract	
		Not unsolicited consumer agreement	Unsolicited consumer agreement	Not unsolicited consumer agreement	Unsolicited consumer agreement
	(1) has been given.				
2.3(3)	The retailer or gas marketing agent must obtain the customer's written acknowledgement that the information in subclause (1) has been given.		✓		✓
2.4(1)	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.	✓		✓	
2.4(2)	A retailer or gas marketing agent must give a customer the information in subclauses (a) to (i).	✓	✓	✓	✓
2.4(3)(a)	The information in subclause (2) must be given no later than with or on the customer's first bill.	✓			
2.4(3)(b)	The information in subclause (2) must be given before the customer has entered into the contract and the customer's written acknowledgement must be obtained.		✓	✓	✓
2.4(4)(a)	The retailer or gas marketing agent is not obliged to provide the information in subclause (2) to a customer if the retailer or gas marketing agent has provided the information to that customer within the preceding 12 months.	✓	✓	✓	✓

Code Reference	Description	Standard form contract		Non-standard contract	
		Not unsolicited consumer agreement	Unsolicited consumer agreement	Not unsolicited consumer agreement	Unsolicited consumer agreement
2.4.4(b)	The retailer or gas marketing agent is not obliged to provide the information to the customer pursuant to subclause (3) if 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.	✓	✓	✓	✓
2.5(2)	A retailer or gas marketing agent must ensure that non-standard contracts that are not unsolicited consumer agreements are in writing.			✓	

3 Further suggestions

3.1 Definition of “gas marketing agent”

The current definition of “gas marketing agent” in section 1.5 of the Code is:

“(a) a person who acts on behalf of the holder of a trading licence – “.

As the definition of “retailer” is:

“a person who holds a trading licence under Part 2A of the Act”

Alinta Energy suggests that the definition of “gas marketing agent” be revised to:

“(a) a person who acts on behalf of a retailer – “.