



# Gas Marketing Code Consultative Committee

## Final Review Report

2018 Review of the *Gas Marketing Code of Conduct*

9 April 2019

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## Executive summary

By law, the Economic Regulation Authority must establish a committee to advise it on matters relating to the *Gas Marketing Code of Conduct*. This committee, the Gas Marketing Code Consultative Committee (GMCCC), must review the Code every two years. The GMCCC must undertake public consultation as part of the review and report its findings to the ERA.

This report presents the findings of the GMCCC's 2018 review of the Code.

The *Energy Coordination Act 1994* 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) sets out 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 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 5 February 2019. The public consultation period closed on 25 February 2019. Three submissions were received.

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

**Recommendation 1** – Amend clause 2.3(2) to allow a retailer to provide the customer with the information in subclause 2.3(2)(d)-(l) on or with the customer's first bill, rather than before entering into the non-standard contract.

**Recommendation 2** – Delete the note at the end of clause 2.10.

**Recommendation 3** – Delete clauses 2.2(2)(i) and 2.3(2)(l) from the Code.

**Recommendation 4** – Amend clauses 2.2(2)(e) and 2.3(2)(h) to be consistent with the wording of clause 4.5(1)(h) of the Gas Compendium.

**Recommendation 5** – Amend clauses 2.2(2)(g) and 2.3(2)(j) to be consistent with the wording of clause 4.5(1)(z) & 4.5(1)(aa) of the Compendium.

The rationale for these recommendations can be found in section 2 of this report.

A copy of the current Code is at Attachment 1.

## 1. Background

Persons who supply gas to small use customers must hold a gas trading licence issued by the Economic Regulation Authority under the *Energy Coordination Act 1994*. Gas trading licensees must comply with the *Gas Marketing Code of Conduct* 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.

### 1.1 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.

### 1.2 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 the Code's commencement and then every two years thereafter.

#### 1.2.1 Committee members

Appointments for the current term of the GMCCC were made in October 2018. Current members of the GMCCC are:

<b>Chair</b>	
Executive Director, Regulation and Inquiries	Economic Regulation Authority
<b>Executive Officer</b>	
Senior Project Officer, Regulation and Inquiries	Economic Regulation Authority
<b>Industry Representatives</b>	
Sarah Silbert	AGL Sales Pty Limited
Catherine Rousch	Alinta Energy
Nina Telford	Wesfarmers Kleenheat Gas Pty Ltd

Consumer Organisation Representatives	
Kathryn Lawrence	Citizens Advice Bureau of WA
Diane Hayes	Financial Counsellors' Association of WA
Graham Hansen	Western Australian Council of Social Service
Government Representatives	
Robyn Peterson	Department of Mines, Industry Regulation and Safety
Chloe Upton	Department of Treasury, Public Utilities Office

### 1.3 Code review process

The Secretariat of the ERA prepared a Discussion Paper for the consideration of the GMCCC in December 2018. The GMCCC considered the issues outlined in the Discussion Paper and subsequently released its Draft Review Report.

As required by the Act, the GMCCC sought comment from interested parties on the Draft Review Report. On 5 February 2019, 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 25 February 2019. The GMCCC received three submissions, from Alinta, AGL and Synergy (Attachment 2).

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

For previous GMCCC Final Review Reports, the ERA's Secretariat prepared a marked-up copy of the Code on behalf of the GMCCC. This time, the ERA has advised the GMCCC that it will engage Parliamentary Counsel's Office (PCO) to draft any proposed amendments to the Code.

If, after consideration of the Final Review Report, the ERA decides to propose amendments to the Code it will request PCO to draft the amendments. The ERA's Draft Decision will include a marked-up copy of the Code, including any proposed amendments.

The Act requires the ERA to refer any proposed Code amendments to the GMCCC for advice. The GMCCC must undertake further consultation with interested parties before providing its final advice to the ERA.

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

## 2. Recommendations

### 2.1 Information to be given before entering into a non-standard contract

Clause 2.3(2) of the Code details the information that a retailer must provide to a customer before entering into a non-standard contract. Clause 2.3(2) states:

- (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 nonstandard 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.

It is important that before entering into a non-standard contract a customer is given all relevant information that may affect the customer's decision to enter into that contract. However, the information in clauses 2.3(2)(d)-(l) is information that is not particularly relevant to the customer at the time they enter into a non-standard contract and is unlikely to inform the customer's decision as to whether or not to enter into the contract.

Clause 2.3(3) recognises this as it provides that retailers do not have to give the information to the customer if the information was already provided in the last 12 months, or if the retailer informs the customer how they may obtain the information (e.g. by referring the customer to a website or brochure that contains the information).

