



Gas Marketing Code Consultative Committee

2015 Review of the *Gas Marketing Code of Conduct*

Final Review Report

24 February 2015

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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 2014* (**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 12 December 2014. The public consultation period closed on 16 January 2015.

Two submissions were received.

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

Recommendation 1

That the Authority write to the Minister for Energy to express concern that there remain outstanding issues in relation to:

- (a) reference to the AGA Code *Energy Coordination (Customer Contracts) Regulations 2004*;
- (b) the definition of 'marketing' within the Gas Act; and
- (c) the ambiguity of the definition of 'contract' under Regulation 6(5) of the *Energy Coordination (Tariff) Regulations 2000*.

Recommendation 2

Insert the following wording as clause 2.7 in the Code and renumber existing clauses 2.7 – 2.9 as 2.8 - 2.10.

2.7 Compliance

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

Penalty -

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

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

Penalty –

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

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

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

2 Background

2.1 The Gas Market in Western Australia

The Economic Regulation Authority (**Authority**) is responsible for issuing gas trading licences. These licences permit a person (‘the **retailer**’) to sell gas to certain customers in one or more supply areas.

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

In 2013/14, there were five licensed gas retailers:

- Alinta Sales Pty Ltd (t/a **Alinta Energy**);
- Electricity Generation and Retail Corporation (t/a **Synergy**);
- Esperance Gas Distribution Company Pty Ltd (**Esperance Gas**)¹;
- Perth Energy Pty Ltd; and
- Wesfarmers Kleenheat Gas Pty Ltd (**Kleenheat**).

In WA, the market for gas is contestable. This means that gas retailers may sell gas to any customer within their supply area regardless of the customer’s consumption level. There is one exception: Synergy may only sell gas to customers who consume more than 0.18TJ of gas per annum². Further, customers who consume less than 1TJ of gas per year (**small use customers**)³ are entitled to additional protection. When selling gas to a small use customer, a gas retailer must comply with the minimum standards prescribed in the Code and the *Compendium of Gas Customer Licence Obligations* (**Compendium**).⁴

At 30 June 2014, the WA gas retail market comprised approximately 666,525 residential and non-residential small use customers.

Historically, the retail market has been dominated by Alinta Energy, which holds a licence to sell gas in the Coastal, Goldfields-Esperance and Great Southern supply areas. As at 30 June 2014, Alinta Energy supplied 96.6% of all small use customer accounts, Kleenheat supplied 3.3% and the remaining 0.1% of small use customer accounts were shared between Esperance Gas and Synergy.

Like Alinta Energy, both Synergy and Kleenheat hold a licence to supply gas in the Coastal, Goldfields-Esperance and Great Southern supply areas.⁵ Synergy has been supplying gas to business customers in competition with Alinta Energy since 2007.

Kleenheat has historically only supplied reticulated LPG in Margaret River and Albany. However, on 24 March 2013, Kleenheat commenced the supply of gas to residential and

¹ Licence GTL11 was renewed and transferred from WorleyParsons Asset Management Pty Limited to Esperance Gas Distribution Company Pty Ltd on 14 March 2014.

² This equates to an annual gas bill of approximately \$6,200.

³ This equates to an annual gas bill of approximately \$34,200 for residential customers in the mid-West.

⁴ The Compendium forms Schedule 2 of gas licences.

⁵ Kleenheat’s licence also authorises the supply of gas in the Wheatbelt Supply Area.

business customers in the Coastal supply area in competition with both Alinta Energy and Synergy.

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

2.2 Gas Marketing Code of Conduct

The Code is made under section 11ZPM of the *Energy Coordination Act 1994 (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.

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).⁶

Since the initial approval of the Code, the GMCCC has undertaken three reviews of the Code. The most recent version of the Code, the *Gas Marketing Code of Conduct 2014*, took effect on 1 January 2014.

Under the Act, the next statutory review of the Code is due to commence no later than May 2015 (but can be commenced any time prior to that date).

2.3 What is 'Marketing'

The Gas Act defines marketing as:⁷

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

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

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

⁶ Section 11ZPV(2) of the Gas Act.

