



Gas Marketing Code Consultative Committee

## Draft review report

Gas Marketing Code of Conduct - 2024 Review

June 2024

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## Invitation to make submissions

**Submissions are due by 5pm (AWST) Wednesday 17 July 2024**

The ERA invites comments on this paper and encourages all interested parties to provide comment on the matters discussed in this paper and any other issues or concerns not already raised in this paper.

We would prefer to receive your comments via our online submission form [www.erawa.com.au/consultation](http://www.erawa.com.au/consultation)

You can also send comments through:

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

Post: Level 4, Albert Facey House, 469 Wellington Street, Perth WA 6000

Please note that submissions provided electronically do not need to be provided separately in hard copy.

All submissions will be made available on our website unless arrangements are made in advance between the author and the ERA. This is because it is preferable that all submissions be publicly available to facilitate an informed and transparent consultative process. Parties wishing to submit confidential information are requested to contact us at [info@erawa.com.au](mailto:info@erawa.com.au).

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## Introduction

The Economic Regulation Authority approves the *Gas Marketing Code of Conduct* (the Code) created under the *Energy Coordination Act 1994*<sup>1</sup> (the Act). The ERA establishes the Gas Marketing Code Consultative Committee (the GMCCC) to review and advise it on matters related to the Code. The GMCCC must review the Code every two years (under s.11ZPV of the Act). A copy of the current Code is at Appendix 2 – Gas Marketing Code of Conduct 2022.

This report outlines the GMCCC's draft recommendations for the 2024 review of the Code, which are based on the GMCCC's consideration of topics raised during its call for issues process.

Interested parties are invited to comment on the draft recommendations, which will inform the GMCCC's recommendations in its final review report to the ERA. The GMCCC encourages submissions on any issue related to gas marketing standards or practices, not only those set out in this draft review report.

The GMCCC proposes to make the following recommendations:

### ***Recommendation 1 – Alignment with electricity code***

That minor amendments be made to clauses 6(2), 6(3)(e), 8(1), 8(2)(a)(iii), 8(2)(b)(ii) and (vi), 8(3) to align them with like provisions in the [Code of Conduct for the Supply of Electricity to Small Use Customers 2022](#) (Electricity Code).

### ***Recommendation 2 – Requirements for telemarketers***

That the Code be amended to simplify marketing identification requirements by merging existing clauses 8(1) and 8(2), where practical.

### ***Recommendation 3 – Comparative gas marketing claims***

That a new subclause 7(3) be created to require retailers or marketing agents to provide the basis for any claims of efficiency or lower emissions.

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Full advice to support these draft recommendations is in section 2 of this report.

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The GMCCC also proposes to provide the following comments to the ERA:

- The GMCCC was unable to identify any clauses explicitly duplicate with Australian Consumer Law (ACL). Removing clauses from the Code that appear similar to the ACL's principles-based provisions may weaken customer protections under the Code.
- The GMCCC does not recommend that changes be made to divisions 2 and 3 of the Code that would require gas industry participants to provide standardised fact sheets about retail products to customers.
- The GMCCC does not consider it necessary to make changes to record-keeping requirements for marketing purposes in clause 13 of the Code.
- The GMCCC does not recommend changing monetary penalties in the Code because they are already set at the maximum allowed under the Act.

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More information about these comments can be found in section 3 of this report.

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<sup>1</sup> Energy Coordination Act 1994 ([online](#)).

# 1. Background

## 1.1 The gas market in Western Australia

The ERA administers the gas retail licensing scheme under the Act. When the ERA issues a licence to a retailer under the scheme, the licence holder is permitted to sell gas to small use customers within their supply area. The Act requires each licensee to comply with the provisions of the Code that apply to them.

Customers who use less than 1TJ of gas per year are small use customers and are entitled to the protections set out in the Code and the ERA's Compendium of Gas Customer Licence Obligations (the Compendium)<sup>2</sup>.

As of 30 June 2023, there were 793,313 small use customers in Western Australia buying gas from eight retail licence holders – this includes 783,579 residential and 9,734 business customers.<sup>3,4</sup> As of May 2024, the average Western Australian household spends \$560 on gas per year.<sup>5</sup>

## 1.2 The Code

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 ERA administers the Code to protect customers who have little or no bargaining power in large retail markets.

Retailers who sell gas only to customers using more than 1TJ of gas per year are not required to hold a trading licence and are not covered by the Code.

