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ENERGY COORDINATION ACT 1994

**GAS MARKETING CODE OF
CONDUCT 2012**

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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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—

“*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.

“*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 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: 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*.

“**Telemarketing Industry Standard**” means the *Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard 2007*.

“**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

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**.
