Western Australia

Energy Coordination Act 1994

Gas Marketing Code of Conduct 2012

This Code was repealed by the *Gas Marketing Code of Conduct 2014* as at 1 Jan 2014 (see *Gazette* 6 Dec 2013 p. 5725).
Gas Marketing Code of Conduct 2012

Contents

Part 1 — Preliminary

1.1 Title 3
1.2 Authority 3
1.3 Commencement 3
1.4 Interpretation 3
1.5 Definitions 4
1.6 Application 9
1.7 Purpose 9
1.8 Objectives 9
1.9 Amendment and Review 9

Part 2 — Marketing

Division 1 — Obligations particular to retailers

2.1 Retailers to ensure representatives comply with this Part 10

Division 2 — Contracts

2.2 Entering into contracts 10

Division 3 — Information to be provided to customers

2.3 Information to be given before entering into a contract 11
2.4 Information to be given at the time of or after entering into a contract 11

Division 4 — Marketing conduct

2.5 Standards of conduct 13
2.6 Contact for the purposes of marketing 14
Contents

Division 5 — Miscellaneous

2.7 Presumption of authority 15
2.8 Gas marketing agent complaints 15

Notes
Compilation table 17

Defined terms
Western Australia

Energy Coordination Act 1994

Gas Marketing Code of Conduct 2012

Part 1 — Preliminary

1.1 Title

The Code may be cited as the Gas Marketing Code of Conduct 2012.

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 arranging a contract is to be read as 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.

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

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 circumstance 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 2012 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.

contact 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 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 for this definition:
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 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 telephone typewriter.

unsolicited consumer agreement means a contract that is approved by the Authority under section 11WF of the Act.

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 for this section:

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 for this subsection:
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

2.5 Standards of 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.

Division 5 — Miscellaneous

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.
Notes

1 This is a compilation of the Gas Marketing Code of Conduct 2012 and includes the amendments made by the other written laws referred to in the following table.

Compilation table

<table>
<thead>
<tr>
<th>Citation</th>
<th>Gazettel</th>
<th>Commencement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gas Marketing Code of Conduct 2012</td>
<td>26 Jun 2012</td>
<td>1 Jul 2012 (see Gazette 26 Jun p. 2877-84)</td>
</tr>
</tbody>
</table>

This Code was repealed by the Gas Marketing Code of Conduct 2014 as at 1 Jan 2014 (see Gazette 6 Dec 2013 p. 5725)
## Defined terms

*This is a list of terms defined and the provisions where they are defined.*  
*The list is not part of the law.*

<table>
<thead>
<tr>
<th>Defined term</th>
<th>Provision(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Act</td>
<td>1.5</td>
</tr>
<tr>
<td>alternative tariff</td>
<td>1.5</td>
</tr>
<tr>
<td>Australian Consumer Law (WA)</td>
<td>1.5</td>
</tr>
<tr>
<td>Authority</td>
<td>1.5</td>
</tr>
<tr>
<td>basic living needs</td>
<td>1.5</td>
</tr>
<tr>
<td>change in personal circumstance</td>
<td>1.5</td>
</tr>
<tr>
<td>Code</td>
<td>1.5</td>
</tr>
<tr>
<td>Compendium</td>
<td>1.5</td>
</tr>
<tr>
<td>complaint</td>
<td>1.5</td>
</tr>
<tr>
<td>concession</td>
<td>1.5</td>
</tr>
<tr>
<td>contact</td>
<td>1.5</td>
</tr>
<tr>
<td>contract</td>
<td>1.5</td>
</tr>
<tr>
<td>cooling-off period</td>
<td>1.5</td>
</tr>
<tr>
<td>customer</td>
<td>1.5</td>
</tr>
<tr>
<td>distributor</td>
<td>1.5</td>
</tr>
<tr>
<td>Do Not Call Register Act</td>
<td>1.5</td>
</tr>
<tr>
<td>door to door marketing</td>
<td>1.5</td>
</tr>
<tr>
<td>emergency</td>
<td>1.5</td>
</tr>
<tr>
<td>financial hardship</td>
<td>1.5</td>
</tr>
<tr>
<td>gas customer safety awareness program</td>
<td>1.5</td>
</tr>
<tr>
<td>gas marketing agent</td>
<td>1.5</td>
</tr>
<tr>
<td>gas ombudsman</td>
<td>1.5</td>
</tr>
<tr>
<td>marketing</td>
<td>1.5</td>
</tr>
<tr>
<td>marketing identification number</td>
<td>1.5</td>
</tr>
<tr>
<td>non-standard contract</td>
<td>1.5</td>
</tr>
<tr>
<td>payment difficulties</td>
<td>1.5</td>
</tr>
<tr>
<td>premises</td>
<td>1.5</td>
</tr>
<tr>
<td>residential customer</td>
<td>1.5</td>
</tr>
<tr>
<td>retailer</td>
<td>1.5</td>
</tr>
<tr>
<td>standard form contract</td>
<td>1.5</td>
</tr>
<tr>
<td>telemarketing calls</td>
<td>1.5</td>
</tr>
<tr>
<td>Telemarketing Industry Standard</td>
<td>1.5</td>
</tr>
<tr>
<td>telephone</td>
<td>1.5</td>
</tr>
<tr>
<td>TTY</td>
<td>1.5</td>
</tr>
<tr>
<td>unsolicited consumer agreement</td>
<td>1.5</td>
</tr>
<tr>
<td>verifiable consent</td>
<td>1.5</td>
</tr>
</tbody>
</table>