⁷ Section 11ZPL of the Gas Act.

2.4 Gas Marketing Code Consultative Committee

The GMCCC Terms of Reference (**Appendix 4**) provide detail regarding the decision-making model to be employed by the GMCCC.

Current members of the GMCCC are:⁸

- Mr Paul Kelly, Economic Regulation Authority (Chairperson);
- Ms Cathryn Greville, Economic Regulation Authority (Executive Officer);
- Ms Sarah Hazell, Department of Commerce (government agency representative);
- Mr James McIntosh,⁹ Public Utilities Office (government agency representative);
- Mr Charles Brown, Financial Counsellors' Association of WA (consumer representative);
- Mr Matthew Sargeant, Chamber of Commerce and Industry of Western Australia (consumer representative);
- Ms Catherine Rousch, Alinta Energy (industry representative);
- Mr Simon Thackray, Synergy (industry representative); and
- Mr John Saratsis, Kleenheat (industry representative).

The current GMCCC membership term expires on 30 September 2016.

The Chairperson and Executive Officer have no voting rights, however all other members are voting members of the GMCCC.

2.5 Code Review Process

The Secretariat of the Authority prepared a Discussion Paper for the consideration of the GMCCC in November 2014. The GMCCC met to discuss the issues outlined in the Discussion Paper 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 12 December 2014, the Draft Review Report was published on the Authority's website and an email was sent to all those registered with the Authority as interested parties.

A period of five weeks¹⁰ was provided for public consultation on the Draft Review Report, with the date for submissions closing on 16 January 2015. Submissions were received from the following stakeholders:

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

Following receipt of the submissions, the GMCCC considered the issues raised and subsequently approved this Report.

⁸ One consumer representative position is vacant.

⁹ Currently acting as proxy for Mr Alex Kroon of the Public Utilities Office.

¹⁰ A five-week consultation period was provided as the consultation occurred over the Christmas and New Year break.

After consideration of this Final Review Report, the Authority may decide to propose amendments to the Code. The Gas Act requires the Authority to refer any proposed Code amendments back to the GMCCC for advice before the changes can be made. The GMCCC must then undertake further consultation on any proposed amendments prior to providing its final advice to the Authority.

3 Outstanding issues from 2013 Code Review

In its Final Review Report for the 2013 Review of the Code, the GMCCC noted the following three issues, all of which had arisen from the 2011 Review.

It is noted that these three issues must each be addressed by other parties (as opposed to the Authority), and therefore there are no associated changes proposed to the Code to deal with these issues at this stage. However, they are included in this Final Review Report by way of background information and in recognition of issues that sit outside the Code. Some GMCCC members raised concerns that these matters remain outstanding.

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 Customer Service Code (**AGA Code**). The Australian Gas Association 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 contains provisions that are no longer current or relevant to the gas market in Australia.

The GMCCC agreed that the continuing reference to the AGA Code in the Contract Regulations may cause confusion and recommended that the Authority write to the Minister for Energy regarding the issue.¹¹ The Authority accepted this recommendation and subsequently wrote to the Minister for Energy expressing its support for amendments to the Contract Regulations. The Secretariat understands the issue is currently under consideration, along with a number of other legislative amendments with respect to gas.

3.2 Energy Coordination Act 1994 – Definition of 'marketing'

The current definition of 'marketing' within the Gas Act and the Code reads:

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

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

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

¹¹ 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 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.

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. Again, the Secretariat understands the issue is currently under consideration, along with a number of other legislative amendments with respect to gas.

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

Clause 2.3(2)(a) of the Code states:

- (1) 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;

In preparation for the 2011 Review of the Code the Authority considered, and sought legal advice on, whether there is a requirement for a retailer to offer a standard form contract.¹² The advice received indicated that there was uncertainty on this matter due to the ambiguity of the definition of 'contract' under Regulation 6(5) of the *Energy Coordination (Tariff) Regulations 2000*.

The Authority subsequently wrote to the Minister for Energy regarding this issue. The Secretariat understands the issue is currently under consideration, along with a number of other legislative amendments with respect to gas.

