

Gas Marketing Code of Conduct 2004

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THE TEXT OF THE LEGISLATION FOLLOWS

Gas Marketing Code of Conduct 2004

CONTENTS

Part 1 — Introduction		
1.	Citation	1
2.	Commencement	1
3.	Terms used in this Code	1
4.	Status of notes	4
5.	Complying with this Code	4
6.	No contracting out of this Code	5
Part 2 — Obligations particular to responsible marketers		
7.	Responsible marketers to ensure representatives comply with this Code	6
8.	Training marketing representatives	6
9.	Written information must be easy to understand	7
10.	Information about complaints and compliance with this Code	7
11.	Records to be kept	8
12.	Contact details of marketers	8
Part 3 — Customer contracts		
13.	Entering into customer contracts	9
14.	Information to be given at time of entering into a customer contract	10
Part 4 — Marketing conduct		
15.	Misleading, deceptive or unconscionable conduct	13

Contents

16.	Marketing by telephone	13
17.	Marketing at a person's premises	14
18.	Marketing by personal contact other than at the person's premises	15
19.	Marketing by the internet or by email	16
20.	Conduct when a person does not wish to be contacted	17
Part 5 — Miscellaneous		
21.	Collection and use of personal information	18
22.	Dispute resolution	19
23.	Presumption of authority	19
Notes		
	Compilation table	21

Western Australia

Energy Coordination Act 1994
Energy Legislation Amendment Act 2003

Gas Marketing Code of Conduct 2004

Part 1 — Introduction

1. Citation

This Code may be cited as the *Gas Marketing Code of Conduct 2004*.

2. Commencement

This code comes into operation on the day on which section 31 of the *Energy Legislation Amendment Act 2003* comes into operation.

3. Terms used in this Code

(1) In this Code, unless the contrary intention appears —

“**business day**” means a day that is not a Saturday, Sunday or public holiday;

“**Code Administrator**” means the Economic Regulation Authority established under the *Economic Regulation Authority Act 2003*;

“**contact**” means contact that is face to face or by telephone, internet, email or post;

“**customer**” means a small use customer;

cl. 3

“customer contract” means an arrangement between a retail supplier and a customer for the supply of gas to the customer;

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

(a) a marketer —

(i) goes from place to place; or

(ii) makes telephone calls,

seeking out persons who may be prepared to enter, as customers, into customer contracts; and

(b) the marketer or some other marketer then or subsequently enters into negotiations with those prospective customers with a view to arranging customer contracts;

“gas industry ombudsman” has the meaning given to that term in section 11ZPZ of the *Energy Coordination Act 1994*;

“gas marketing agent” has the meaning given to the term in section 11ZPL of the *Energy Coordination Act 1994*;

“marketer” means a responsible marketer or 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;

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

“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 retail supplier; or
- (b) a person who is referred to in paragraph (d) of the definition of gas marketing agent;

“non-standard customer contract” means a customer contract that is a non-standard contract within the meaning of section 11WB of the *Energy Coordination Act 1994*;

“permitted call times” are between —

- (a) 9.00 a.m. and 8.00 p.m. Mondays to Fridays (other than public holidays); and
- (b) 9.00 a.m. and 5.00 p.m. Saturdays;

“personal information” means information or an opinion (including information or an opinion forming part of a database), whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

“premises”, in relation to an individual, means the individual’s dwelling or place of business or work;

“responsible marketer” means —

- (a) a retail supplier who engages in marketing; or
- (b) a gas marketing agent, other than a marketing representative;

“retail supplier” means a person who holds a trading licence which authorises the person to sell gas transported through a distribution system to small use customers;

“small use customer” means a customer whose consumption of gas is less than 1 terajoule per year;

“standard customer contract” means a customer contract that is a standard form contract within the meaning of section 11WB of the *Energy Coordination Act 1994*.

cl. 4

- (2) A reference to a marketer arranging a customer contract is to be read as a reference to the marketer entering into the contract on the marketer's own behalf, or arranging the contract on behalf of another person (which ever is relevant).
- (3) A reference to an act carried out on behalf of a responsible marketer is a reference to that act being carried out by a marketing representative of the responsible marketer.

