

# Final Decision

Amendments to the *Gas Marketing Code of Conduct*  
2017

13 September 2019

Economic Regulation Authority

WESTERN AUSTRALIA

DMS206063

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## Final Decision

1. The Economic Regulation Authority (ERA) has decided to update the *Gas Marketing Code of Conduct Amendment Code 2019*. This follows the ERA's consideration of the Gas Marketing Code Consultative Committee's (GMCCC) Final Review Report, and the final GMCCC advice on the ERA's proposed amendments to the *Gas Marketing Code of Conduct 2017*.
2. A copy of the Amendment Code is at Appendix 1.
3. The Amendment Code will come into operation on 1 January 2020.
4. A copy of the *Gas Marketing Code of Conduct 2017* as at 1 January 2020, both with tracked changes (Appendix 2) and without tracked changes (Appendix 3), is attached to this final decision.

## Background

5. The Code regulates and controls the conduct of the holders of trading licences (gas retailers) and gas marketing agents, with the object of protecting customers from undesirable marketing conduct; and defining standards of conduct in the marketing of gas to customers.
6. Under section 11ZPO of the *Energy Coordination Act 1994*, the ERA is required to establish a committee to advise it on matters relating to the Code. This committee is known as the Gas Marketing Code Consultative Committee (GMCCC).
7. Under section 11ZPV of the Act, the GMCCC must carry out a review of the Code as soon as practicable after the first anniversary of its commencement and after the expiry of each 2-yearly interval after that anniversary. The object of a review is to re-assess the suitability of the provisions of the Code for the purposes of section 11ZPM(2) of the Act.
8. The GMCCC's final review report was delivered to the ERA on 9 April 2019.
9. The ERA considered the final review report and decided to propose amendments to the Code. The proposed amendments were in the ERA's draft decision published on the ERA website on 30 May 2019.
10. The ERA referred its proposed amendments to the GMCCC for its advice, as required under section 11ZPU of the Act.
11. The Act requires that the GMCCC provide interested parties with an opportunity to comment before providing its advice to the ERA. On 10 June 2019 the GMCCC called for public submissions on the ERA's draft decision. The closing date for submissions was 1 July 2019. Four submissions were received.
12. The GMCCC provided its [final advice](#) to the ERA on 30 July 2019. A copy of the submissions received are included at Attachment 1 of the GMCCC's final advice.
13. The GMCCC's final advice recommended the ERA make two additional amendments to the Code. The GMCCC recommendations and the ERA's response to each recommendation are as follows:

**Recommendation 1**

Amend clause 2.3(4) as follows:

(4) ~~Subject to subclause (3), a~~ A retailer or gas marketing agent must obtain the customer's verifiable confirmation that the information referred to in subclause (2) has been given.

The ERA agrees with this recommendation.

**Recommendation 2**

The GMCCC recommends the ERA amend clauses 2.2(2)(g) and 2.2(2A)(g) to remove the requirement to include the text "interpreter services" next to the interpreter symbol.

The ERA agrees with this recommendation.

14. Following the ERA's consideration of the GMCCC's final advice, the ERA has decided to make the amendments to the Code as outlined in the ERA's draft decision, and the two additional amendments recommended by the GMCCC in its letter of final advice.
15. In making its decision, the ERA has considered the objectives of the Code under section 11ZPM of the Act.
16. The ERA has also considered the matters set out in section 26 of the *Economic Regulation Authority Act 2003*:
  - a. The need to promote regulatory outcomes that are in the public interest.
  - b. The long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets.
  - c. The need to encourage investment in relevant markets.
  - d. The legitimate business interests of investors and service providers in relevant markets.
  - e. The need to promote competitive and fair market conduct.
  - f. The need to prevent abuse of monopoly or market power.
  - g. The need to promote transparent decision-making processes that involve public consultation.

## **Appendix 1 : *Gas Marketing Code of Conduct Amendment Code 2019***

Western Australia

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

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

Approved by the Economic Regulation Authority.

