ENGLISH COORDINATION ACT 1994

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GAS MARKETING CODE OF CONDUCT 2012

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The Economic Regulation Authority—

(a) repeals the “Gas Marketing Code of Conduct 2004” and the “Gas Marketing Code of Conduct 2008”, which repeal is to take effect on 1 July 2012;
(b) approves the “Gas Marketing Code of Conduct 2012” as set out below; and
(c) prescribes 1 July 2012 as the date on which the “Gas Marketing Code of Conduct 2012” comes into operation,
pursuant to section 11ZPM of the Energy Coordination Act 1994.

LYNDON G. ROWE, Chairman,
Economic Regulation Authority.
ENERGY COORDINATION ACT 1994

GAS MARKETING CODE OF CONDUCT 2012

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PART 1—PRELIMINARY

1.1 Title
The \textit{Code} may be cited as the \textit{Gas Marketing Code of Conduct 2012}.

1.2 Authority
This \textit{Code} is made pursuant to Part 2C of the \textit{Act}.

1.3 Commencement
The \textit{Code} comes into operation upon the day prescribed by the \textit{Authority}.

1.4 Interpretation
(1) Headings and notes are for convenience or information only and do not affect the interpretation of the \textit{Code} or of any term or condition set out in the \textit{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 \textit{Code} have a corresponding meaning.

(6) A reference to a \textit{gas marketing agent} arranging a \textit{contract} is to be read as a reference to a \textit{gas marketing agent} entering into the \textit{contract} on the \textit{retailer’s} or \textit{customer’s} behalf, or arranging the \textit{contract} on behalf of another person (whichever is relevant).

1.5 Definitions
In the \textit{Code}, unless the contrary intention appears—

“\textit{Act}” means the \textit{Energy Coordination Act 1994}.

“\textit{alternative tariff}” means a tariff other than the tariff under which the \textit{customer} is currently supplied gas.

“\textit{Australian Consumer Law (WA)}” means schedule 2 to the \textit{Competition and Consumer Act 2010 (Cth)} as modified by section 36 of the \textit{Fair Trading Act (WA) 2010}.

“\textit{Authority}” means the Economic Regulation Authority established under the \textit{Economic Regulation Authority Act 2003}.

“\textit{basic living needs}” includes—

\begin{itemize}
\item[(a)] rent or mortgage;
\item[(b)] other utilities (e.g. electricity, phone and water);
\item[(c)] food and groceries;
\item[(d)] transport (including petrol and car expenses);
\item[(e)] childcare and school fees;
\item[(f)] clothing; and
\item[(g)] medical and dental expenses.
\end{itemize}

“\textit{change in personal circumstances}” includes—

\begin{itemize}
\item[(a)] sudden and unexpected disability, illness of or injury to the \textit{residential customer} or a dependant of the \textit{residential customer};
\item[(b)] loss of or damage to property of the \textit{residential customer}; or
\item[(c)] other similar unforeseeable circumstances arising as a result of events beyond the control of the \textit{residential customer}.
\end{itemize}

“\textit{Code}” means this \textit{Gas Marketing Code of Conduct 2012} as amended by the \textit{Authority}.

“\textit{Compendium}” means the Compendium of Gas Customer Licence Obligations.

“\textit{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.

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

“\textit{contact}” means contact that is face to face, by \textit{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 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 of gas per annum.
“distributor” means a person who holds a distribution licence under Part 2A of the Act.
“Do Not Call Register Act” means the Do Not Call Register Act 2006 (Cth).
“door to door marketing” means the marketing practice under which—
(a) a gas marketing agent goes from place to place seeking out persons who may be prepared to enter, as customers, into contracts; and
(b) 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, a 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 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; 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 or other party 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.
“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.
“telemarketing calls” is defined in section 5 of the Do Not Call Register Act.
“telephone” means a device which is used to transmit and receive voice frequency signals.
“TTY” means telephone typewriter.
“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) 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.