Note: Many terms used in this Code are defined in the *Energy Coordination Act 1994*. Some definitions in the Act are repeated here for the convenience of readers.

4. Status of notes

Notes in this Code are provided to assist understanding and do not form part of the Code.

5. Complying with this Code

- (1) A responsible marketer (other than a retail supplier) who contravenes a provision of this Code commits an offence.

Penalty:

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

Note: Subclause (1) does not apply to retail suppliers as section 11ZPP of the *Energy Coordination Act 1994* has the effect that a breach of this Code by a retail supplier is a breach of the retail supplier's licence.

- (2) A marketing representative who contravenes a provision of this Code commits an offence.

Penalty: \$5 000.

- (3) If a gas marketing agent of a retail supplier contravenes a provision of this Code, the retail supplier commits an offence.

Penalty:

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

- (4) It is a defence to a prosecution for a contravention of subclause (3) if the retail supplier proves that the retail supplier took practicable measures to ensure that the gas marketing agent complied with this Code.

6. No contracting out of this Code

A marketer must not arrange a customer contract that purports to exclude, restrict or modify the effect of this Code.

Part 2 — Obligations particular to responsible marketers

7. Responsible marketers to ensure representatives comply with this Code

A responsible marketer must take practicable measures to ensure that marketing representatives of the responsible marketer comply with this Code.

8. Training marketing representatives

- (1) A responsible marketer must ensure that each marketing representative of the responsible marketer undertakes appropriate training and testing (both before starting marketing and on an ongoing basis) so that each marketing representative understands this Code and has the abilities, knowledge and understanding referred to in subclause (2).
- (2) The abilities, knowledge and understanding referred to in subclause (1) are —
 - (a) knowledge of the provisions of this Code;
 - (b) the ability to explain the arrangements for competition in gas supply for small use customers in Western Australia;
 - (c) knowledge of the product being marketed, including —
 - (i) tariffs, billing procedures and payment options; and
 - (ii) the requirements for eligibility for concessions, rebates or grants;
 - (d) knowledge of the retail supplier's obligations to customers experiencing financial hardship, including the availability of instalment payment plans;
 - (e) the ability to clearly explain the terms of each offer that may be made by a marketer in relation to a possible customer contract and to substantiate each claim made in relation to a possible customer contract;

- (f) knowledge of basic contractual rights, including the need for a customer's agreement to the terms of a customer contract;
 - (g) an understanding of what is conduct that is misleading, deceptive or likely to mislead or deceive or that is unconscionable;
 - (h) general knowledge of the principles of consumer protection law, including those in the *Trade Practices Act 1974* of the Commonwealth, the *Fair Trading Act 1987* and the *Door to Door Trading Act 1987*; and
 - (i) other similar abilities or knowledge that the Code Administrator may require.
- (3) A responsible marketer must ensure that each marketing representative of the responsible marketer is given a copy of this Code.

9. Written information must be easy to understand

A responsible marketer must ensure that any written information that must be given to a customer under this Code is expressed in clear, simple and concise language and is in a format that makes it easy to read.

10. Information about complaints and compliance with this Code

A responsible 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 responsible marketer;
- (b) on request by the gas industry ombudsman in relation to a particular complaint, give to the gas industry ombudsman information that this Code requires the responsible marketer to keep, and any other information

cl. 11

that the responsible marketer has, relating to the complaint; and

- (c) on request by the Code Administrator, give to the Code Administrator information that this Code requires the responsible marketer to keep, and any other information that the responsible marketer has, relating to compliance with this Code.

11. Records to be kept

A record or other information that a responsible 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 responsible marketer.

12. Contact details of marketers

- (1) A responsible marketer must give the responsible marketer's contact details to the Code Administrator and ensure that those details are kept up to date.
- (2) The contact details are —
 - (a) the name, business address and telephone number of the responsible marketer and the name, street address of the place of work and telephone number of each marketing representative of the responsible marketer;
 - (b) the name, address and telephone number of each retail supplier (if any) for whom the responsible marketer carries out marketing.