**1. Citation**

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

**2. Commencement**

This code comes into operation as follows —

- (a) clauses 1 and 2 — on the day on which this code is published in the *Gazette*;
- (b) the rest of the code — 1 January 2020.

**3. Code amended**

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

**4. Clause 1.5 amended**

In clause 1.5 insert in alphabetical order:

***verifiable confirmation*** means confirmation that is given —

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

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5. Clause 2.2 amended

In clause 2.2(2):

- (a) delete “a *retailer* or *gas marketing agent* must give the following information to a *customer* no later than on or with” and insert:

if a *customer* enters into a contract described in subclause (1), the *retailer* or *gas marketing agent* must give the following information to the *customer* before or at the time of giving

- (b) delete paragraph (e) and insert:

(e) with respect to a *residential customer*, a statement that the *residential customer* may be eligible to receive *concessions* and how the *residential customer* may find out about their eligibility for those *concessions*;

- (c) delete paragraph (g) and insert:

(g) with respect to a *residential customer* —  
(i) the *telephone* number for interpreter services, identified by the National Interpreter Symbol; and  
(ii) the *telephone* number for *TTY* services;

- (d) in paragraph (h) delete “*retailer*; and” and insert:

*retailer*.

- (e) delete paragraph (i).



**6. Clause 2.3 amended**

- (1) In clause 2.3(1)(a) delete “that the *non-standard contract* has been entered into, and” and insert:

to entering into the *non-standard contract*; and

- (2) In clause 2.3(2)(c) delete “*contract*,” and insert:

*contract*.

- (3) Delete clause 2.3(2)(d) to (l) and insert:

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

- (a) how the *customer* may obtain —
  - (i) a copy of the *Code* and the *Compendium*; and
  - (ii) details on all relevant tariffs, fees, charges, *alternative tariffs* and service levels that may apply to the *customer*;
- (b) the scope of the *Code*;
- (c) that a *retailer* and *gas marketing agent* must comply with the *Code*;
- (d) how the *retailer* may assist if the *customer* is experiencing *payment difficulties* or *financial hardship*;
- (e) with respect to a *residential customer*, a statement that the *residential customer* may be

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eligible to receive *concessions* and how the *residential customer* may find out about their eligibility for those *concessions*;

- (f) the *distributor's* 24 hour *telephone* number for faults and emergencies;
- (g) with respect to a *residential customer* —
  - (i) the *telephone* number for interpreter services, identified by the National Interpreter Symbol; and
  - (ii) the *telephone* number for *TTY* services;
- (h) how to make an enquiry of, or *complaint* to, the *retailer*.

- (4) In clause 2.3(3) delete “subclauses (2)(d)-(l),” and insert:

subclause (2A),

- (5) Delete clause 2.3(4) and insert:

- (4) A *retailer* or *gas marketing agent* must obtain the *customer's verifiable confirmation* that the information referred to in subclause (2) has been given.

**7. Clause 2.10 amended**

In clause 2.10 delete the note.

Economic Regulation Authority

## **Appendix 2 : *Gas Marketing Code of Conduct 2017* as at 1 January 2020 (showing tracked changes)**



Western Australia

Energy Coordination Act 1994

## **Gas Marketing Code of Conduct 2017**

Showing, in tracked changes, the effect of the amendments in the *Gas Marketing Code of Conduct Amendment Code 2019*.

These amendments come into effect on 1 January 2020.

Note: this is a comparison between the Code as at the time the *Gas Marketing Code of Conduct Amendment Code 2019* was made and as it will be on 1 January 2020, so changes are shown in a more granular form than the amendments set out in the *Gas Marketing Code of Conduct Amendment Code 2019*.

# Gas Marketing Code of Conduct 2017

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## 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.

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- (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 an organisation, related to its products or services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.

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

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

**contract** means a **standard form contract** or a **non-standard contract**.

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

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

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

**emergency** means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens

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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 for this definition:

The energy ombudsman Western Australia is the gas ombudsman appointed under the scheme approved by the Authority pursuant to section 11ZPZ of the Act.

