



Gas Marketing Code Consultative Committee

Final Review Report

2016/17 Review of the *Gas Marketing Code of Conduct*

19 January 2017

Contents

1	Executive Summary	1
2	Background	3
2.1	Gas Marketing Code of Conduct	3
2.2	Gas Marketing Code Consultative Committee	3
2.3	Committee Members	3
2.4	Code Review Process	4
3	Recommendations	5
3.1	Typographical corrections	5
3.2	Clause 1.5 – Definition of Code	5
3.3	Clause 1.5 – Definition of complaint	6
3.4	Clause 1.5 – Definition of door to door marketing	6
3.5	Clause 2.4(2) – Contact by telephone	6
3.6	Clause 2.5(2)(b) – Face to face contact	7
3.7	AGA Energy Coordination (Customer Contracts) Regulations 2004 – Australian Gas Association Customer Service Code	7
	Attachment 1 – Proposed new Code (with track changes)	9
	Attachment 2 – Proposed new Code (clean copy)	10
	Attachment 3 – GMCCC Terms of Reference	11
	Attachment 4 – Submission received from Synergy	12

1 Executive Summary

By law, the ERA must establish a committee to advise it on matters relating to the Gas Marketing Code of Conduct. This committee is known as the Gas Marketing Code Consultative Committee (GMCCC). The GMCCC must review the Code every two years. The GMCCC is tasked with undertaking public consultation as part of the review and reporting its findings to the ERA.

This report presents the findings of the of the GMCCC's 2016/17 review of the Code.

The *Energy Coordination Act 1994 (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 28 November 2016. The public consultation period closed on 16 December 2016. One submission was received.

Following consideration of the issue raised in the submission, the GMCCC makes the following recommendations to the ERA.

The rationale for these recommendations can be found in section 3 of this report. **Attachment 1** of this report is a marked up copy of the Code incorporating the recommendations made by the GMCCC in this report. **Attachment 2** is a clean version of the Code incorporating the GMCCC's recommendations.

Recommendation 1A – Amend clause 2.2(3) as follows:

For the purposes of subclause (2), a **retailer** or **gas marketing agent** is taken to have given the **customer** the required information if [...]

Recommendation 1B – Amend clause 2.3(4) as follows:

Subject to subclause (3), ~~the~~ a retailer or gas marketing agent must obtain the **customer's verifiable consent** that the information in clause 2.3(2) has been given.

Recommendation 1C – Amend clause 2.6 as follows:

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 ~~the~~ person's **premises** indicating [...]

Recommendation 2 – Amend the definition of "Code" in clause 1.5 as follows:

"Code" means this *Gas Marketing Code of Conduct* ~~2017~~²⁰¹⁵ made under section 11ZPM of the Act as amended by the **Authority** under Part 2C of the Act.

Recommendation 3 – Amend the definition of “complaint” in clause 1.5 to be consistent with the definition of “complaint” included in AS/NZS 10002:2014: *Guidelines for complaint management in organizations*.

Recommendation 4 – Delete the definition of “door to door marketing” from clause 1.5.

Recommendation 5 – Amend clause 2.4(2) as follows:

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

Recommendation 6 – Amend clause 2.5(2)(b) as follows:

A **retailer** or **gas marketing agent** who meets with a **customer** face to face for the purposes of **marketing** must [...]

(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**.

as soon as practicable following a request by the **customer** for the information.

Recommendation 7 – The ERA again write to the Minister for Energy to express concern about outstanding issues in relation to references to the AGA Code in the *Energy Coordination (Customer Contracts) Regulations 2004*.

2 Background

Persons who supply gas to small use customers must hold a gas trading licence issued by the ERA under the *Energy Coordination Act 1994*. Gas trading licensees must comply with the Code as a condition of their licence.

A small use customer is a customer who consumes not more than 1TJ of gas per year. Currently, 1TJ of gas equates to an annual gas bill of approximately between \$28,500 and \$43,000, depending on where the customer is located.

2.1 Gas Marketing Code of Conduct

The Code regulates and controls the conduct of retailers and gas marketing agents who supply and market gas to residential and non-residential small use customers. The Code was developed to protect the interests of customers who have little or no market power. For this reason, the Code only applies to small use customers.

The Code has the power of subsidiary legislation.

2.2 Gas Marketing Code Consultative Committee

Under section 11ZPO of the Act, the ERA is required to establish a committee to advise it on matters relating to the Code. This committee is known as the Gas Marketing Code Consultative Committee or GMCCC.

