ENERGY COORDINATION ACT 1994

GAS MARKETING CODE OF CONDUCT 2015

The Economic Regulation Authority—

(a) repeals the “Gas Marketing Code of Conduct 2014” gazetted 6 December 2013 (No. 215), which repeal is to take effect on 1 July 2015;

(b) approves the “Gas Marketing Code of Conduct 2015”, gazetted 3 June 2015 (No. 83); and

(c) prescribes 1 July 2015 as the date on which the “Gas Marketing Code of Conduct 2015”, gazetted 3 June 2015 (No. 83) comes into operation, pursuant to section 11ZPM (Part 2C) of the Energy Coordination Act 1994.

Dr STEPHEN KING, Chairman, Economic Regulation Authority.
ENERGY COORDINATION ACT 1994

GAS MARKETING CODE OF CONDUCT 2015

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ENERGY COORDINATION ACT 1994

GAS MARKETING CODE OF CONDUCT 2015

PART 1—PRELIMINARY

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

1.2 Authority
This Code is made pursuant to Part 2C of the Act.

1.3 Commencement
The Code comes into operation upon the day prescribed by the Authority.

1.4 Interpretation
(1) Headings and notes are for convenience or information only and do not affect the interpretation of the Code or of any term or condition set out in the Code.
(2) An expression importing a natural person includes any company, partnership, trust, joint venture, association, corporation or other body corporate and any governmental agency and vice versa.
(3) A reference to a document or a provision of a document includes an amendment or supplement to, or replacement of or novation of, that document or that provision of that document.
(4) A reference to a person includes that person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns.
(5) Other parts of speech and grammatical forms of a word or phrase defined in the Code have a corresponding meaning.
(6) A reference to a gas marketing agent 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—
“alternative tariff” means a tariff other than the tariff under which the customer is currently supplied gas.
“Authority” means the Economic Regulation Authority established under the Economic Regulation Authority Act 2003.
“basic living needs” includes—
(a) rent or mortgage;
(b) other utilities (e.g. electricity, phone and water);
(c) food and groceries;
(d) transport (including petrol and car expenses);
(e) childcare and school fees;
(f) clothing; and
(g) medical and dental expenses.
“business day” means any day except a Saturday, Sunday or public holiday.
“change in personal circumstances” includes—
(a) sudden and unexpected disability, illness of or injury to the residential customer or a dependant of the residential customer;
(b) loss of or damage to property of the residential customer; or
(c) other similar unforeseeable circumstances arising as a result of events beyond the control of the residential customer.
“Code” means this Gas Marketing Code of Conduct 2014 as amended by the Authority.
“Compendium” means the Compendium of Gas Customer Licence Obligations.
“complaint” means an expression of dissatisfaction made to an organisation, related to its products or services, or the complaints-handling process itself where a response or resolution is explicitly or implicitly expected.

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

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

“contract” means a standard form contract or a non-standard contract:

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

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

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

“door to door marketing” means the marketing practice under which—

(a) the retailer or gas marketing agent goes from place to place seeking out persons who may be prepared to enter, as customers, into contracts; and

(b) the retailer or the gas marketing agent or some other gas marketing agent then or subsequently enters into negotiations with those prospective customers with a view to arranging contracts on behalf of, or for the benefit of, the retailer or party other than the customer.

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

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

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

(a) information on the properties of gas relevant to its use by customers;

(b) a notice of the requirement for proper installation and use of approved appliances and equipment;

(c) a notice of the requirement to use only qualified trade persons for gas connection and appliance and equipment installation;

(d) the proper procedure for the reporting of gas leaks or appliance or equipment defects; and

(e) safety procedures to be followed and the appropriate telephone number to call in case of emergency.

“gas marketing agent” means—

(a) a person who acts on behalf of a retailer—

(i) for the purpose of obtaining new customers for the licensee; or

(ii) in dealings with existing customers in relation to contracts for the supply of gas by the licensee; or

(b) a representative, agent or employee of a person referred to in paragraph (a).

(c) not a person who is a customer representative.

“gas ombudsman” means the ombudsman appointed under the scheme approved by the Authority pursuant to section 11ZPZ of the Act.

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

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

(a) negotiations for, or dealings in respect of, a contract for the supply of gas to a customer; or

(b) advertising, promotion, market research or public relations in relation to the supply of gas to customers.

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

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

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

“premises” means premises owned or occupied by a new or existing customer.

“public holiday” means a public holiday in Western Australia.

“residential customer” means a customer who consumes gas solely for domestic use.
"retailer" means a person who holds a trading licence under Part 2A of the Act.

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

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

"TTY" means teletypewriter.