Although clause 2.3(3) reduces the information requirements of clauses 2.3(2)(d)-(l), clause 2.3(3)(b) still requires retailers to explain to customers what information is available. To do so,

the retailer will have to mention the information in subclauses 2.3(2)(d)-(l) to the customer on the phone.

The GMCCC recommends the Code be amended to allow retailers to provide the information in subclauses 2.3(2)(d)-(l) on or with the customer's first bill. This is equal to the protection afforded to customers entering into a standard form contract under clause 2.2(2) of the Code.

### Recommendation 1

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

## 2.2 Records to be kept

Clause 2.10 states:

### 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.]

The note at the end of this clause refers to clause 13.1(1) of the *Compendium of Gas Customer Licence Obligations*. As part of the 2014 review of the Compendium, the record keeping obligations under clause 13 of the Compendium were removed. The GMCCC recommends removing this note from clause 2.10.

### Recommendation 2

Delete the note at the end of clause 2.10.

## 2.3 Gas Customer Safety Awareness Programme

Licensed gas retailers are required to have a gas customer safety awareness programme.<sup>1</sup> This programme provides gas customers with information about the requirement for proper installation and use of gas appliances and equipment, the requirement to use qualified tradespersons for connections and installations, and the procedures for reporting gas leaks, equipment defects, and emergencies.

The Gas Marketing Code requires a retailer to give a customer general information on the retailer's gas customer safety awareness programme.

Under the new Australian Standard *AS-NZS 4645.1:2018 Gas distribution networks Network management* (AS 4645), a gas distributor has an obligation to have a safety and operating plan. The plan must assign responsibilities for distributors and retailers in the gas supply chain for consumer education and public awareness programs that cover gas safety issues. Appendix E of the standard covers consumer safety awareness programs. Appendix E1 notes

<sup>1</sup> Clause 10.5A of the Compendium of Gas Customer Licensing Obligations ([online](#)).

that the information may be provided by various parties in the gas supply chain, including the distributors themselves and retailers. The appendix identifies two possible models:

- The distributor integrates the information with other parties in the supply chain, including retailers.
- The distributor may need to provide information to assist the main party (retailers) that is in communication with customers, to allow the retailer to package the information directed to the customer.

Both of these models place the responsibility for ensuring consumers receive appropriate safety awareness material on the distributor. The EnergySafety division of the Department of Mines, Industry Regulation and Safety is responsible for regulating compliance with AS 4645.

The Code no longer needs to require a retailer or gas marketing agent to give customers information on the retailer's gas customer safety awareness programme, because this information must be given to customers under AS 4645.

The GMCCC recommends removing the requirement for a retailer or gas marketing agent to give a customer general information on the retailer's gas customer safety awareness programme.

### Recommendation 3

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

## 2.4 Concessions information

Clauses 2.2(2) and 2.3(2) of the Code set out the information that a retailer must give to a customer who enters into a contract with the retailer. One of the requirements is for retailers to give residential customers information on the concessions that may apply to the customer.

Clause 2.2(2) states:

#### 2.2 Entering into a standard form contract

[...]

(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 —

- (e) with respect to a residential customer, the concessions that may apply to the residential customer;

Clause 2.3(2) states:

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

[...]

(2) Before entering into a non-standard contract, a retailer or gas marketing agent must give the customer the following information —

- (h) with respect to a residential customer, the concessions that may apply to the residential customer;



Under the Code, a retailer must inform a customer of the concessions that may apply the customer, but the retailer does not have to tell the customer where to find information on their eligibility.

The Compendium also requires retailers to give residential customers information on concessions. Clause 4.5(1) of the Compendium requires retailers to include concession information on a customer's bill:

- (1) Unless a customer agrees otherwise, a retailers must include at least the following information on the customer's bill –

[...]

- (h) with respect to a residential customer, a statement that the residential customer may be eligible to receive concessions and how the residential customer may find out its eligibility for those concessions.

The Compendium requires a retailer to inform a residential customer that they may be eligible to receive concessions and how the customer may find out their eligibility for those concessions. This means retailers need to refer the customer to an information source where the customer can find out more about their eligibility (for example the retailer could refer a customer to the retailer's website or to ConcessionsWA).

The GMCCC considers the concession information to be given to customers under the Compendium would be more useful to customers than the concession information given to customers under the Code. This is because under the Compendium customers are given information on how to find out their eligibility for concessions rather than simply being told about the concessions that may apply.

The GMCCC recommends the Code be amended to replicate the wording of the Compendium.

