ENERGY COORDINATION ACT 1994

GAS MARKETING
CODE OF CONDUCT 2008
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The Economic Regulation Authority has approved the *Gas Marketing Code of Conduct 2008* under section 11ZPM(1) of the *Energy Coordination Act 1994*.

LYNDON G. ROWE, Chairman,
Economic Regulation Authority.

### PART 1—PRELIMINARY

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

**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**

1.6 A reference to *marketing representative* arranging a *contract* is to be read as a reference to *marketing representative* entering into the *contract* on the *marketer’s* behalf, or arranging the *contract* on behalf of another person (whichever is relevant).

1.7 A reference to an act carried out on behalf of a *marketer* is a reference to that act being carried out by a *marketing representative* of the *marketer*.

**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.

“*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.

“*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
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 as amended by the Authority.

“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.

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

“cooling-off period” in relation to a door to door contract or non-standard contract means the period of 10 days commencing on and including the day on which the contract is made.

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

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

“Customer Service Charter” means the customer service charter that the retailer is required to prepare as a condition of its trading licence.

“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) a marketing representative—
(i) goes from place to place;
(ii) makes telephone calls; or
(iii) uses electronic means,
seeking out persons who may be prepared to enter, as customers, into contracts; and

(b) the marketing representative or some other marketing representative then or subsequently enters into negotiations with those prospective customers with a view to arranging contracts.

“electronic means” means the internet, email, facsimile or other similar means but does not include telephone.

“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 programme” means a programme 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 the holder of a trading licence—
(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;

(b) a person who acts—
(i) on behalf of one or more customers; or
(ii) as an intermediary between one or more customers and a licensee,
in respect of the supply of gas to the customer or customers; and
(c) a representative, agent or employee of a person referred to in paragraph (a) or (b).

“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.]
“marketer” means—
(a) a retailer who engages in marketing; or
(b) a gas marketing agent, other than a marketing representative.

“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 an unique number assigned by a marketer to each marketing representative acting on its behalf.

“marketing representative” means—
(a) a person who is referred to in paragraph (a) of the definition of gas marketing agent and who is an employee of a retailer; or
(b) a representative, agent or employee of a person in paragraph (a).

“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.

“permitted call times” are—
(a) for the purposes of telephone and personal contact other than at customers premises between—
(i) 9.00 a.m. and 8.00 p.m. Mondays to Fridays (other than public holidays); and
(ii) 9.00 a.m. and 5.00 p.m. Saturdays;
(b) for the purposes of contact at customers premises between—
(i) 9.00 a.m. and 7.00 p.m. Mondays to Fridays (other than public holidays); and
(ii) 9.00 a.m. and 5.00 p.m. Saturdays.

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

“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.

“TTY” means telephone typewriter.

“verifiable consent” means consent that is given—
(a) expressly;
(b) in writing or orally;
(c) after the marketer or retailer (as appropriate) 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) customers;
(b) retailers;
(c) distributors; and
(d) gas marketing agents.

1.7 Purpose
The Code regulates and controls the conduct of gas marketing agents, retailers and distributors.

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

PART 2—MARKETING
Division 1—Obligations particular to marketers

2.1 Marketers to ensure representatives comply with this Part
A marketer must ensure that its marketing representatives comply with this Part.
2.2 Entering into contracts

(1) A marketer must, in the course of arranging a standard form contract that is entered into as a result of door to door marketing or a non-standard contract other than in accordance with subclause (2), ensure that the contract is signed by the customer.

[Note: Under the Electronic Transactions Act 2003, any documents or signatures that must be provided under the Code may also be provided electronically (subject to the terms and conditions set out in the Electronic Transactions Act 2003).]

(2) If a customer initiates a request to a marketer or retailer by telephone or by electronic means for a non-standard contract the contract need not be signed but the marketer or retailer must obtain and make a record of the customer’s verifiable consent that the contract has been entered into.

(3) A standard form contract that is not entered into as a result of door to door marketing need not be signed by the customer but the date of the customer entering into the standard form contract must be recorded by the marketing representative.