## 1.3 Gas Marketing Code Consultative Committee

The ERA reviews the Code every two years and establishes the GMCCC under s.11ZPO of the Act to provide advice on each Code review.

The ERA appoints each member to the GMCCC for a two-year term. For this term, an employee from Energy Policy WA will be included in GMCCC deliberations as an observer, to facilitate input by the Expert Consumer Panel (ECP).<sup>6</sup>

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<sup>2</sup> The ERA's Gas Compendium including current version and recent review are on its website ([online](#)).

<sup>3</sup> The retail licence holders are: AGL Sales Pty Ltd, Alinta Sales Pty Ltd (t/a Alinta Energy), Amanda Energy Pty Ltd, Electricity Generation and Retail Corporation (t/a Synergy), IPower 1 Pty Ltd and Ipower2 Pty Ltd (t/a Simply Energy), Origin Energy Retail Limited, Perth Energy Pty Ltd and Wesfarmers Kleenheat Gas Pty Ltd ([online](#)).

<sup>4</sup> Gas retail licences include an obligation for licensees to provide the ERA with specified reporting data. The total customer number has been obtained from the latest licensee reporting data. ([online](#)) [Accessed 14 May 2024]

<sup>5</sup> Finder Consumer Sentiment Tracker, May 2024 ([online](#)) [Accessed 14 May 2024]

<sup>6</sup> [Expert Consumer Panel \(www.wa.gov.au\)](http://www.wa.gov.au)

### 1.3.1 GMCCC Members

The current members of the GMCCC are:

Chair (non-voting member)	Employer
Executive Director, Regulation (ex officio)	Economic Regulation Authority
Executive Officer (non-voting member)	
Senior Regulatory Officer, Licensing and Consumer Protection (ex officio)	Economic Regulation Authority
Industry representatives	
Catherine Rousch	Alinta Energy
Deanna Power	Kleenheat Energy
Becky Cant	Synergy
Consumer representatives	
Ashleigh Gregory	Western Australian Council of Social Service
Helena Jakupovic	Financial Wellbeing Collective
Leanne Bérard	Financial Counsellors Association
Government representatives	
Anne Braithwaite	Energy Policy WA (DEMIRS)
Penny Griffiths	Building & Energy (DEMIRS)
Observer (non-voting)	
Brent Savage	Energy Policy WA (DEMIRS)

## 1.4 Code Review Process

In December 2023, the Secretariat asked GMCCC members to raise issues to be considered during the 2024 Code review. The GMCCC's observer coordinated input from the ECP for this process.

The Secretariat circulated an issues summary to the GMCCC on 26 March 2024 and sought further input from members. The Secretariat collated the responses into this draft review report, which has been endorsed by the GMCCC to publish for stakeholder comment. The GMCCC will consider any submissions and prepare a final review report with a set of recommendations for the ERA.

The ERA will consider the final review report when making its draft decision on changes to the Code. The GMCCC will consult with interested parties on the ERA's draft decision before providing advice to inform the ERA's final decision.

## 2. Recommendations

This section outlines the issues considered by the GMCCC when making its draft recommendations.

### 2.1 Alignment with the Electricity Code

The ERA has historically used code review processes across its licensing areas to make minor amendments to align all the legal instruments.

The GMCCC considered minor amendments that would align the Electricity Code with the Gas Marketing Code. These amendments can be seen in full in Appendix 1 – Minor changes to align with electricity code.

#### Recommendation 1

That minor amendments be made to clauses 6(2), 6(3)(e), 8(1), 8(2)(a)(iii), 8(2)(b)(ii), and (vi), 8(3) to align them with like provisions in the Code of Conduct for the Supply of Electricity to Small Use Customers 2022.

### 2.2 Requirements for marketing

The GMCCC considered amendments to the Code to align telemarketing identification requirements with those for in-person marketing. Clause 8 outlines the obligations on a retailer or gas marketing agent when contacting or meeting with a customer for marketing purposes. Clause 8(1) covers circumstances where a customer is contacted, while clause 8(2) prescribes requirements for face-to-face meetings.

The GMCCC considered if merging the two clauses would create duplication with ACL guidelines related to telemarketing or would be redundant.<sup>7</sup> The GMCCC noted that clause 8 replicates clause 12 of the Electricity Code.

