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ENERGY COORDINATION ACT 1994

**GAS MARKETING
CODE OF CONDUCT 2008**

GAS MARKETING CODE OF CONDUCT 2008

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ENERGY COORDINATION ACT 1996

GAS MARKETING CODE OF CONDUCT 2008

The Economic Regulation Authority has approved the *Gas Marketing Code of Conduct 2008* under section 11ZPM(1) of the *Energy Coordination Act 1994*.

LYNDON G. ROWE, Chairman,
Economic Regulation Authority.

PART 1—PRELIMINARY

1.1 Title

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

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 **marketing representative** arranging a **contract** is to be read as a reference to **marketing representative** entering into the **contract** on the **marketer's** behalf, or arranging the **contract** on behalf of another person (whichever is relevant).
- (7) A reference to an act carried out on behalf of a **marketer** is a reference to that act being carried out by a **marketing representative** of the **marketer**.

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.

“**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 as amended by the *Authority*.

“**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.

“**contact**” means contact that is face to face, by telephone or by post, facsimile or electronic communication.

“**cooling-off period**” in relation to a door to door contract or *non-standard contract* 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 per annum.

“**contract**” means a *standard form contract* or a *non-standard contract*;

“**Customer Service Charter**” means the customer service charter that the *retailer* is required to prepare as a condition of its trading licence.

“**distributor**” means a person who holds a distribution licence under Part 2A of the *Act*.

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

(a) a **marketing representative**—

(i) goes from place to place;

(ii) makes telephone calls; or

(iii) uses *electronic means*,

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

(b) the *marketing representative* or some other *marketing representative* then or subsequently enters into negotiations with those prospective *customers* with a view to arranging *contracts*.

“**electronic means**” means the internet, email, facsimile or other similar means but does not include telephone.

“**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 programme**” means a programme 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;

(b) a person who acts—

(i) on behalf of one or more *customers*; or

(ii) as an intermediary between one or more *customers* and a licensee, in respect of the supply of gas to the *customer* or *customers*; and

(c) a representative, agent or employee of a person referred to in paragraph (a) or (b).

“**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.]

“**marketer**” means—

- (a) a **retailer** who engages in **marketing**; or
- (b) a **gas marketing agent**, other than 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**; or
- (b) advertising, promotion, market research or public relations in relation to the supply of gas to **customers**.

“**marketing identification number**” means an unique number assigned by a **marketer** to each **marketing representative** acting on its behalf.

“**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 **retailer**; or
- (b) a representative, agent or employee of a person in paragraph (a).

“**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**.

“**permitted call times**” are—

- (a) for the purposes of telephone and personal contact other than at customers premises between—
 - (i) 9.00 a.m. and 8.00 p.m. Mondays to Fridays (other than public holidays); and
 - (ii) 9.00 a.m. and 5.00 p.m. Saturdays;
- (b) for the purposes of contact at customers premises between—
 - (i) 9.00 a.m. and 7.00 p.m. Mondays to Fridays (other than public holidays); and
 - (ii) 9.00 a.m. and 5.00 p.m. Saturdays.

“**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**.

“**TTY**” means telephone typewriter.

“**verifiable consent**” means consent that is given—

- (a) expressly;
- (b) in writing or orally;
- (c) after the **marketer** or **retailer** (as appropriate) 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**.

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

- (1) The **Code** will be amended in accordance with Part 2C of the **Act**.

PART 2—MARKETING

Division 1—Obligations particular to marketers

2.1 Marketers to ensure representatives comply with this Part

A **marketer** must ensure that its **marketing representatives** comply with this Part.

*Division 2—Contracts***2.2 Entering into contracts**

(1) A **marketer** must, in the course of arranging a **standard form contract** that is entered into as a result of **door to door marketing** or 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 **marketer** or **retailer** by telephone or by **electronic means** for a **non-standard contract** the contract need not be signed but the **marketer** or **retailer** must obtain and make a record of the **customer's verifiable consent** that the contract has been entered into.