Under section 11ZPV of the Act, the committee must carry out a review of the Code as soon as practicable after the first anniversary of its commencement and then every two years thereafter.

2.3 Committee Members

Appointments for the current term of the GMCCC were made in October 2016. Current members of the GMCCC are:

Chair	
Executive Director, Licensing Monitoring and Customer Protection	Economic Regulation Authority
Executive Officer	
Assistant Director, Customer Protection	Economic Regulation Authority
Industry Representatives	
Simon Thackray	Synergy
Catherine Rousch	Alinta
Alex Penter	Wesfarmers Kleenheat Gas

Consumer Organisation Representatives	
Charles Brown	Consumer Credit Legal Service (WA) Inc.
Diane Hayes	Financial Counsellors Association of WA
[Representative TBC] ¹	Chamber of Commerce and Industry WA
Government Representatives	
Alex Kroon	Public Utilities Office
Sarah Hazell	Department of Commerce

2.4 Code Review Process

The Secretariat of the ERA prepared a Discussion Paper for the consideration of the GMCCC in November 2016. As required by the Gas Act, the GMCCC sought comment from interested parties on the Draft Review Report. On 28 November 2016, the Draft Review Report was published on the ERA website and an email was sent to all those registered with the ERA as interested parties.

A period of three weeks was provided for public consultation on the Draft Review Report, with the date for submissions closing on 16 December 2016. The GMCCC received one submission, from Synergy (**Attachment 4**).

Following receipt of the submission, the GMCCC considered the issue raised and subsequently approved this Report.

After consideration of this Final Review Report, the ERA may decide to propose amendments to the Code. The Gas Act requires the ERA 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 ERA.

¹ This position was occupied by Dale Leggett of the Chamber of Commerce and Industry WA until December 2016.

3 Recommendations

The recommendations made in this report stem from corresponding amendments made to the marketing provisions of the *Code of Conduct for the Supply of Electricity to Small Use Customers* following the Electricity Code Consultative Committee’s review of that code.

3.1 Typographical corrections

There are two minor typographical inconsistencies in the Code. These relate to the use of the words “a” and “the”. The GMCCC recommends that, where appropriate, the first reference in each (sub)clause to a retailer or person should refer to “a retailer” or “a person” and any subsequent references should be to “the retailer” or “the customer”. There is also one typographical correction to insert a comma.

Recommendation 1A:

Amend clause 2.2(3) as follows:

For the purposes of subclause (2), a **retailer** or **gas marketing agent** is taken to have given the **customer** the required information if [...]

Recommendation 1B:

Amend clause 2.3(4) as follows:

Subject to subclause (3), ~~the~~ a retailer or gas marketing agent must obtain the **customer’s verifiable consent** that the information in clause 2.3(2) has been given.

Recommendation 1C:

Amend clause 2.6 as follows:

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~~ the person’s **premises** indicating [...]

3.2 Clause 1.5 – Definition of Code

The definition of “Code” in the Code does not specify that it includes amendments made by the ERA under the Act.

Recommendation 2:

Amend the definition of “Code” in clause 1.5 as follows:

“Code” means this *Gas Marketing Code of Conduct* ~~2017~~²⁰¹⁵ [made under section 11ZPM of the Act](#) as amended by the **Authority under Part 2C of the Act**.

3.3 Clause 1.5 – Definition of complaint

Standards Australia has issued new guidelines for complaint management in organisations (AS/NZS 10002:2014). The Standard includes the following, new definition of “complaint”:

Expression of dissatisfaction made to or about an organization, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

Recommendation 3:

Amend the definition of “complaint” in clause 1.5 to be consistent with the definition of “complaint” included in AS/NZS 10002:2014, *Guidelines for complaint management in organizations*.

3.4 Clause 1.5 – Definition of door to door marketing

The term “door to door marketing” is no longer used in the Code.

Recommendation 4:

Delete the definition of “door to door marketing” from clause 1.5.

3.5 Clause 2.4(2) – Contact by telephone

Clause 2.4(2) requires a retailer or gas marketing agent to ensure that a customer is able to contact them on their telephone number during their normal business hours for the purposes of enquiries, verifications and complaints. In recognition of the fact that retailers and gas marketing agents can no longer only be contacted by telephone but also electronically (such as by email, live chat, Facebook or SMS), the GMCCC recommends that the words “telephone number” be replaced with “contact details, including telephone number”. The words “including telephone number” aim to clarify that a customer must still be able to contact a retailer or gas marketing agent by telephone, at the very least.