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

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

**marketing identification number** means a unique number assigned by a **retailer** to each **gas marketing agent acting** on its behalf.

**non-standard contract** means a contract entered into between a **retailer** and a **customer**, or a class of **customers**, that is not a **standard form contract**.

**payment difficulties** means a state of immediate financial disadvantage that results in a **residential customer** being unable to pay an outstanding amount as required by a **retailer** by reason of a **change in personal circumstances**.

**premises** means premises owned or occupied by a new or existing **customer**.

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

**residential customer** means a **customer** who consumes gas solely for domestic use.

**retailer** means a person who holds a trading licence under Part 2A of the Act.

**standard form contract** means a contract that is approved by the **Authority** under section 11WF of the Act.

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**telephone** means a device which is used to transmit and receive voice frequency signals.

**TTY** means teletypewriter.

**unsolicited consumer agreement** is defined in section 69 of the *Australian Consumer Law (WA)*.

**verifiable confirmation** means confirmation that is given —

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

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

- (a) expressly;
- (b) in writing or orally;
- (c) after the **retailer** or **gas marketing agent** (whichever is relevant) has in plain language appropriate to that **customer** disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used; and
- (d) by the **customer** or a nominated person competent to give consent on the **customer's** behalf.

## 1.6. Application

The **Code** applies to —

- (a) **retailers**; and
- (b) **gas marketing agents**.

## 1.7. Purpose

The **Code** regulates and controls the conduct of **gas marketing agents** and **retailers**.

Note for this clause:

This **Code** is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities including, but not limited to, the *Fair Trading Act 2010 (WA)*, the *Spam*

*Act 2003 (Cth), the Spam Regulations 2004 (Cth), the Do Not Call Register Act 2006 (Cth), the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth) and the Privacy Act 1988 (Cth).*

**1.8. Objectives**

The objectives of the *Code* are to —

- (a) define standards of conduct in the *marketing* of gas to *customers*; and
- (b) protect *customers* from undesirable *marketing* conduct.

**1.9. Amendment and Review**

The *Code* will be amended in accordance with Part 2C of the Act.

## **Part 2 — Marketing**

### **Division 1 — Obligations particular to retailers**

**2.1. Retailers to ensure representatives comply with this Part**

A *retailer* must ensure that its *gas marketing agents* comply with this Part.

### **Division 2 — Contracts and information to be provided to customers**

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

- (1) When entering into a *standard form contract* that is not an *unsolicited consumer agreement*, a *retailer* or *gas marketing agent* must —
  - (a) record the date the *standard form contract* was entered into;
  - (b) give, or make available to the *customer* at no charge, a copy of the *standard form contract* —

- (i) at the time the *standard form contract* is entered into, if the *standard form contract* was not entered into over the *telephone*; or
  - (ii) as soon as possible, but not more than 5 *business days* after the *standard form contract* was entered into, if the *standard form contract* was entered into over the *telephone*.
- (2) Subject to subclause (3), ~~a~~ if a customer enters into a contract described in subclause (1), the retailer or gas marketing agent must give the following information to ~~the~~ a customer ~~no later than on or with~~ before or at the time of giving the *customer's* first bill —
  - (a) how the *customer* may obtain —
    - (i) a copy of the *Code* and *Compendium*; and
    - (ii) details on all relevant tariffs, fees, charges, *alternative tariffs* and service levels that may apply to the *customer*,
  - (b) the scope of the *Code*;
  - (c) that a retailer and gas marketing agent must comply with the *Code*;
  - (d) how the *retailer* may assist if the *customer* is experiencing *payment* difficulties or *financial hardship*;
  - (e) with respect to a *residential customer*, ~~the concessions that may apply to the residential customer;~~ a statement that the residential customer may be eligible to receive concessions and how the residential customer may find out about their eligibility for those concessions;
  - (f) the *distributor's* 24 hour *telephone* number for faults and emergencies;