The ACL requires salespeople to inform customers who they are, what business they represent, and why they are calling. These ACL requirements are broadly included in clause 8(2) of the Code but not in clause 8(1). Merging clauses 8(1) and 8(2) would make marketing identification requirements more consistent for customers and industry, whether by phone or in person. The change would also avoid the potential for customer confusion by aligning requirements for different types of marketing between different parts of the Code.

The GMCCC does not anticipate any additional regulatory burden as retailers and marketing agents are likely to already provide consumers with the required information as standard practise.

#### Recommendation 2

That the Code be amended to simplify marketing identification requirements by merging existing clauses 8(1) and 8(2) where practical.

<sup>7</sup> Australian Competition and Consumer Commission, Telemarketing and door-to-door sales ([online](#)).



## 2.3 Gas marketing claims

Clause 7 of the Code currently sets out what information retailers must provide to customers and a retailer's obligation to be contactable for enquiries, verifications, and complaints. The Code does not currently regulate or control conduct related to comparative marketing of different sources of energy.

The GMCCC considered the kind of marketing claims that gas retailers can make. The ECP noted that it was important for customers to have the right contextual information, especially when claims about the efficiency of gas were made during marketing activities. Such claims could mislead consumers because, while gas is cheaper than electricity per unit of energy delivered from the distribution network, gas appliances often cost more for consumers to use.<sup>8</sup>

Modern electric appliances, such as reverse cycle air conditioners and heat pump hot water systems, can generate more useful heat than gas appliances for each unit of energy used. As such, the cost of energy per unit may not be helpful to consumers without additional context or without an in-depth understanding of each class of appliances they own.

Some examples of the kinds of claim that may not be contextually understood by customers are shown in Figures 1 and 2. In these examples, both from the WA retail gas market, a basis for the claims might be more specific information that helps customers understand the veracity of each claim, such as the type of electric system being compared or quantifying "low greenhouse gas emissions".

**Figure 1: Example of a claim about cooktops that does not provide a basis for the claim or details about which type of electric cooktop is being compared.**

Electricity may have made our lives easier in many ways but gas remains the most efficient and responsive way to cook on the stove. Whether boiling or steaming, sautéing, griddling or stir-frying, there are a huge number of advantages of cooking with gas.

**Immediately responsive heat**

The reason most professional kitchens use gas cooktops is that they can easily control the heat. With a simple turn of the dial the flame gets bigger or smaller so that the change in heat is immediate and precise. There's no long wait for the pan to heat up or for it to cool down, saving time and ensuring dishes aren't spoiled by a slow response. Temperatures are closer to the recommended heat in recipe books, helping you to achieve dependable results every time you cook. There's a reason for the saying, "we're cooking with gas!"

**Even heat distribution**

Electric cooktops and the pans used on them need to be perfectly flat or the heat won't be distributed evenly across the cookware. The flames on a gas cooktop are central so that they heat pans evenly, with no cool spots and without scorching them. As the entire surface of an electric cooktop heats up, gas cooktops tend to be safer as they are cooler when turned off.

**Less wasted heat**

Electric cooktops emit more heat than those powered by gas, generating excess heat in your home. Gas cooktops not only keep your home cooler when they're on but as soon as you turn them off the flame is extinguished and the heat source vanishes – not so with an electric cooktop, which continues to emit heat after it is switched off.

**Figure 2: Example of a claim about hot water systems that does not provide basis of claim about efficiency or details about which type of electric water heater is being compared.**

Gas storage hot water systems heat and store water in an insulated tank ready for when you need it.

1. These systems are energy efficient, particularly if you choose one of the new 4 or 5-star models.
2. They produce low greenhouse gas emissions, which is good for the environment.
3. Gas heaters are speedy; they can heat a 170 litre tank in about one hour. Its recovery rate, being the time it takes to reheat a tank of water, is much faster than an electric water heater. So it's great for a family of four to have a shower without the water going cold.

If your old hot water system is on its last legs, there's no need to pack your bags and check in to your nearest hotel – you can usually get a new gas hot water system installed within a day.