Recommendation 5:

Amend clause 2.4(2) as follows:

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

3.6 Clause 2.5(2)(b) – Face to face contact

Clause 2.5(2)(b) requires that a retailer or gas marketing agent who meets with a customer face to face for the purposes of marketing, provides the customer as soon as practicable with certain information in writing. This includes the retailer's or gas marketing agent's first name, marketing identification number, the retailer's name, the retailer's complaints telephone number, and the telephone number of the energy ombudsman.

The GMCCC recommends that this information should only have to be provided upon the customer's request. The GMCCC notes that retailers and gas marketing agents who, in the course of marketing, meet with a customer face to face will continue to be required to wear an identity card.²

Recommendation 6:

Amend clause 2.5(2)(b) as follows:

A **retailer** or **gas marketing agent** who meets with a **customer** face to face for the purposes of **marketing** must [...]

- (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**.

[as soon as practicable following a request by the customer for the information.](#)

3.7 AGA Energy Coordination (Customer Contracts) Regulations 2004 – Australian Gas Association Customer Service Code

During the 2011 review of the Code, the GMCCC noted that the *Energy Coordination (Customer Contracts) Regulations 2004* (**Contract Regulations**) contain multiple

² Clause 2.5(2)(a) requires a retailer or gas marketing agent who meets with a customer face to face for the purposes of marketing to wear a clearly visible and legible identity card that shows his or her first name, his or her photograph, his or her marketing identification number, and the name of the retailer on whose behalf the contact is being made.

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 in the 2011 review, recommended that the Authority write to the Minister for Energy regarding the issue³. The ERA accepted this recommendation and subsequently wrote to the Minister for Energy in 2011 expressing its support for amendments to the Contract Regulations. The GMCCC noted in its 2015 review of the Code that this matter remained outstanding and again recommended that the ERA write to the Minister for Energy about this issue.⁴ The ERA again accepted the recommendation and subsequently wrote to the Minister for Energy. The Secretariat understands the issue is currently under consideration.

Recommendation 7:

The ERA again write to the Minister for Energy to express concern about outstanding issues in relation to references to the AGA Code in the *Energy Coordination (Customer Contracts) Regulations 2004*.

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

⁴ Gas Marketing Code Consultative Committee, *2015 Review of the Gas Marketing Code of Conduct – Final Review Report*, 24 February 2015, p.8 (recommendation 1).

Attachment 1 – Proposed new Code (with track changes)

Gas Marketing Code of Conduct 2017~~2015~~

PART 1 PRELIMINARY	2
1.1 Title	2
1.2 Authority	2
1.3 Commencement	2
1.4 Interpretation	2
1.5 Definitions	2
1.6 Application	5
1.7 Purpose	5
1.8 Objectives	5
1.9 Amendment and Review	6
 PART 2 MARKETING	 7
DIVISION 1 – OBLIGATIONS PARTICULAR TO RETAILERS.....	7
2.1 Retailers to ensure representatives comply with this Part.....	7
DIVISION 2 – CONTRACTS AND INFORMATION TO BE PROVIDED TO	
CUSTOMERS.....	7
2.2 Entering into a standard form contract.....	7
2.3 Entering into a non-standard contract.....	8
DIVISION 3 – MARKETING CONDUCT	9
2.4 Standards of conduct	9
2.5 Contact for the purposes of marketing.....	9
2.6 No canvassing or advertising signs	10
DIVISION 4 – MISCELLANEOUS.....	10
2.7 Compliance	10
2.8 Presumption of authority	11
2.9 Gas marketing agent complaints	11
2.10 Records to be kept	11

Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 2017*⁵.

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* ~~2017-2015~~ made under section 11ZPM of the Act as amended by the **Authority under Part 2C of the Act**.

“**Compendium**” means the Compendium of Gas Customer Licence Obligations.

“**complaint**” means an expression of dissatisfaction made to or about an organisation, related to its products, ~~or~~ services, staff or the ~~complaints-~~ handling of a complaint, process itself where a response or resolution is explicitly or implicitly expected or legally required.

“**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 a~~ **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** contact details, including telephone number, during the normal business hours of the **retailer** or **gas marketing agent** for the purposes of enquiries, verifications and **complaints**.

2.5 Contact for the purposes of marketing

- (1) A **retailer** or **gas marketing agent** who makes **contact** with a **customer** for the purposes of **marketing** must, on request by the **customer** –
 - (a) provide the **customer** with the complaints **telephone** number of the **retailer** on whose behalf the **contact** is being made;

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

as soon as practicable following a request by the **customer** for the information.