- (g) with respect to a *residential customer*, ~~how the *residential customer* may access the *retailer's* —~~
  - (i) the *telephone* number for interpreter services, identified by the National Interpreter Symbol; and
  - (ii) the *telephone* number for *TTY* services;
  - ~~(i) multi-lingual services (in languages reflective of the *retailer's customer base*); and~~
  - ~~(ii) *TTY* services;~~
- (h) how to make an enquiry of, or *complaint* to, the *retailer*; ~~and.~~
  - ~~(i) general information on the *retailer's gas customer safety awareness program*.~~

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

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

- (1) When entering into a *non-standard contract* that is not an *unsolicited consumer agreement*, a *retailer* or *gas marketing agent* must —
  - (a) obtain and make a record of the *customer's verifiable consent* ~~that to entering into~~ the *non-standard contract* ~~has been entered into, and; and~~ and

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

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

- (da) how the *customer* may obtain —
  - (i) a copy of the *Code* and the *Compendium*; and
  - (ii) details on all relevant tariffs, fees, charges, *alternative tariffs* and service levels that may apply to the *customer*;
- (eb) the scope of the *Code*;
- (fc) that a *retailer* and *gas marketing agent* must comply with the *Code*;



- (gd) how the *retailer* may assist if the *customer* is experiencing *payment difficulties* or *financial hardship*;
  - (he) with respect to a *residential customer*, ~~the *concessions* that may apply to the *residential customer*~~; a statement that the *residential customer* may be eligible to receive *concessions* and how the *residential customer* may find out about their eligibility for those *concessions*;
  - (if) the *distributor's* 24 hour *telephone* number for faults and emergencies;
  - (jg) with respect to a *residential customer*, ~~how the *residential customer* may access the *retailer's*~~ —
    - (i) the *telephone* number for interpreter services, identified by the National Interpreter Symbol; and
    - (ii) the *telephone* number for *TTY* services;
    - ~~(i) multi-lingual services (in languages reflective of the *retailer's customer base*); and~~
    - ~~(ii) *TTY* services;~~
  - (kh) how to make an enquiry of, or *complaint* to, the *retailer*; and.
  - ~~(l) general information on the *retailer's gas customer safety awareness program*.~~
- (3) For the purposes of ~~subclauses (2)(d) (1)~~ subclause (2A), a *retailer* or *gas marketing agent* is taken to have given the *customer* the required information if —
- (a) the *retailer* or *gas marketing agent* has provided the information to that *customer* within the preceding 12 months; or
  - (b) the *retailer* or *gas marketing agent* has informed the *customer* how the *customer* may obtain the information, unless the *customer* requests to receive the information.
- (4) ~~Subject to subclause (3), a~~ A *retailer* or *gas marketing agent* must obtain the *customer's* verifiable ~~consent~~ confirmation that

the information ~~in clause 2.3(2)~~ [referred to in subclause \(2\)](#) has been given.

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

#### **2.4. Standards of conduct**

- (1) A *retailer* or *gas marketing agent* must ensure that the inclusion of *concessions* is made clear to *residential customers* and any prices that exclude *concessions* are disclosed.
- (2) A *retailer* or *gas marketing agent* must ensure that a *customer* is able to *contact* the *retailer* or *gas marketing agent* on the *retailer's* or *gas marketing agent's* contact details, including *telephone* number, during the normal business hours of the *retailer* or *gas marketing agent* for the purposes of enquiries, verifications and *complaints*.

#### **2.5. Contact for the purposes of marketing**

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

- (iii) his or her *marketing identification number* (for *contact* by a *gas marketing agent*); and
  - (iv) the name of the *retailer* on whose behalf the *contact* is being made; and
- (b) provide the *customer*, in writing —
- (i) his or her first name;
  - (ii) his or her *marketing identification number* (for *contact* by a *gas marketing agent*);
  - (iii) the name of the *retailer* on whose behalf the *contact* is being made;
  - (iv) the complaints *telephone* number of the *retailer* on whose behalf the *contact* is being made;
  - (v) the business address and Australian Business or Company Number of the retailer on whose behalf the *contact* is being made; and
  - (vi) the *telephone* number of the *gas ombudsman*;
- as soon as practicable following a request by the *customer for the information*.