A 2023 Grattan Institute report looked at the lifecycle cost of energy for different household scenarios across all Australian state and territories. The analysis used the standardised

<sup>8</sup> *Domestic Hot Water and Flexibility*, Roche, D., Dwyer, S., Rispler, J., Chatterjee, A., Fane, S. & White, S. (2023). Report prepared for ARENA by UTS Institute for Sustainable Futures ([online](#))

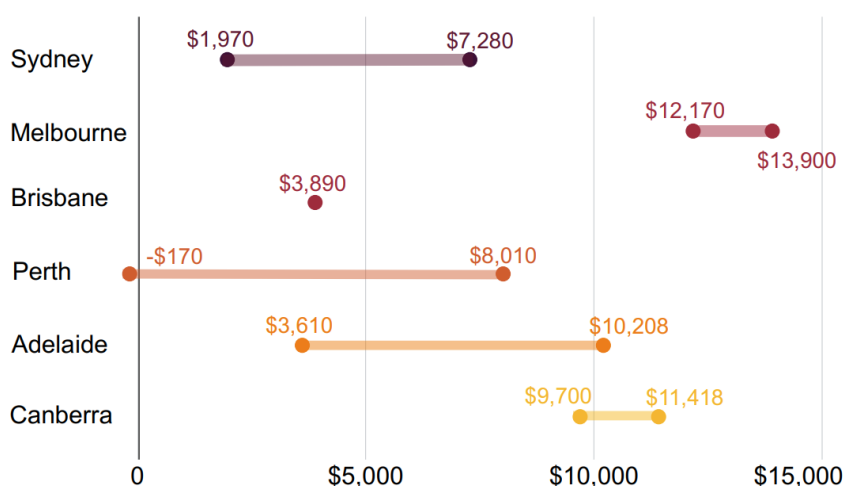
residential energy baseline model for determining energy consumption across appliance categories published by the Commonwealth Government.<sup>9</sup>

The Grattan report stated:

It is true that not every household would save if they switched to all electric today. Some West Australian homes may pay more in an all-electric home – since gas is so cheap in that state. Households that buy cheap, inefficient appliances will also miss out on savings. But for most households, switching now or soon will save them in the future, even after accounting for the upfront cost of electric appliances.

The report shows that some Western Australian households would pay up to \$170 more over a 10-year period by switching to all-electric appliances from all-gas or a combination of gas and electric appliances, but that most households would still save money on their overall energy bills by switching even after accounting for higher upfront costs of new electric appliances. Figure 3 shows potential costs or savings from the report for all jurisdictions.

**Figure 3: Grattan Institute report Figure 2.2: Most households will save money by upgrading to electric appliances. Note: Includes the upfront cost in savings calculations.**



The Compendium requires retailers to publish the most cost-effective and efficient ways to use gas and the typical running costs of major domestic gas appliances on their websites. This obligation remains in the amended Gas Compendium, commencing 1 July 2024.<sup>10</sup> This obligation does not address issues with comparative marketing because the Compendium applies to licensees and their customers, whereas the Code covers both existing customers and non-customers.

Technological differences between some gas and modern electric appliances like heat pumps mean that even relatively low efficiency electric appliances can cost less to run than maximally efficient gas ones, information provided by the Commonwealth Government's YourHome energy website states.<sup>11</sup> For example, instantaneous gas hot water systems might use one unit of gas to generate one unit of heat - an efficiency of nearly 100 per cent. Electric heat pump hot water systems can generate three or more units of heat for every unit of electricity used - an efficiency of 300 per cent or more. Heat pumps and reverse cycle air conditioners can achieve these high efficiencies by extracting useful heat energy from the ground or surrounding air and transferring it to air or water using compressed gas.<sup>12</sup>

<sup>9</sup> The Grattan Institute, June 2023, *Getting off gas: why, how, and who should pay?* ([online](#))

<sup>10</sup> Economic Regulation Authority, April 2024, Final decision, 2023 review of the Compendium of Gas Customer Licence Obligations, see cl49 ([online](#))

<sup>11</sup> Australian Government, YourHome, Heating and cooling ([online](#))

<sup>12</sup> Hot water systems | Australian Department of Climate Change, Energy, the Environment and Water ([online](#))

When gas is marketed to customers as cost-effective specifically because it is cheaper than electricity per unit delivered, this omits context about the lifecycle cost of energy that would help customers make an informed choice.

The GMCCC recognises the need for accurate comparison of the relative efficiency of electricity and gas usage. However, the GMCCC wants to avoid regulatory requirements for comparative marketing claims that create unnecessary overlap with the ACL and the Gas Compendium.