(4) The terms and conditions of a standard form contract that is not entered into as a result of door to door marketing must be made available to the customer on request at no charge.

(5) A contract is entered into as a result of door to door marketing if the following conditions are satisfied—

(a) negotiations leading to the formation of the contract (whether or not they are the only negotiations that precede the formation of the contract) take place between the marketing representative and the customer in each other’s presence in Western Australia at a place other than trade premises of the marketer; and

(b) the marketing representative attends at that place—

(i) in the course of door to door marketing; and

(ii) otherwise than at the unsolicited invitation of the customer.

(6) For the purposes of subclause (5)(b), in determining whether an invitation is solicited or unsolicited—

(a) any solicitation by way of advertisement addressed to the public or a substantial section of the public is to be disregarded; but

(b) if an invitation arises from a communication initiated by the marketing representative (other than as described in paragraph (a)) the invitation is not to be regarded as unsolicited.

2.3 Information to be given before entering into a contract

(1) Before arranging a contract, a marketing representative must give a customer the following information—

(a) that the customer is free to choose the standard form contract offered by the retailer;

(b) the difference between a standard form contract and a non-standard contract;

(c) how and when the terms of the contract will be given or made available to the customer; and

(d) that the customer is entitled to a written copy of the contract when requested.

(2) For a standard form contract that is not entered into as a result of door to door marketing or a non-standard contract in accordance with clause 2.2(2) above, the marketing representative must obtain and make a record of the customer’s verifiable consent that the information in subclause (1) has been given.

(3) For a standard form contract that is entered into as a result of door to door marketing or a non-standard contract other than in accordance with clause 2.2(2) above, the marketing representative must obtain the customer’s written acknowledgement that the information in subclause (1) has been given.

2.4 Information to be given at time of or after entering into a contract

(1) When a customer enters into a new contract with a retailer, a retailer or marketer must, at the time the contract is entered into, offer to give or make available to the customer a copy of the contract. If the customer accepts the offer, the retailer or marketer must, at the time the contract is entered into, or as soon as possible thereafter, give or make available to the customer a copy of the contract.

(2) A retailer or marketing representative must give the following information to a customer—

(a) how the customer may obtain—

(i) a copy of the retailer’s Customer Service Charter;

(ii) a copy of the Code; and

(iii) 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, distributor, marketer and marketing representative must comply with the Code;
(d) how the retailer may assist if the customer is experiencing payment difficulties or financial hardship;
(e) the concessions that may apply to the customer;
(f) the distributor’s 24 hour telephone number for faults and emergencies;
(g) how the 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;
(i) general information on the retailer’s gas customer safety awareness programme; and
(j) the details of any right the customer may have to rescind the contract during a cooling-off period and the charges that may apply if the customer rescinds the contract.

(3) For a standard form contract that is not entered into as a result of door to door marketing—

(a) the information in subclause (1) must be given no later than with or on the customer’s first bill; and
(b) if requested by the customer and, if the customer has not previously been provided a copy of the contract, a copy of the contract at no charge to the customer.

(4) For a standard form contract that is entered into as a result of door to door marketing or a non-standard contract—

(a) the information in subclause (1) and a copy of the contract must be given before the customer has entered into the contract;
(b) the marketing representative must obtain the customer’s written acknowledgement that the information in subclause (1) has been given.

Division 4—Marketing Conduct

2.5 Standards of Conduct

(1) A marketing representative must not, when marketing, engage in conduct that is misleading, deceptive or likely to mislead or deceive or that is unconscionable.
(2) A marketing representative must not exert undue pressure on a customer, nor harass or coerce a customer.
(3) A marketing representative must ensure that the inclusion of concessions is made clear to customers and any prices that exclude concessions are disclosed.
(4) A marketing representative must ensure that all standard form contracts that are entered into as a result of door to door marketing and all non-standard contracts are in writing.
(5) A marketer must ensure that a customer is able to contact the marketer on the marketer’s telephone number during the normal business hours of the marketer for the purposes of enquiries, verifications and complaints.