## 2.6. No canvassing or advertising signs

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

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

## Division 4 — Miscellaneous

### 2.7. Compliance

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

Penalty —

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

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

Penalty —

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

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

## **2.8. Presumption of authority**

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

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

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

## **2.9. Gas marketing agent complaints**

A **gas marketing agent** must —

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

**2.10. Records to be kept**

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

~~————— Note for this clause:~~

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

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.  
The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
Act.....	1.5
alternative tariff.....	1.5
Australian Consumer Law (WA) .....	1.5
Authority.....	1.5
basic living needs .....	1.5
business day .....	1.5
change in personal circumstances .....	1.5
Code.....	1.5
Compendium.....	1.5
complaint .....	1.5
concession.....	1.5
contact.....	1.5
contract .....	1.5
cooling-off period .....	1.5
customer.....	1.5
distributor.....	1.5
emergency.....	1.5
financial hardship.....	1.5
gas customer safety awareness program .....	1.5
gas marketing agent .....	1.5
gas ombudsman.....	1.5
marketing .....	1.5
marketing identification number .....	1.5
non-standard contract.....	1.5
payment difficulties .....	1.5
premises .....	1.5
public holiday .....	1.5
residential customer .....	1.5
retailer .....	1.5
standard form contract .....	1.5
telephone.....	1.5
TTY.....	1.5
unsolicited consumer agreement.....	1.5
verifiable confirmation.....	1.5
verifiable consent .....	1.5

## **Appendix 3 : *Gas Marketing Code of Conduct 2017 as at 1 January 2020 (clean)***



Western Australia

Energy Coordination Act 1994

## **Gas Marketing Code of Conduct 2017**

Showing the Code, as amended by the *Gas Marketing Code of Conduct Amendment Code 2019*, as at 1 January 2020.



# Gas Marketing Code of Conduct 2017

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## 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.

**cl. 1.5**

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- (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 an organisation, related to its products or services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.

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

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

***contract*** means a ***standard form contract*** or a ***non-standard contract***.

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

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

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

***emergency*** means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens

**cl. 1.5**

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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 for this definition:

The energy ombudsman Western Australia is the gas ombudsman appointed under the scheme approved by the Authority pursuant to section 11ZPZ of the Act.

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

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

**marketing identification number** means a unique number assigned by a **retailer** to each **gas marketing agent acting** on its behalf.

**non-standard contract** means a contract entered into between a **retailer** and a **customer**, or a class of **customers**, that is not a **standard form contract**.

**payment difficulties** means a state of immediate financial disadvantage that results in a **residential customer** being unable to pay an outstanding amount as required by a **retailer** by reason of a **change in personal circumstances**.

**premises** means premises owned or occupied by a new or existing **customer**.

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

**residential customer** means a **customer** who consumes gas solely for domestic use.

**retailer** means a person who holds a trading licence under Part 2A of the Act.

**standard form contract** means a contract that is approved by the **Authority** under section 11WF of the Act.

**cl. 1.6**

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**telephone** means a device which is used to transmit and receive voice frequency signals.

**TTY** means teletypewriter.

**unsolicited consumer agreement** is defined in section 69 of the *Australian Consumer Law (WA)*.

**verifiable confirmation** means confirmation that is given —

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

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

- (a) expressly;
- (b) in writing or orally;
- (c) after the **retailer** or **gas marketing agent** (whichever is relevant) has in plain language appropriate to that **customer** disclosed all matters materially relevant to the giving of the consent, including each specific purpose for which the consent will be used; and
- (d) by the **customer** or a nominated person competent to give consent on the **customer's** behalf.

**1.6. Application**

The **Code** applies to —

- (a) **retailers**; and
- (b) **gas marketing agents**.