As the above three issues were raised with the Minister for Energy a number of years ago and they remain unresolved, the GMCCC agreed to recommend that the Authority write to the Minister expressing the GMCCC's and the Authority's concerns that these matters remain outstanding.

¹² This was in relation to clause 2.3(1)(a) of the 2008 version of the Gas Marketing Code.

Recommendation 1

That the Authority write to the Minister for Energy to express concern that there remain outstanding issues in relation to:

- (a) reference to the AGA Code *Energy Coordination (Customer Contracts) Regulations 2004*;
- (b) the definition of 'marketing' within the Gas Act; and
- (c) the ambiguity of the definition of 'contract' under Regulation 6(5) of the *Energy Coordination (Tariff) Regulations 2000*.

4 Achieving Consistency with the Electricity Code

The *Code of Conduct for the Supply of Electricity to Small Use Customers* (**Electricity Code**) regulates and controls the conduct of electricity retailers, distributors and marketing agents. Part 2 of the Electricity Code, which deals with marketing, generally mirrors the Code.

To retain consistency between the Code and the Electricity Code, the GMCCC recommends the following amendment be made to the Code.

4.1 Penalty provision

The Electricity Code contains a clause called 'Compliance', set out as follows:

2.7 Compliance

- (1) An **electricity marketing agent** who contravenes a provision of this Part commits an offence.

Penalty —

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

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

Penalty —

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

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

There is no equivalent provision in the Gas Marketing Code.

To ensure that the Code is not only enforceable against retailers (as a condition of their licence) but also against gas marketing agents, the GMCCC recommends that a penalty or compliance provision consistent with the Electricity Code be inserted into the Gas Code.

To ensure consistency of clause numbering between the Code and the Electricity Code, the GMCCC recommends that the 'Compliance' clause be inserted as clause 2.7 in the Code, and that the existing clauses 2.7 – 2.9 are renumbered as clauses 2.8 - 2.10.

Recommendation 2

Insert the following wording as clause 2.7 in the Code and renumber existing clauses 2.7 – 2.9 as 2.8 - 2.10.

2.7 Compliance

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

Penalty -

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

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

Penalty –

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

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

APPENDICES

Appendix 1 – Proposed new Code (with track changes)

Gas Marketing Code of Conduct ~~2014~~2015

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Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct* ~~2014~~[2015](#).

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 -
 - (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.

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;

- (b) provide the **customer** with the **telephone** number of the **gas ombudsman**; and
 - (c) for **contact** by a **gas marketing agent**, provide the **customer** with the **gas marketing agent's marketing identification number**.
- (2) A **retailer** or **gas marketing agent** who meets with a **customer** face to face for the purposes of **marketing** must –
- (a) wear a clearly visible and legible identity card that shows –
 - (i) his or her first name;
 - (ii) his or her photograph;
 - (iii) his or her **marketing identification number** (for **contact** by a **gas marketing agent**); and
 - (iv) the name of the **retailer** on whose behalf the **contact** is being made; and
 - (b) 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;
 - (v) the business address and Australian Business or Company Number of the **retailer** on whose behalf the **contact** is being made; and
 - (vi) the **telephone** number of the **gas ombudsman**.

2.6 No canvassing or advertising signs

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

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

Division 4 – Miscellaneous

2.7 Compliance

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

Penalty –

- (a) for an individual, \$5 000;

(b) for a body corporate, \$20 000.

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

Penalty –

(a) for an individual, \$5 000;

(b) for a body corporate, \$20 000.

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

2.72.8 Presumption of authority

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

(a) a **retailer**, or

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

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

2.82.9 Gas marketing agent complaints

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**.

2.92.10 Records to be kept

A record or other information that a **gas marketing agent** is required by this **Code** to keep must be kept for at least 2 years after the last time the person to whom the information relates was **contacted** by or on behalf of the **gas marketing agent**.

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

Appendix 2 – Proposed new Code (clean copy)

Gas Marketing Code of Conduct 2015

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Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 2015*.

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 -
 - (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.