(3) A **standard form contract** that is not entered into as a result of **door to door marketing** need not be signed by the **customer** but the date of the **customer** entering into the **standard form contract** must be recorded by the **marketing representative**.

(4) The terms and conditions of a **standard form contract** that is not entered into as a result of **door to door marketing** must be made available to the **customer** on request at no charge.

(5) 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 **marketing representative** and the **customer** in each other's presence in Western Australia at a place other than trade premises of the **marketer**; and
- (b) the **marketing representative** attends at that place—
 - (i) in the course of **door to door marketing**; and
 - (ii) otherwise than at the unsolicited invitation of the **customer**.

(6) For the purposes of subclause (5)(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
- (b) if an invitation arises from a communication initiated by the **marketing representative** (other than as described in paragraph (a)) the invitation is not to be regarded as unsolicited.

*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 **marketing representative** 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 entered into as a result of **door to door marketing** or a **non-standard contract** in accordance with clause 2.2(2) above, the **marketing representative** 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 entered into as a result of **door to door marketing** or a **non-standard contract** other than in accordance with clause 2.2(2) above, the **marketing representative** must obtain the **customer's** written acknowledgement that the information in subclause (1) has been given.

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

(1) When a **customer** enters into a new **contract** with a **retailer**, a **retailer** or **marketer** 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 **marketer** must, at the time the **contract** is entered into, or as soon as possible thereafter, give or make available to the **customer** a copy of the **contract**.

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

- (a) how the **customer** may obtain—
 - (i) a copy of the **retailer's Customer Service Charter**;
 - (ii) a copy of the **Code**; and
 - (iii) 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**, **marketer** and **marketing representative** must comply with the **Code**;

- (d) how the *retailer* may assist if the *customer* is experiencing *payment difficulties* or *financial hardship*;
 - (e) the *concessions* that may apply to the *customer*;
 - (f) the *distributor's* 24 hour telephone number for faults and emergencies;
 - (g) how the *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 programme; and
 - (j) 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) For a *standard form contract* that is not entered into as a result of *door to door marketing*—
- (a) the information in subclause (1) must be given no later than with or on the *customer's* first bill; and
 - (b) if requested by the *customer* and, if the *customer* has not previously been provided a copy of the *contract*, a copy of the *contract* at no charge to the *customer*.
- (4) For a *standard form contract* that is entered into as a result of *door to door marketing* or a *non-standard contract*—
- (a) the information in subclause (1) and a copy of the contract must be given before the *customer* has entered into the *contract*;
 - (b) the *marketing representative* must obtain the *customer's* written acknowledgement that the information in subclause (1) has been given.

Division 4—Marketing Conduct

2.5 Standards of Conduct

- (1) A *marketing representative* must not, when *marketing*, engage in conduct that is misleading, deceptive or likely to mislead or deceive or that is unconscionable.
- (2) A *marketing representative* must not exert undue pressure on a *customer*, nor harass or coerce a *customer*.
- (3) A *marketing representative* must ensure that the inclusion of *concessions* is made clear to *customers* and any prices that exclude *concessions* are disclosed.
- (4) A *marketing representative* must ensure that all *standard form contracts* that are entered into as a result of *door to door marketing* and all *non-standard contracts* are in writing.
- (5) A *marketer* must ensure that a *customer* is able to *contact* the *marketer* on the *marketer's* telephone number during the normal business hours of the *marketer* for the purposes of enquiries, verifications and *complaints*.