Part 3 — Customer contracts

13. Entering into customer contracts

- (1) A marketer must, in the course of arranging a non-standard customer contract or a standard customer contract that is entered into as a result of door to door marketing, ensure that the contract is signed by the customer.
- (2) A standard customer contract that is not entered into as a result of door to door marketing need not be signed by the customer but the fact and the time of the consent of the customer must be recorded by the marketer.
- (3) The terms and conditions of a standard customer contract that is not entered into as a result of door to door marketing must be available to the customer on request at no charge.
- (4) 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 marketer and the customer in each other's presence in Western Australia at a place other than trade premises of the marketer;
 - (b) the marketer attends at that place —
 - (i) in the course of door to door marketing; and
 - (ii) otherwise than at the unsolicited invitation of the consumer.
- (5) For the purposes of subclause (4)(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

cl. 14

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

14. Information to be given at time of entering into a customer contract

- (1) Before arranging a customer contract a marketer must give the customer the following information —
 - (a) that the customer is free to choose the standard customer contract offered by the retail supplier;
 - (b) how and when the terms of the customer contract will be given to the customer;
 - (c) the name of the marketer, and the name, address and telephone number of the responsible marketer and of the retail supplier.
- (2) The marketer must also give the following information to the customer —
 - (a) the terms of the customer contract including —
 - (i) the type and frequency of bills the customer will receive;
 - (ii) the relevant prices, charges, tariffs and service levels that will apply to the customer; and
 - (iii) the payment methods and options available to the customer;
 - (b) the details of any energy assistance schemes which may be available to the customer;
 - (c) the details of any right the customer may have to rescind the customer contract during a cooling-off period and the charges that may apply if the customer rescinds the contract;
 - (d) how to make an enquiry of or complaint to the responsible marketer or the gas industry ombudsman, and a copy of the complaint handling and dispute

- resolution procedures of the responsible marketer if the customer requests one;
- (e) that a marketer must comply with this Code and the general scope of this Code, and a copy of this Code if the customers requests one.
- (3) For a standard customer contract that is not entered into as a result of door to door marketing —
- (a) the information in subclause (2) may be given before the customer enters into the contract, but must, if not given before, be posted to the customer within 2 business days after the day on which the customer entered into the contract or be given by some other quicker means; and
 - (b) the marketer must obtain and make a record of the customer's acknowledgment that the information that must be given before the customer enters into the contract (under subclause (1)) has been given.
- (4) For a non-standard customer contract or a standard customer contract that is entered into as a result of door to door marketing —
- (a) the information in subclause (2) must be given before the customer enters into the contract; and
 - (b) the marketer must obtain the customer's written acknowledgment that the information that must be given before the customer enters into the contract (under subclause (1) and (2)) has been given.
- (5) If a customer contract is subject to a cooling-off period the marketer must inform the customer that —
- (a) if gas is supplied to the customer before the end of the cooling-off period; and
 - (b) if the customer rescinds the contract during that period,
- the customer will be liable for the gas and any other services supplied to the customer, and any other charges in accordance with the contract.

cl. 14

Note: A non-standard customer contract or a standard customer contract that is entered into as a result of door to door marketing has a cooling-off period of 10 days.

Part 4 — Marketing conduct

15. Misleading, deceptive or unconscionable conduct

A marketer must not, when marketing, engage in conduct that is misleading, deceptive or likely to mislead or deceive or that is unconscionable.