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;

- (b) provide the **customer** with the **telephone** number of the **gas ombudsman**; and
 - (c) for **contact** by a **gas marketing agent**, provide the **customer** with the **gas marketing agent's marketing identification number**.
- (2) A **retailer** or **gas marketing agent** who meets with a **customer** face to face for the purposes of **marketing** must –
- (a) wear a clearly visible and legible identity card that shows –
 - (i) his or her first name;
 - (ii) his or her photograph;
 - (iii) his or her **marketing identification number** (for **contact** by a **gas marketing agent**); and
 - (iv) the name of the **retailer** on whose behalf the **contact** is being made; and
 - (b) 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;
 - (v) the business address and Australian Business or Company Number of the **retailer** on whose behalf the **contact** is being made; and
 - (vi) the **telephone** number of the **gas ombudsman**.

2.6 No canvassing or advertising signs

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

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

Division 4 – Miscellaneous

2.7 Compliance

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

Penalty –

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

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

Penalty –

- (a) for an individual, \$5 000;
 - (b) for a body corporate, \$20 000.
- (3) It is a defence to a prosecution for a contravention of subclause (2) if the **retailer** proves that the **retailer** used reasonable endeavours to ensure that the **gas marketing agent** complied with this **Code**.

2.8 Presumption of authority

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

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

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

2.9 Gas marketing agent complaints

A **gas marketing agent** must –

- (a) keep a record of each **complaint** made by a **customer**, or person **contacted** for the purposes of **marketing**, about the **marketing** carried out by or on behalf of the **gas marketing agent**; and
- (b) on request by the **gas ombudsman** in relation to a particular **complaint**, give to the **gas ombudsman** within 28 days of receiving the request, all information that the **gas marketing agent** has relating to the **complaint**.

2.10 Records to be kept

A record or other information that a **gas marketing agent** is required by this **Code** to keep must be kept for at least 2 years after the last time the person to whom the information relates was **contacted** by or on behalf of the **gas marketing agent**.

[Note: 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: Synergy

Our ref: 3738009

Mr Paul Kelly
GMCCC Chairman
PO Box 8469
PERTH BC WA 6849
E: records@erawa.com.au

Dear Paul

PUBLIC SUBMISSION - 2015 REVIEW OF THE GAS MARKETING CODE OF CONDUCT

Synergy appreciates the opportunity to make a submission in relation to the GMCCC's draft review report dated 12 December 2014 (the **Report**).

Outstanding issues from the previous Code review

We note the items outstanding from the last review in 2013 and the GMCCC's confirmation the state government was contacted over those matters but no response for addressing these matters has been provided.

A further issue recently come to light is the inconsistency between the *Energy Coordination (Customer Contracts) Regulations 2004* and the *Australian Consumer Law* in terms of differing cooling off periods. Although the problem was removed from the gas marketing code in 2014, legislative inconsistency remains in relation to the contract regulations and the ACL.

Given the longevity of previously communicated issues, lack of progress and consequent regulatory burden, cost and customer confusion, Synergy advocates the GMCCC again raising its concerns with the state government over the inconsistent application of small use gas customer protections.

Question 1 - should any requirements regarding 'energy price fact sheets' be included in the Code? And, if so, should these requirements be modelled on the AER framework?

The Report raises whether energy price fact sheets require further consideration, notes the practice is mandated in the eastern states and accepts the costs of development, maintenance [and compliance] will be borne by consumers

As well as requiring fact sheet publication on retailer websites in the NEM, the Australian Energy Regulator also uses the fact sheets for publication on its price comparison website. However, the GMCCC has not considered whether it is necessary for the Economic Regulation Authority to develop or maintain a similar website in WA. Consequently, it is difficult to see an acceptably measurable benefit to customers of this regulation comparable to the NEM.

Synergy however, considers the above to be a second tier issue. The real matter is whether mandated price fact sheets are required in Western Australia. Notwithstanding Synergy is the only licensed gas retailer to publish its own small use gas fact sheet, we are of the view a mandated requirement is unnecessary as unlike past experience in the NEM, there is no evidence of market failure in relation to local gas retailer marketing practices.