**1.7. Purpose**

The **Code** regulates and controls the conduct of **gas marketing agents** and **retailers**.

Note for this clause:

This **Code** is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities including, but not limited to, the *Fair Trading Act 2010 (WA)*, the *Spam*



*Act 2003 (Cth), the Spam Regulations 2004 (Cth), the Do Not Call Register Act 2006 (Cth), the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth) and the Privacy Act 1988 (Cth).*

**1.8. Objectives**

The objectives of the *Code* are to —

- (a) define standards of conduct in the *marketing* of gas to *customers*; and
- (b) protect *customers* from undesirable *marketing* conduct.

**1.9. Amendment and Review**

The *Code* will be amended in accordance with Part 2C of the Act.

## **Part 2 — Marketing**

### **Division 1 — Obligations particular to retailers**

#### **2.1. Retailers to ensure representatives comply with this Part**

A *retailer* must ensure that its *gas marketing agents* comply with this Part.

### **Division 2 — Contracts and information to be provided to customers**

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

- (1) When entering into a *standard form contract* that is not an *unsolicited consumer agreement*, a *retailer* or *gas marketing agent* must —
  - (a) record the date the *standard form contract* was entered into;
  - (b) give, or make available to the *customer* at no charge, a copy of the *standard form contract* —
    - (i) at the time the *standard form contract* is entered into, if the *standard form contract* was not entered into over the *telephone*; or
    - (ii) as soon as possible, but not more than 5 *business days* after the *standard form contract* was entered into, if the *standard form contract* was entered into over the *telephone*.
- (2) Subject to subclause (3), if a *customer* enters into a contract described in subclause (1), the *retailer* or *gas marketing agent* must give the following information to the *customer* before or at the time of giving the *customer's* first bill —
  - (a) how the *customer* may obtain —
    - (i) a copy of the *Code* and *Compendium*; and

- (ii) details on all relevant tariffs, fees, charges, **alternative tariffs** and service levels that may apply to the **customer**,
  - (b) the scope of the **Code**;
  - (c) that a retailer and gas marketing agent must comply with the **Code**;
  - (d) how the **retailer** may assist if the **customer** is experiencing **payment** difficulties or **financial hardship**;
  - (e) with respect to a **residential customer**, a statement that the **residential customer** may be eligible to receive **concessions** and how the **residential customer** may find out about their eligibility for those **concessions**;
  - (f) the **distributor's** 24 hour **telephone** number for faults and emergencies;
  - (g) with respect to a **residential customer** —
    - (i) the **telephone** number for interpreter services, identified by the National Interpreter Symbol; and
    - (ii) the **telephone** number for **TTY** services;
  - (h) how to make an enquiry of, or **complaint** to, the **retailer**.
- (3) For the purposes of subclause (2) a **retailer** or **gas marketing agent** is taken to have given the **customer** the required information if —
- (a) the **retailer** or **gas marketing agent** has provided the information to that **customer** within the preceding 12 months; or
  - (b) the **retailer** or **gas marketing agent** has informed the **customer** how the **customer** may obtain the information, unless the **customer** requests to receive the information.

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

- (1) When entering into a *non-standard contract* that is not an *unsolicited consumer agreement*, a *retailer* or *gas marketing agent* must —
  - (a) obtain and make a record of the *customer's verifiable consent* to entering into the *non-standard contract*; and
  - (b) give, or make available to the *customer* at no charge, a copy of the *non-standard contract* —
    - (i) at the time the *non-standard contract* is entered into, if the *non-standard contract* was not entered into over the *telephone*; or
    - (ii) as soon as possible, but not more than 5 *business days* after the *non-standard contract* was entered into, if the non-standard contract was entered into over the *telephone*.
- (2) Before entering into a *non-standard contract*, a *retailer* or *gas marketing agent* must give the *customer* the following information —
  - (a) that the *customer* is able to choose the *standard form contract* offered by the *retailer*;
  - (b) the difference between the *non-standard contract* and the *standard form contract*;
  - (c) details of any right the *customer* may have to rescind the *non-standard contract* during a *cooling-off period* and the charges that may apply if the *customer* rescinds the *non-standard contract*.
- (2A) Subject to subclause (3), if a *customer* enters into a *non-standard contract*, the *retailer* or *gas marketing agent* must give the following information to the *customer* before or at the time of giving the *customer's* first bill —
  - (a) how the *customer* may obtain —
    - (i) a copy of the *Code* and the *Compendium*; and

