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ENERGY COORDINATION ACT 1994

GAS MARKETING CODE OF CONDUCT 2017

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The Economic Regulation Authority—

(a) repeals the "Gas Marketing Code of Conduct 2015" gazetted 3 June 2015 (No. 83), which repeal is to take effect on 1 July 2017;

(b) approves the "Gas Marketing Code of Conduct 2017", gazetted 29 May 2017 (No. 103); and

(c) prescribes 1 July 2017 as the date on which the "Gas Marketing Code of Conduct 2017", gazetted 29 May 2017 (No.103) comes into operation,

pursuant to section 11ZPM (Part 2C) of the *Energy Coordination Act 1994*.

Ms NICOLA CUSWORTH, Chair, Economic Regulation Authority.

ENERGY COORDINATION ACT 1994

GAS MARKETING CODE OF CONDUCT 2017

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ENERGY COORDINATION ACT 1994

GAS MARKETING CODE OF CONDUCT 2017

PART 1—PRELIMINARY

1.1 Title

The ***Code*** may be cited as the *Gas Marketing Code of Conduct 2017*.

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—

"Act" means the *Energy Coordination Act 1994.*

*"***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.

"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 2017* made under section 11ZPM of the ***Act*** as amended by the ***Authority*** under Part 2C of the ***Act***.

"Compendium" means the Compendium of Gas Customer Licence Obligations.

"complaint" means an expression of dissatisfaction made to or about an organisation, related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

"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 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***.

"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), a ***retailer*** or ***gas marketing agent*** must obtain the ***customer's verifiable consent*** that the information in clause 2.3(2) has been given.

Division 3—Marketing conduct

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*** contact details, including ***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) 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***.

as soon as practicable following a request by the ***customer*** for the information.

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 the 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***.

Division 4—Miscellaneous

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*.]