Yours sincerely,

Simon Thackray
MANAGER, REGULATION AND COMPLIANCE

16 January 2015

Appendix 5 – Submission: Alinta Energy



2015 Review of the Gas Marketing Code of Conduct

Alinta Energy Submission

16 January 2015

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 2014* (**Code**) carried out by the Gas Marketing Code Consultative Committee (**GMCCC**).

Alinta Energy largely agrees with the recommendations in the Report and will restrict its comments to one key issue below.

2 Question 1 – Energy Price Fact Sheets

Should any requirements regarding ‘energy price fact sheets’ be included in the Code? And, if so, should these requirements be modelled on the AER framework?

The purpose of the *AER Retail Pricing Information Guideline*¹ (**Guideline**) is to assist *small customers* (defined in the Guideline as residential and business customers below an upper consumption threshold) in readily comparing standing offer prices and market offer prices offered by retailers by specifying the manner and form in which details of these prices are to be presented by retailers.

The jurisdiction of the Australian Energy Regulator (**AER**) includes the energy retail markets in the ACT, New South Wales, South Australia and Tasmania (electricity only) and encompasses a large number of retailers, each with a variety of energy market products available to small customers.

In contrast, Western Australia (**WA**) currently has a limited number of gas retailers in the small use customer market, with only two retailers making offers to residential customers. As such, it is currently not difficult for consumers in WA to compare offers and Alinta Energy therefore does not see a need for the introduction of Energy Price Fact Sheets.

However, should the GMCCC recommend the introduction of Energy Price Fact Sheets to the Economic Regulation Authority (**Authority**), consideration should be given to the matters noted below.

2.1 Price comparator website

The National Energy Retail Law requires the AER to develop and make available a price comparator website, the purpose of which is to assist a small customer compare the standing offer price available to that customer and the market offer prices generally available to classes of small customers². A generally available contract offer is one that is widely available to most residential and/or small business customers and is not exclusive to particular customer segments. This website can be found at www.energymadeeasy.gov.au.

Retailers are required to upload detailed information pertaining to applicable offers, including usage and daily supply charges, length of contract, fees and charges and conditional discounts (e.g. up-front credits, discounts for payment by due date, etc). Each upload generates an Energy Price Fact Sheet with a unique identifier, which the customer can use to compare with other similarly generated Energy Price Fact Sheets.

Alinta Energy notes there have been numerous issues with the Energy Made Easy price comparator website and redevelopment is being considered for 2015 to enhance both the customer and retailer experience. The current website does not enable a customer to easily

¹ *AER Retail Pricing information Guideline*, Australian Energy Regulator, Jan 2012, ver 2.0

² *National Energy Retail Law (South Australia) Act 2011*, S 62(3)

compare offers and is “clunky” from a retailer’s point of view, with offer creation, editing, approval and submission likely to be overhauled.

The Energy Made Easy experience has shown that considerable resources are required to administer and maintain a price comparator website, the cost of which is passed on to retailers and, in turn, to consumers. Retailers are likely to spread the cost equally across their customer base so that non-churning customers subsidise those customers seeking to churn away.

In its deliberations concerning Energy Price Fact Sheets, the GMCCC should consider whether a price comparator website is warranted given the considerable administration costs associated with the Energy Made Easy website and, if so, which entity would be in the best position to manage such a website for WA. Consideration should then be given to extending any obligations to the electricity retail market so as to spread website running costs over a wider database. However, before a decision is made about whether to develop such a website, a cost benefit study should be undertaken.

2.2 Retailer publication

In addition to the Energy Price Fact Sheets generated through the comparator website, the Guideline requires³ a retailer to publish Energy Price Fact Sheets on the retailer’s website for all contract offers that are generally available to small customers.

Alinta Energy believes it is in a retailer’s best interests to disclose all details concerning its offers in a clear and transparent manner on the retailer’s website.

Should the GMCCC recommend the introduction of Energy Price Fact Sheets to the Authority, Alinta Energy would support the publication of each generally available contract offer on the relevant retailer’s website as per the Guidelines. (The GMCCC may also need to consider what constitutes a “generally available contract offer”.)

Alinta Energy does not support the separate publication of largely duplicate information on a comparator website.

³ Guideline, S 3.1