16. Marketing by telephone

- (1) A marketer who makes a telephone call to a person for the purposes of marketing must, as soon as practicable, tell the person —
 - (a) his or her name;
 - (b) the name of the responsible marketer and of the retail supplier on whose behalf the call is being made;
 - (c) the purpose of the call; and
 - (d) the complaints and enquiries telephone number of the responsible marketer and of the retail supplier.
- (2) If, during a telephone conversation between a marketer and a person for the purposes of marketing, the person indicates that the person wishes to end the conversation, the marketer must —
 - (a) end the conversation as soon as practicable; and
 - (b) not attempt to contact the person for the purposes of marketing for the next 30 days unless the person agrees otherwise.
- (3) A marketer must not make a telephone call to a person for the purposes of marketing outside the permitted call times.
- (4) A telephone conversation between a marketer and a person for the purposes of marketing must not continue for more than 15 minutes past the end of the permitted call time without the express consent of the person.

cl. 17

- (5) A responsible marketer must keep the following records about each telephone call made by or on behalf of the responsible marketer to a person for the purposes of marketing —
 - (a) the name and telephone number of the person;
 - (b) the name of the or each marketer who made or was involved in the call;
 - (c) the date and time of the call.

17. Marketing at a person's premises

- (1) A marketer who visits a person at the person's premises for the purposes of marketing must, as soon as practicable, tell the person —
 - (a) his or her name;
 - (b) the name of the responsible marketer and of the retail supplier on whose behalf the visit is being made;
 - (c) the purpose of the visit; and
 - (d) the complaints and enquiries telephone number of the responsible marketer and of the retail supplier.
- (2) A marketer who visits a person at the person's premises for the purposes of marketing must, while at the premises, wear a clearly visible identity card that shows —
 - (a) his or her name;
 - (b) a photograph of the marketer;
 - (c) the name and business address of the responsible marketer and the name of the retail supplier on whose behalf the visit is being made (which may be printed on the back of the card); and
 - (d) the complaints and enquiries telephone number of the responsible marketer and of the retail supplier (which may be printed on the back of the card).

- (3) If, while a marketer is at a person's premises for the purposes of marketing, the person indicates that the person wishes to end the conversation or the marketer to leave, the marketer must —
 - (a) leave the premises as soon as practicable; and
 - (b) not attempt to contact the person for the purposes of marketing for the next 30 days unless the person agrees otherwise.
- (4) A marketer must not visit a person at the person's premises for the purposes of marketing outside the permitted call times.
- (5) A marketer must not remain at a person's premises for the purposes of marketing for more than 15 minutes past the end of the permitted call time without the express consent of the person.
- (6) A responsible marketer must keep the following records about each visit made by or on behalf of the responsible marketer at a person's premises for the purposes of marketing —
 - (a) the name of the person and the address of the premises;
 - (b) the name of the or each marketer who visited the person; and
 - (c) the date and time of the visit.

18. Marketing by personal contact other than at the person's premises

- (1) A marketer who meets a person for the purposes of marketing, other than at the person's premises, must, as soon as practicable, tell the person —
 - (a) his or her name;
 - (b) the name of the responsible marketer and of the retail supplier on whose behalf the marketing is being carried out;
 - (c) the purpose of the marketing; and
 - (d) the complaints and enquiries telephone number of the responsible marketer and of the retail supplier.

cl. 19

- (2) A marketer who meets a person for the purposes of marketing, other than at the person's premises, must, while meeting the person, wear a clearly visible identity card that shows —
 - (a) his or her name;
 - (b) a photograph of the marketer;
 - (c) the name and business address of the responsible marketer and the name of the retail supplier on whose behalf the marketing is being carried out (which may be printed on the back of the card); and
 - (d) the complaints and enquiries telephone number of the responsible marketer and of the retail supplier (which may be printed on the back of the card).
- (3) If a person who is met by a marketer for the purposes of marketing, other than at the person's premises, gives the marketer his or her name and address, the responsible marketer must keep the following records about the meeting with the person —
 - (a) the name and address of the person;
 - (b) the name of the or each marketer who met the person;
 - (c) the date and time of the meeting.

19. Marketing by the internet or by email

- (1) A marketer who contacts or attempts to contact a person for the purposes of marketing using electronic means must include the following information —
 - (a) the marketer's email address or other means of electronic contact;
 - (b) the business name, company name, Australian Business Number and business address of the responsible marketer and of the retail supplier on whose behalf the marketing is being carried out;
 - (c) the purpose of the marketing;

- (d) the complaints and enquiries telephone number of the responsible marketer and of the retail supplier.
- (2) A responsible marketer must keep the following records about each contact or attempted contact of a person for the purposes of marketing —
 - (a) the email address of the person;
 - (b) the date and time of the contact or attempted contact;
 - (c) any correspondence between the person and the responsible marketer.
- (3) In this clause —
“electronic means” means the internet, email or other similar means but does not include the telephone.