2.6 No canvassing or advertising signs

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

Attachment 2 – Proposed new Code (clean copy)

Gas Marketing Code of Conduct 2017

PART 1 PRELIMINARY	2
1.1 Title	2
1.2 Authority.....	2
1.3 Commencement.....	2
1.4 Interpretation.....	2
1.5 Definitions	2
1.6 Application	5
1.7 Purpose	5
1.8 Objectives	5
1.9 Amendment and Review	5
 PART 2 MARKETING.....	 6
DIVISION 1 – OBLIGATIONS PARTICULAR TO RETAILERS.....	6
2.1 Retailers to ensure representatives comply with this Part.....	6
DIVISION 2 – CONTRACTS AND INFORMATION TO BE PROVIDED TO	
CUSTOMERS.....	6
2.2 Entering into a standard form contract.....	6
2.3 Entering into a non-standard contract.....	7
DIVISION 3 – MARKETING CONDUCT	8
2.4 Standards of conduct	8
2.5 Contact for the purposes of marketing.....	8
2.6 No canvassing or advertising signs	9
DIVISION 4 – MISCELLANEOUS.....	9
2.7 Compliance	9
2.8 Presumption of authority	10
2.9 Gas marketing agent complaints	10
2.10 Records to be kept.....	10

Part 1 Preliminary

1.1 Title

The **Code** may be cited as the *Gas Marketing Code of Conduct 2017*.

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

“Compendium” means the Compendium of Gas Customer Licence Obligations.

“complaint” means an expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

“concession” means a concession, rebate, subsidy or grant related to the supply of gas, which is available to **residential customers** only.

“contact” means contact that is face to face, by **telephone** or by post, facsimile or electronic communication.

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

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

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

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

“emergency” means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person, in Western Australia or which destroys or damages, or threatens to destroy or damage, any property in Western Australia.

“financial hardship” means a state of more than immediate financial disadvantage which results in a **residential customer** being unable to pay an outstanding amount as required by a **retailer** without affecting the ability to meet the **basic living needs** of the **residential customer** or a dependant of the **residential customer**.

“gas customer safety awareness program” means a program to communicate information to **customers** regarding safety in the use of gas and must address, at a minimum, provision of the following information to **customers** –

- (a) information on the properties of gas relevant to its use by **customers**;
- (b) a notice of the requirement for proper installation and use of approved appliances and equipment;
- (c) a notice of the requirement to use only qualified trade persons for gas connection and appliance and equipment installation;
- (d) the proper procedure for the reporting of gas leaks or appliance or equipment defects; and
- (e) safety procedures to be followed and the appropriate **telephone** number to call in case of **emergency**.

“gas marketing agent” means –

- (a) a person who acts on behalf of a **retailer** –
 - (i) for the purpose of obtaining new **customers** for the licensee; or
 - (ii) in dealings with existing **customers** in relation to **contracts** for the supply of gas by the licensee; or
- (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), a **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** contact details, including **telephone** number, during the normal business hours of the **retailer** or **gas marketing agent** for the purposes of enquiries, verifications and **complaints**.

2.5 Contact for the purposes of marketing

- (1) A **retailer** or **gas marketing agent** who makes **contact** with a **customer** for the purposes of **marketing** must, on request by the **customer** –
 - (a) provide the **customer** with the complaints **telephone** number of the **retailer** on whose behalf the **contact** is being made;
 - (b) provide the **customer** with the **telephone** number of the **gas ombudsman**; and

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

2.6 No canvassing or advertising signs

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

Attachment 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.

Attachment 4 – Submission received from Synergy

Our ref: 10751238

T:

E:

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

Dear Paul

PUBLIC SUBMISSION – 2016 REVIEW OF THE GAS MARKETING CODE OF CONDUCT

Synergy appreciates the invitation to make a submission in relation to the GMCCC's draft review report dated 28 November 2016.

We note the *Energy Coordination (Customer Contracts) Regulations 2004* continue to reference the Australian Gas Association Customer Service Code. We recognise the GMCCC has previously raised this issue with the Minister for Energy however the matter is yet to be resolved. Given it was first raised by the GMCCC in 2011 we recommend the GMCCC again raises the issue with the state government to encourage resolution of this long outstanding matter.

With the exception of the above comments, Synergy has no recommendations regarding the draft review report and supports the proposed changes.

Please contact me with any queries.

Yours sincerely

Simon Thackray
MANAGER REGULATION AND COMPLIANCE

13 December 2016