#### Recommendation 4

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

## 2.5 Interpreter information

The Code requires retailers to give residential customers information on how to access interpreter services.

Clause 2.2(2)(g) states:

- (1) 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 —
- (g) with respect to a residential customer, how the residential customer may access the retailer's—
- (ii) multi-lingual services (in languages reflective of the retailer's customer base); and
  - (ii) TTY services;

Clause 2.3(2)(j) states:

- (2) Before entering into a non-standard contract, a retailer or gas marketing agent must give the customer the following information —

- (h) with respect to a residential customer, how the residential customer may access the retailer's—
  - (ii) multi-lingual services (in languages reflective of the retailer's customer base); and
  - (iii) TTY services;

The Compendium requires retailers to give residential customers information on how to access interpreter services under clause 4.5(1):

- (1) Unless a customer agrees otherwise, a retailer must include at least the following information on the customer's bill –

[...]

- (z) with respect to residential customers, the telephone number for interpreter services together with the National Interpreter Symbol and the words "Interpreter Services";
- (aa) the telephone number for TTY services;

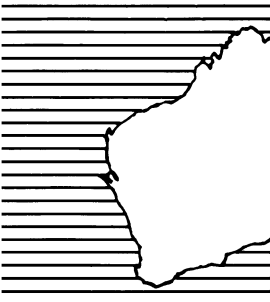
The GMCCC considers that for non-English speaking customers, the National Interpreter Symbol next to the telephone number for interpreter services (as required under the Compendium) is clearer than a blurb on how to access multi lingual services.

The GMCCC recommends the Code be amended to be consistent with the wording of the Compendium.

### **Recommendation 5**

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

## **Appendix 1 – Gas Marketing Code of Conduct 2017**



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ENERGY COORDINATION ACT 1994

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**GAS MARKETING CODE OF  
CONDUCT 2017**

**ENERGY COORDINATION ACT 1994**  
**GAS MARKETING CODE OF CONDUCT 2017**

The Economic Regulation Authority—

- (a) repeals the “Gas Marketing Code of Conduct 2015” gazetted 3 June 2015 (No. 83), which repeal is to take effect on 1 July 2017;
- (b) approves the “Gas Marketing Code of Conduct 2017”, gazetted 29 May 2017 (No. 103); and
- (c) prescribes 1 July 2017 as the date on which the “Gas Marketing Code of Conduct 2017”, gazetted 29 May 2017 (No.103) comes into operation,

pursuant to section 11ZPM (Part 2C) of the *Energy Coordination Act 1994*.

Ms NICOLA CUSWORTH, Chair, Economic Regulation Authority.

**ENERGY COORDINATION ACT 1994****GAS MARKETING CODE OF CONDUCT 2017****PART 1—PRELIMINARY**

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## ENERGY COORDINATION ACT 1994

## GAS MARKETING CODE OF CONDUCT 2017

## 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*.]

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## Appendix 2 – Submissions to Draft Review Report



8 February 2019

Paul Kelly  
Chairman GMCCC  
Economic Regulation Authority  
PO Box 8469  
Perth BC WA 6849

[publicsubmissions@erawa.com.au](mailto:publicsubmissions@erawa.com.au)

Dear Paul

### **2018 Review of the Gas Marketing Code of Conduct**

Alinta Sales Pty Ltd (**Alinta Energy**) is pleased to provide comment on the amendments to the *Gas Marketing Code of Conduct* (**Code**) proposed by the Gas Marketing Code Consultative Committee (**GMCCC**) and presented in the Draft Review Report.

Alinta Energy agrees with the recommendations in the Draft Review Report and would like to propose some further amendments to the Code for consideration by the GMCCC.

#### **Clauses 2.2(2)(e) and 2.2(3)(h)**

Clauses 2.2(2)(e) and 2.2(3)(h) of the Code require a retailer to provide a residential customer, for a standard form contract and a non-standard contract respectively, the concessions that may apply to the customer.

A "**concession**" is defined in clause 1.5 as "a concession, rebate, subsidy or grant related to the supply of gas, which is available to **residential customers** only".

It is currently unclear whether this definition refers to concessions applied by the retailer only, or to more generally available concessions, such as the energy rebate provided by the State Government, which is not relevant to all retailers.