[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 *Australian Consumer Law (WA)*, the *Spam Act 2003* (Cth), the *Spam Regulations 2004* (Cth), the *Do Not Call Register Act*, the *Telecommunications Industry Standard 2007* 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**

2.2 Entering into contracts
(1) A gas marketing agent must, in the course of arranging 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 retailer or gas marketing agent for a non-standard contract the contract need not be signed but the retailer or gas marketing agent must obtain and make a record of the customer’s verifiable consent that the contract has been entered into.

(3) A standard form contract need not be signed by the customer but the date of the customer entering into the standard form contract must be recorded by the gas marketing agent.

(4) The terms and conditions of a standard form contract must be made available to the customer on request at no charge.

(5) Clauses 2.2(1) to (4) inclusive do not apply in relation to contracts that are unsolicited consumer agreements.

**Division 3—Information to be provided to customers**

2.3 Information to be given before entering into a contract
(1) Before arranging a contract, a gas marketing agent 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 an **unsolicited consumer agreement** or for a **non-standard contract** in accordance with clause 2.2(2) above, the **gas marketing agent** 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 an **unsolicited consumer agreement** or a **non-standard contract** other than in accordance with clause 2.2(2) above, the **gas marketing agent** must obtain the **customer's written acknowledgement** that the information in subclause (1) has been given.

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

(1) When a **customer** enters into a new **contract** that is not an **unsolicited consumer agreement** with a **retailer** or **gas marketing agent**, a **retailer** or **gas marketing agent** 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 **gas marketing agent** must, at the time the **contract** is entered into, or as soon as possible thereafter, but no more than 28 days later, give or make available to the **customer** a copy of the **contract**.

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

   - (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**, **distributor** 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**;
   - (i) general information on the **retailer's gas customer safety awareness program**; and
   - (j) for agreements that are not **unsolicited consumer agreements**, 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) Subject to subclause (4), the information in subclause (2) must be given—

   - (a) for a **standard form contract**, no later than with or on the **customer's first bill**; and
   - (b) for a **non standard form contract** or a **standard form contract** that is an **unsolicited consumer agreement**, before the **customer** has entered into the **contract** and the **gas marketing agent** must obtain the **customer's written acknowledgement** that the information in subclause (2) has been given.

(4) Despite subclause (3), the **retailer** is not obliged to provide the information in subclause (2) to a **customer** if—

   - (a) the **retailer** has provided the information to that **customer** within the preceding 12 months; or
   - (b) when the **retailer** is obliged to provide the information to the **customer** pursuant to subclause (3), the **retailer** informs the **customer** how the **customer** may obtain the information in subclause (2) and, if requested, gives the information to the **customer**.

#### Division 4—Marketing conduct

(1) A **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 **gas marketing agent** must ensure that all **non-standard contracts** that are not **unsolicited consumer agreements** are in writing.

(3) A **retailer** or other party must ensure that a **customer** is able to **contact** the **retailer** or other party on the **retailer's** or other party's **telephone** number during the normal business hours of the **retailer** or other party for the purposes of enquiries, verifications and **complaints**.

#### 2.6 Contact for the purposes of marketing

(1) A **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** or other party on whose behalf the **contact** is being made; and
   - (b) provide the **customer** with the **gas marketing agent’s marketing identification number**.
(2) A gas marketing agent who meets with a customer face to face for the purposes of marketing must—
   (a) when negotiating a contract that is not an unsolicited consumer agreement, 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 retailer or other party 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 retailer or other party on whose behalf the contact is being made;
      (iv) the complaints telephone number of the retailer or other party on whose behalf the contact is being made; and
      (v) the business address and Australian Business or Company Number of the retailer or other party on whose behalf the contact is being made.

(3) A retailer or other party 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; and
      (iii) if the contact was made at a place other than the customer's premises, the details and address of the location;
   (b) the name of the gas marketing agent who made the contact; and
   (c) the date and time of the contact.

(4) Clause 2.6(3) does not apply where a gas marketing agent contacts a customer in response to a customer request or query.

2.7 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.

2.8 Gas marketing agent complaints
(1) 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) 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.