- (ii) details on all relevant tariffs, fees, charges, **alternative tariffs** and service levels that may apply to the **customer**;
  - (b) the scope of the **Code**;
  - (c) that a **retailer** and **gas marketing agent** must comply with the **Code**;
  - (d) how the **retailer** may assist if the **customer** is experiencing **payment difficulties** or **financial hardship**;
  - (e) with respect to a **residential customer**, a statement that the **residential customer** may be eligible to receive **concessions** and how the **residential customer** may find out about their eligibility for those **concessions**;
  - (f) the **distributor's** 24 hour **telephone** number for faults and emergencies;
  - (g) with respect to a **residential customer** —
    - (i) the **telephone** number for interpreter services, identified by the National Interpreter Symbol; and
    - (ii) the **telephone** number for **TTY** services;
  - (h) how to make an enquiry of, or **complaint** to, the **retailer**.
- (3) For the purposes of subclause (2A), a **retailer** or **gas marketing agent** is taken to have given the **customer** the required information if —
- (a) the **retailer** or **gas marketing agent** has provided the information to that **customer** within the preceding 12 months; or
  - (b) the **retailer** or **gas marketing agent** has informed the **customer** how the **customer** may obtain the information, unless the **customer** requests to receive the information.
- (4) A **retailer** or **gas marketing agent** must obtain the **customer's verifiable confirmation** that the information referred to in subclause (2) has been given.

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

#### **2.4. Standards of conduct**

- (1) A *retailer* or *gas marketing agent* must ensure that the inclusion of *concessions* is made clear to *residential customers* and any prices that exclude *concessions* are disclosed.
- (2) A *retailer* or *gas marketing agent* must ensure that a *customer* is able to *contact* the *retailer* or *gas marketing agent* on the *retailer's* or *gas marketing agent's* contact details, including *telephone* number, during the normal business hours of the *retailer* or *gas marketing agent* for the purposes of enquiries, verifications and *complaints*.

#### **2.5. Contact for the purposes of marketing**

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

- (iv) the name of the *retailer* on whose behalf the *contact* is being made; and
- (b) provide the *customer*, in writing —
  - (i) his or her first name;
  - (ii) his or her *marketing identification number* (for *contact* by a *gas marketing agent*);
  - (iii) the name of the *retailer* on whose behalf the *contact* is being made;
  - (iv) the complaints *telephone* number of the *retailer* on whose behalf the *contact* is being made;
  - (v) the business address and Australian Business or Company Number of the retailer on whose behalf the *contact* is being made; and
  - (vi) the *telephone* number of the *gas ombudsman*;  
as soon as practicable following a request by the *customer for the information*.

## 2.6. No canvassing or advertising signs

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

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

## Division 4 — Miscellaneous

### 2.7. Compliance

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

Penalty —

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

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

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

Penalty —

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

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

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

## **2.8. Presumption of authority**

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

(a) a *retailer*; or

(b) a *gas marketing agent*,

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

## **2.9. Gas marketing agent complaints**

A *gas marketing agent* must —

(a) keep a record of each *complaint* made by a *customer*, or person *contacted* for the purposes of *marketing*, about the *marketing* carried out by or on behalf of the *gas marketing agent*; and

(b) on request by the *gas ombudsman* in relation to a particular *complaint*, give to the *gas ombudsman* within 28 days of receiving the request, all information that the *gas marketing agent* has relating to the complaint.



**2.10. Records to be kept**

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

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

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