The ACL broadly prohibits marketing that is likely to be misleading or deceptive across all industries. Including comparative marketing in the Code would provide retail gas customers with more information to make an informed decision. Such regulation of comparative marketing in the retail energy sector would not be unique to Western Australia. The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing (Cap Code) has provisions requiring that:

- Marketing material must not mislead by omitting material information.
- Materials including comparisons must not mislead or be likely to mislead.
- Materials must objectively compare one or more identifiable feature.
- Comparisons with an unidentifiable competitor must not mislead or be likely to mislead.
- Elements of the comparison must not be selected to give the marketer an unrepresentative advantage.
- Price comparisons must make the basis of the comparison clear.
- Comparative 'environmental' claims such as "greener" or "friendlier" can be justified, for example, if the advertised product provides a total environmental benefit over that of the marketer's previous product or competitor products and the basis of the comparison is clear.<sup>13,14</sup>

The GMCCC supports a new clause in the Code that would require retailers to provide context to consumers when making comparative claims to consumers about gas and electricity. The clause should prevent marketers from making claims to customers about the cost, environmental, and other effects of gas use while omitting relevant or comparative information about electric equivalents.

### Recommendation 3

That a new subclause 7(3) be created to require retailers or marketing agents to provide the basis for any claims of efficiency or lower emissions.

These amendments should provide clarity to retailers, marketing agents, and customers by building on the principles-based approach of the ACL regarding misleading and deceptive conduct.

<sup>13</sup> The UK Code of Non-broadcast Advertising and Direct & Promotional Marketing ([online](#)) [Accessed 15 May 2024] cl3.3, 3.33, 3.35, 3.38, 3.39, 3.4, 11.3

<sup>14</sup> About the ASA and CAP ([online](#)) [Accessed 15 May 2024]

### 3. Other issues

This section outlines issues raised during the issues period that were considered by the GMCCC but have not led to a recommendation in this report.

#### 3.1 Duplication with Australian Consumer Law (ACL)

During the 2022 review of the Electricity Code, the consultative committee reviewing the electricity code recommended investigating and removing potential duplication with the ACL.<sup>15</sup>

When commencing the current review, the GMCCC discussed benefits and drawbacks of removing seemingly duplicate provisions between the Code and the ACL. The GMCCC identified clauses 5(1) and 6(1) – which address entering a standard form contract or non-standard contract - as potentially duplicate.

In its deliberations, the GMCCC noted that since the ACL is principles-based regulation and the Code contains specific obligations for licensees in the Western Australian retail gas market, that removing clauses may weaken overall customer protections.

The Code exists to protect small use customers from undesirable marketing conduct and to define standards of conduct for how gas is marketed to customers. The GMCCC's view is that clauses 5(1) and 6(1) are not duplicate and repealing them may lead to a weakening of customer protections for small use gas customers in Western Australia. The GMCCC was not able to identify substantive benefit to either customers or gas industry participants by removing the provisions.

#### 3.2 Cost information provided to customers

The ECP and GMCCC consumer representatives raised the adequacy of information that retailers provide to customers. Both suggested that gas retailers should be required to provide standardised information on retail products and offers, like other Australian jurisdictions.

Standardising information about retail products would make comparisons easier for consumers. Fact sheets are intended to be easily digestible and, in the case of Victoria, standardised by the regulator using information provided by each retailer.<sup>16</sup> This regulated presentation of information may help increase competition in the market if customers are better able to understand plan pricing and, therefore, change provider.

The GMCCC considered effects on stakeholders if such provisions were included in the Code. In particular, the change would impose costs on retailers and the State Government to establish the system necessary to generate the fact sheets, which must be weighed against any benefits that individual end users would see. The GMCCC considered examples of resources used in eastern states:

- The Victorian Government's [Energy Compare](#) website, and
- The Australian Energy Regulator's [Energy Made Easy](#) website.

<sup>15</sup> Economic Regulation Authority, 2023, review of the Code of Conduct for the Supply of Electricity to Small Use Customers ([online](#)).

<sup>16</sup> Essential Services Commission, 9 May 2019, "New rules help Victorians compare energy offers". ([online](#)).

The GMCCC noted that, although it was unclear whether these were the types of resource the ECP would like to see, such resources are expensive for governments and industry to develop and maintain.

A desktop review of current gas retail offers suggests customers do not have issues identifying the best tariff available to them. With relatively few competitors in the WA market and gas usage charges for small use customers regulated by the state government, the GMCCC considers the costs of developing fact sheet-style information to be high, but the benefit to consumers to be low.