Alinta Energy would therefore like to propose the following amendments:

Clause 2.2(2):

(e) with respect to a **residential customer**, the **concessions** that [are relevant to the retailer and](#) may apply to the **residential customer**;

Clause 2.2(3):

(h) with respect to a **residential customer**, the **concessions** that [are relevant to the retailer and](#) may apply to the **residential customer**;

**Clauses 2.2(2)(i) and 2.2(3)(l)**

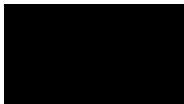
Clauses 2.2(2)(i) and 2.2(3)(l) of the Code require a retailer to provide a residential customer, for a standard form contract and a non-standard contract respectively, information on the retailer's gas customer safety awareness program.

Clause 1.5 defines "**gas customer safety awareness program**" and Alinta Energy notes the information to be provided to customers predominantly concerns matters relating to the distributor, including the properties of gas; installation and use of approved appliances and equipment; use of qualified trade persons to install appliances; procedures for reporting gas leaks; and emergency safety procedures.

Alinta Energy suggests deleting clauses 2.2(2)(i) and 2.2.3(l) and the definition of "gas customer safety awareness program" in clause 1.5 as this information is more relevant to, and available from, the distributor.

If you have any questions concerning this submission, please contact me on 9486 3191 or [catherine.rousch@alintaenergy.com.au](mailto:catherine.rousch@alintaenergy.com.au) .

Yours sincerely



**Catherine Rousch**  
Manager Regulatory Compliance  
Alinta Energy





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Paul Kelly

Chairman, GMCCC

Economic Regulation Authority

By email: [publicsubmissions@erawa.com.au](mailto:publicsubmissions@erawa.com.au)

22 February 2019

Dear Paul

AGL Energy (**AGL**) welcomes the opportunity to provide feedback on the Gas Marketing Code of Conduct (the **Code**) and the Draft Review Report of the Code released by the Gas Marketing Code Consultative Committee (**GMCCC**).

**GMCCC Draft Review Report (Report)**

Recommendation 1

AGL supports recommendation 1 as set out in the Report. Specifically, we support the amendment of clause 2.3(2) to allow a retailer to provide the customer with information in subclause 2.3(d)-(l) on or with the customer's first bill, rather than before entering into the non-standard contract as currently required.

AGL is of the view that the current requirements under clause 2.3(2) are unduly onerous on the retailer. AGL supports this recommendation due to the length of time it requires for a call centre agent to address each of the matters set out in clause 2.3(2) on a call with a customer. As a result, this often creates a poor customer experience during this initial engagement with the retailer because:

- it unnecessarily extends the call time for the customer;
- at this point in time, most of the information is not relevant to the customer, who is keen to enter into the contract and have the call finished; and
- the information is difficult for the customer to absorb during the call or recall after the call has ended.

As noted in the Report, this change could be consistent with clause 2.2(2) of the Code and the redrafting of clause 2.3(2) could reflect that clause, noting that clause 2.3(2) (a)-(c) would remain unchanged.

Recommendation 2

AGL supports recommendation 2 as set out in the Report.



## The Code

### Definition of verifiable consent

AGL proposes that the definition of '*verifiable consent*' in section 1.5 of the Code could be expanded to specifically capture the customer's consent by electronic communication generated by the customer as it is ambiguous whether this is covered by "in writing". This would address a customer signing up online.

AGL recommends that the definition of "verifiable consent" is amended (in italics) to state:

" (b) in writing *signed by the customer, orally or by electronic communication generated by the customer*; " .

If you would like to discuss our comments further, please contact Sarah Silbert, Senior Network Relationship and Regulation Advisor, on 0400813300 or email [SSilbert@agl.com.au](mailto:SSilbert@agl.com.au) .

Yours sincerely,



Naomi Bott  
Acting Manager, Customer Markets Regulatory and Compliance

Our Ref: 20354102  
Enquiries: Catherine Lennon  
Telephone: 62827348

5 February 2019

Mr Paul Kelly  
Chairman Gas Marketing Code Consultative Committee  
Economic Regulation Authority  
PO Box 8469  
PERTH BC WA 6849

Dear Paul

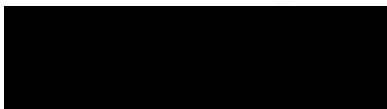
**GAS MARKETING CODE CONSULTATIVE COMMITTEE (GMCCC) – 2018  
REVIEW OF THE GAS MARKETING CODE OF CONDUCT (CODE)**

I refer to the draft review report issued by the Economic Regulation Authority (**Authority**) on 5 February 2019.

Synergy welcomes the opportunity to provide comment on the draft review report, and supports the two recommendations.

Please contact me on 62827348 should you have any queries or comments with respect to Synergy's submission.

Yours sincerely



**CATHERINE LENNON  
REGULATION AND COMPLIANCE ANALYST**