2.6 Contact for the purposes of marketing

(1) A marketing representative who makes contact with a customer for the purposes of marketing (other than meeting with a customer face to face) must, as soon as practicable, tell the customer—
   (a) his or her first name;
   (b) the name of the marketer, and if different, of the retailer on whose behalf the contact is being made; and
   (c) the purpose of the contact;

and, after having identified the purpose of the contact, if the contact is not by electronic means, ask if the customer wishes to proceed further.

(2) A marketing representative 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 marketer and, if different, of the retailer on whose behalf the contact is being made; and
   (b) provide the customer with the marketer’s marketing identification number.

(3) A marketing representative who meets with a customer face to face for the purposes of marketing must—
   (a) as soon as practicable, tell the customer the purpose of the contact,
   (b) 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; and
      (iv) the name of the marketer and, if different, of the retailer on whose behalf the contact is being made; and
(c) as soon as practicable, provide the customer, in writing—
   (i) his or her first name;
   (ii) his or her marketing identification number;
   (iii) the name of the marketer and, if different, of the retailer on whose behalf the contact is being made;
   (iv) the complaints telephone number of the marketer and, if different, of the retailer on whose behalf the contact is being made; and
   (v) the marketer’s business address and Australian Business or Company Number.

(4) If, when a marketing representative makes contact with a customer for the purposes of marketing, the customer indicates that he or she wishes the contact to end, the marketing representative must—
   (a) end the contact as soon as practicable; and
   (b) not attempt to contact the customer for the purposes of marketing for the next 30 days unless the customer agrees otherwise.

(5) Unless requested by the customer, a marketing representative must not make contact with a customer for the purposes of marketing outside the permitted call times, unless the contact is by electronic means or the contact arises outside the customer’s premises in circumstances where the customer initiates contact with the marketing representative.

(6) A marketing representative must ensure that contact for the purposes of marketing does not continue for more than 15 minutes past the end of the permitted call times without the customer’s verifiable consent unless the contact is by electronic means.

(7) A marketer must keep the following records each time it initiates contact with a customer for the purposes of marketing—
   (a) the name of the customer and—
      (i) if the contact was made by telephone, the telephone number;
      (ii) if the contact was made at the customer’s premises, the address of the premises;
      (iii) if the contact was made at a place other than the customer’s premises, the details and address of the location; and
      (iv) if the contact was made by electronic means, the email address or facsimile number of the customer;
   (b) the name of the marketing representative who made the contact; and
   (c) the date and time of the contact.

(8) Clause 2.6(7) does not apply where a marketer contacts a customer in response to a customer request or query.

2.7 Conduct when a customer does not wish to be contacted

(1) If a customer who has been contacted by a marketing representative for the purposes of marketing requests not to be contacted again on behalf of the marketer, the marketer must ensure that the customer is not contacted on behalf of the marketer in relation to the supply of gas by the retailer for whom the marketing was carried out for the next 2 years unless—
   (a) the customer requests contact; or
   (b) the customer has moved premises; or
   (c) a marketer has a legal obligation to contact the customer.

(2) A marketer must keep a record of each customer who has requested not to be contacted (as described in subclause (1)) that includes the name, address and telephone number of the customer at the time the customer made that request.

(3) A marketer must give a copy of the record to the gas ombudsman or the Authority on request.

(4) A marketer must provide the customer on request with written confirmation that the customer will not be contacted by or on behalf of the marketer in relation to the supply of gas by the retailer for whom the marketing was carried out for the next 2 years.

(5) When engaging in door to door marketing, a marketing representative must, to the extent practicable, comply with a notice on or near a premises indicating that the customer does not wish to receive unsolicited mail or other marketing information.

Division 5—Miscellaneous

2.8 Collection and use of personal information

A retailer and a marketer must comply with the National Privacy Principles as set out in the Privacy Act 1998 in relation to information collected under this Part.

2.9 Not Used

2.10 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.
2.11 Marketer complaints

(1) A marketer 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 marketer;

(b) on request by the gas ombudsman in relation to a particular complaint, give to the gas ombudsman all information that the marketer has relating to the complaint.

(2) A record or other information that a marketer 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 marketer.