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

"verifiable consent" means consent that is given—

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

1.6 Application

The Code applies to—

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

1.7 Purpose

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

[Note: This Code is not the only compliance obligation in relation to marketing. Other State and Federal laws apply to marketing activities including, but not limited to, the Fair Trading Act 2010 (WA), the Spam Act 2003 (Cth), the Spam Regulations 2004 (Cth), the Do Not Call Register Act 2006 (Cth), the Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007 (Cth) and the Privacy Act 1988 (Cth).]

1.8 Objectives

The objectives of the Code are to—

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

1.9 Amendment and Review

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

PART 2—MARKETING

Division 1—Obligations particular to retailers

2.1 Retailers to ensure representatives comply with this Part

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

Division 2—Contracts and information to be provided to customers

2.2 Entering into a standard form contract

(1) When entering into a standard form contract that is not an unsolicited consumer agreement, a retailer or gas marketing agent must—

(a) record the date the standard form contract was entered into;
(b) give, or make available to the customer at no charge, a copy of the standard form contract—

(i) at the time the standard form contract is entered into, if the standard form contract was not entered into over the telephone; or
(ii) as soon as possible, but not more than 5 business days after the standard form contract was entered into, if the standard form contract was entered into over the telephone.

(2) Subject to subclause (3), a retailer or gas marketing agent must give the following information to a customer no later than on or with the customer’s first bill—

(a) how the customer may obtain—

(i) a copy of the Code and Compendium; and
(ii) details on all relevant tariffs, fees, charges, alternative tariffs and service levels that may apply to the customer;

(b) the scope of the Code;

(c) that a retailer and gas marketing agent must comply with the Code;
(d) how the retailer may assist if the customer is experiencing payment difficulties or financial hardship;
(e) with respect to a residential customer, the concessions that may apply to the residential customer;
(f) the distributor’s 24 hour telephone number for faults and emergencies;
(g) with respect to a residential customer, how the residential customer may access the retailer’s—
   (i) multi-lingual services (in languages reflective of the retailer’s customer base); and
   (ii) TTY services;
(h) how to make an enquiry of, or complaint to, the retailer; and
(i) general information on the retailer’s gas customer safety awareness program.

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

2.3 Entering into a non-standard contract
(1) When entering into a non-standard contract that is not an unsolicited consumer agreement, a retailer or gas marketing agent must—
   (a) obtain and make a record of the customer’s verifiable consent that the non-standard contract has been entered into, and
   (b) give, or make available to the customer at no charge, a copy of the non-standard contract—
      (i) at the time the non-standard contract is entered into, if the non-standard contract was not entered into over the telephone; or
      (ii) as soon as possible, but not more than 5 business days after the non-standard contract was entered into, if the non-standard contract was entered into over the telephone.

(2) Before entering into a non-standard contract, a retailer or gas marketing agent must give the customer the following information—
   (a) that the customer is able to choose the standard form contract offered by the retailer,
   (b) the difference between the non-standard contract and the standard form contract;
   (c) details of any right the customer may have to rescind the non-standard contract during a cooling-off period and the charges that may apply if the customer rescinds the non-standard contract;
   (d) how the customer may obtain—
      (i) a copy of the Code and the Compendium; and
      (ii) details on all relevant tariffs, fees, charges, alternative tariffs and service levels that may apply to the customer,
   (e) the scope of the Code;
   (f) that a retailer and gas marketing agent must comply with the Code;
   (g) how the retailer may assist if the customer is experiencing payment difficulties or financial hardship;
   (h) with respect to a residential customer, the concessions that may apply to the residential customer;
   (i) the distributor’s 24 hour telephone number for faults and emergencies;
   (j) with respect to a residential customer, how the residential customer may access the retailer’s—
      (i) multi-lingual services (in languages reflective of the retailer’s customer base); and
      (ii) TTY services;
   (k) how to make an enquiry of, or complaint to, the retailer; and
   (l) general information on the retailer’s gas customer safety awareness program.

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

(4) Subject to subclause (3), the retailer or gas marketing agent must obtain the customer’s verifiable consent that the information in clause 2.3(2) has been given.
2.4 Standards of conduct
(1) A retailer or gas marketing agent must ensure that the inclusion of concessions is made clear to residential customers and any prices that exclude concessions are disclosed.

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

2.5 Contact for the purposes of marketing
(1) A retailer or gas marketing agent who makes contact with a customer for the purposes of marketing must, on request by the customer—
(a) provide the customer with the complaints telephone number of the retailer on whose behalf the contact is being made;
(b) provide the customer with the telephone number of the gas ombudsman; and
(c) for contact by a gas marketing agent, provide the customer with the gas marketing agent’s marketing identification number.

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

2.6 No canvassing or advertising signs
A retailer or gas marketing agent who visits a person’s premises for the purposes of marketing must comply with any clearly visible signs at a person’s premises indicating—
(a) canvassing is not permitted at the premises; or
(b) no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at, or associated with, the premises.

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.]