2.6 Contact for the purposes of marketing

- (1) A *marketing representative* who makes *contact* with a *customer* for the purposes of *marketing* (other than meeting with a *customer* face to face) must, as soon as practicable, tell the *customer*—
 - (a) his or her first name;
 - (b) the name of the *marketer*, and if different, of the *retailer* on whose behalf the *contact* is being made; and
 - (c) the purpose of the *contact*;
 and, after having identified the purpose of the *contact*, if the *contact* is not by *electronic means*, ask if the *customer* wishes to proceed further.
- (2) A *marketing representative* 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 *marketer* and, if different, of the *retailer* on whose behalf the *contact* is being made; and
 - (b) provide the *customer* with the *marketer's marketing identification number*.
- (3) A *marketing representative* who meets with a *customer face to face* for the purposes of *marketing* must—
 - (a) 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 *marketer* and, if different, of the *retailer* 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 *marketer* and, if different, of the *retailer* on whose behalf the *contact* is being made;
 - (iv) the complaints telephone number of the *marketer* and, if different, of the *retailer* on whose behalf the *contact* is being made; and
 - (v) the *marketer's* business address and Australian Business or Company Number.
- (4) If, when a *marketing representative* makes *contact* with a *customer* for the purposes of *marketing*, the *customer* indicates that he or she wishes the *contact* to end, the *marketing representative* must—
- (a) end the *contact* as soon as practicable; and
 - (b) not attempt to *contact* the *customer* for the purposes of *marketing* for the next 30 days unless the *customer* agrees otherwise.
- (5) Unless requested by the *customer*, a *marketing representative* must not make *contact* with a *customer* for the purposes of *marketing* outside the *permitted call times*, unless the contact is by *electronic means* or the *contact* arises outside the *customer's premises* in circumstances where the *customer* initiates *contact* with the *marketing representative*.
- (6) A *marketing representative* must ensure that *contact* for the purposes of *marketing* does not continue for more than 15 minutes past the end of the *permitted call times* without the *customer's verifiable consent* unless the *contact* is by *electronic means*.
- (7) A *marketer* 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*;
 - (iii) if the *contact* was made at a place other than the *customer's* premises, the details and address of the location; and
 - (iv) if the *contact* was made by *electronic means*, the email address or facsimile number of the customer;
 - (b) the name of the *marketing representative* who made the *contact*; and
 - (c) the date and time of the *contact*.
- (8) Clause 2.6(7) does not apply where a *marketer* *contacts* a *customer* in response to a *customer* request or query.

2.7 Conduct when a customer does not wish to be contacted

- (1) If a *customer* who has been *contacted* by a *marketing representative* for the purposes of *marketing* requests not to be *contacted* again on behalf of the *marketer*, the *marketer* must ensure that the *customer* is not *contacted* on behalf of the *marketer* in relation to the supply of gas by the *retailer* for whom the *marketing* was carried out for the next 2 years unless—
- (a) the *customer* requests *contact*; or
 - (b) the *customer* has moved *premises*; or
 - (c) a *marketer* has a legal obligation to *contact* the *customer*.
- (2) A *marketer* must keep a record of each *customer* who has requested not to be *contacted* (as described in subclause (1)) that includes the name, address and telephone number of the *customer* at the time the *customer* made that request.
- (3) A *marketer* must give a copy of the record to the *gas ombudsman* or the *Authority* on request.
- (4) A *marketer* must provide the *customer* on request with written confirmation that the *customer* will not be *contacted* by or on behalf of the *marketer* in relation to the supply of gas by the *retailer* for whom the *marketing* was carried out for the next 2 years.
- (5) When engaging in *door to door marketing*, a *marketing representative* must, to the extent practicable, comply with a notice on or near a *premises* indicating that the *customer* does not wish to receive unsolicited mail or other *marketing* information.

Division 5—Miscellaneous

2.8 Collection and use of personal information

A *retailer* and a *marketer* must comply with the National Privacy Principles as set out in the *Privacy Act 1998* in relation to information collected under this Part.

2.9 Not Used

2.10 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.

2.11 Marketer complaints

(1) A *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 *marketer*;
- (b) on request by the *gas ombudsman* in relation to a particular *complaint*, give to the *gas ombudsman* all information that the *marketer* has relating to the *complaint*.

(2) A record or other information that a *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 *marketer*.