20. Conduct when a person does not wish to be contacted

- (1) If a person who has been contacted by a marketer for the purposes of marketing indicates that the person does not wish to be contacted again by or on behalf of the responsible marketer, the responsible marketer must ensure that the person is not contacted by or on behalf of the responsible marketer in relation to the supply of gas by the retail supplier for whom the marketing was carried out for the next 2 years.
- (2) A responsible marketer must keep a record of each person who has indicated that the person does not wish to be contacted (as described in subclause (1)) that includes the name and address of the person at the time the person made that indication.
- (3) The responsible marketer must give a copy of the record to the gas industry ombudsman or the Code Administrator on request.
- (4) A marketer must, to the extent practicable, comply with a notice on or near a person’s premises indicating that the person does not wish to receive unsolicited mail or other marketing (for example, “No junk mail” or “No canvassing” signs).

Part 5 — Miscellaneous

21. Collection and use of personal information

- (1) A marketer must not collect or use personal information in the course of marketing except for the marketing purposes of the retail supplier who is carrying out the marketing or on whose behalf the marketing is being carried out.
- (2) When collecting personal information, a marketer must collect personal information directly from the person to whom it relates unless —
 - (a) the person has given written consent to the information being collected from a particular third party; or
 - (b) the information to be collected relates to the person's credit history.
- (3) A marketer must not disclose personal information, collected by or on behalf of the responsible marketer for marketing purposes, to another person (other than a retail supplier for whom the marketing was carried out) unless —
 - (a) the person to whom the information relates has given written consent to the particular disclosure;
 - (b) the disclosure is required by law; or
 - (c) the disclosure is required for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence.
- (4) A responsible marketer must take practicable measures to protect personal information held by the responsible marketer from misuse, loss, unauthorised access or modification.
- (5) A responsible marketer who holds personal information that relates to a person must give the person the opportunity, on request, to review the information and correct any errors in it.
- (6) If a responsible marketer is prevented by law from giving a person the opportunity to review the information, the

responsible marketer must give the person reasons why the person cannot review the information.

- (7) A responsible marketer must keep a record of each consent given by a person for the purposes of subclause (2)(a) or (3)(a).
- (8) A marketer must comply with the National Privacy Principles set out in Schedule 3 of the *Privacy Act 1988* of the Commonwealth (to the extent to which they are not inconsistent with this Code).

22. Dispute resolution

- (1) A responsible marketer must have a complaint handling and dispute resolution procedure in relation to its marketing that —
 - (a) complies with Australian Standard AS 4269:1995; and
 - (b) is available at no cost to customers and other persons contacted by or on behalf of the responsible marketer.
- (2) The procedure must include notifying such a customer or person that, if the complaint or dispute is not resolved to the customer's satisfaction, the customer or person may make a complaint to the gas industry ombudsman.
- (3) The procedure must include review by the retail supplier of complaints and disputes that relate to marketing carried out on behalf of the retail supplier if the retail supplier is not the responsible marketer in relation to the marketing.

23. Presumption of authority

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

- (a) a retail supplier; or
- (b) a gas marketing agent,

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

cl. 23

Note: Sections 11ZPU to 11ZPW of the *Energy Coordination Act 1994* deal with the review and amendment of this Code including giving interested persons an opportunity to comment on the review or proposed amendment or replacement of this Code.

Notes

¹ This is a compilation of the *Gas Marketing Code of Conduct 2004*. The following table contains information about that code.

Compilation table

Citation	Gazettal	Commencement
<i>Gas Marketing Code of Conduct 2004</i>	28 May 2004 p. 1765-89	31 May 2004 (see cl. 2 and <i>Gazette</i> 28 May 2004 p. 1827)