### **3.3 Extending record keeping requirements**

The GMCCC considered whether changes should be made to record-keeping requirements in the Code, so that they align with requirements in other legal instruments customers might be more familiar with. The Code currently requires marketing records to be kept for at least two years.

Clause 13 of the Code requires that any records to be kept under the Code must be kept for at least two years from the last point of contact between a marketer and a person who is contacted.

The ECP noted that most other records consumers will be familiar with – such as the records of a government agency or record keeping under Commonwealth legislation – must be kept for five or seven years.

Where a customer is left financially worse off because of the actions of the retailer, those financial records are kept for longer periods, allowing time for a customer to resolve their issue. The Code's record-keeping requirements relate specifically to marketing conduct and so the GMCCC does not identify any material benefit to consumers by extending the period for keeping these records.

### **3.4 Adjusting non-compliance penalties**

The ECP noted that penalties for non-compliance with the Code have not changed in recent years despite periods of higher inflation. The ECP suggested that these be increased, and that indexing would allow penalties to keep up with inflation.

Current penalties in the Code are set in clause 10 at \$5,000 for individuals and \$20,000 for corporations. The GMCCC considers that it would be reasonable to adjust monetary penalties in line with inflation, however, current penalties are the maximum allowed under the Act.

The GMCCC notes that licensees that breach the Code are subject to the Act's enforcement provisions, which allow for significantly higher penalties.

## Appendix 1 – Minor changes to align with electricity code

Clause	Issue	Proposed Amendment
3 Terms used	Amend definitions to align with Electricity Code cl 3.	<p><b>contact</b> means contact that is —</p> <p>(c) by post <del>or facsimile</del>; or</p> <p><del><b>distributor, in relation to a small-use customer who has entered into a contract,</b></del> means <del>the a</del> person who holds <del>the a</del> distribution licence under Part 2A of the Act <del>for the system through which gas is supplied to the customer under the contract;</del></p> <p><b>gas marketing agent</b> —</p> <p>(c) does not include a customer representative <del>or the Housing Authority;</del></p>
6 Entering into a non-standard contract	Amend cl 6(2) to align with Electricity Code cl 10(2).	<p>(2) Before <del>a retailer enters</del> <del>entering</del> into a non-standard contract with a small use customer, a retailer or a gas marketing agent must give the small use customer the following information —</p> <p>(b) <del>details of</del> the difference between the non-standard contract and the standard form contract;</p>
	Amend cl 6(3)(e). 'Network operator' is not a defined term.	<p>(e) the <del>network operator's</del> <del>distributor's</del> 24-hour telephone number for faults and emergencies;</p>
8 Contact for purposes of marketing	Amend cl 8(1) to align with Electricity Code cl 12(1).	<p>(1) A retailer or gas marketing agent who contacts a small use customer for the purposes of marketing must, on request by the customer, provide <del>the customer with</del> —</p> <p>(a) <del>the customer with</del> the complaints telephone number of the retailer on whose behalf the contact is being made; and</p> <p>(b) the <del>customer with the telephone number of</del> <del>contact details</del> <del>for</del> the gas industry ombudsman; and</p> <p>(c) in the case of <del>contact by</del> a gas marketing agent — <del>the customer—with</del> the gas marketing agent's marketing identification number.</p>
	Amend cl 8(2)(a)(iii) to align with Electricity Code cl 12(2)(a)(iii).	<p>(iii) in the case of a gas marketing agent — the <del>gas marketing agent's</del> marketing identification number; and</p>
	Amend cl 8(2)(b)(ii) & (vi) to align with Electricity Code cl 12(2)(b)(ii) & (vi).	<p>(ii) in the case of a gas marketing agent — the <del>gas marketing agent's</del> marketing identification number;</p> <p>(vi) the <del>customer with the telephone number of</del> <del>contact details</del> <del>for</del> the gas industry ombudsman.</p>
	Amend cl 8(3) to align with Electricity Code cl 12(3).	<p>(3) A retailer or gas marketing agent must comply with a request under subclause (2)(b) as soon as practicable after it is made <del>by</del> <del>the customer.</del></p>

## **Appendix 2 – Gas Marketing Code of Conduct 2022**

[available online at [Gazette 90 of 2022 \(legislation.wa.gov.au\)](https://legislation.wa.gov.au/Gazette/2022/90) ]