



ENERGY MARKETING CODE

EMC/01

March 2004



VERSION HISTORY

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A detailed amendment record is contained at the back of this industry code.

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1. APPLICATION

- 1.1 This *Energy Marketing Code* is made as an **industry code** pursuant to the powers of the **Commission** under section 28 of the *Essential Services Commission Act 2002*.
- 1.2 Words appearing in bold like **this** are defined in Schedule 1 of this *Energy Marketing Code*.
- 1.3 This **industry code** must be interpreted in accordance with the rules set out in Schedule 2 of this *Energy Marketing Code*.
- 1.4 This *Energy Marketing Code* is intended to operate in conjunction with laws of general application. To the extent that there is any inconsistency between this *Energy Marketing Code* and an applicable Commonwealth, State or Territory law, that law will take precedence over this *Energy Marketing Code*.
- 1.5 This *Energy Marketing Code*, or specified provisions of this *Energy Marketing Code*, will not apply to a **retailer**, or a **marketer** acting on the **retailer's** behalf, where the **retailer** has agreed in writing with an **energy customer**, by obtaining that **energy customer's explicit informed consent**, that this *Energy Marketing Code*, or specified provisions of this *Energy Marketing Code*, will not apply in respect of that **energy customer**, if the **energy customer**:
- (a) is a **business customer**;
 - (b) has one or more **connection points** to a premises or a group of premises;
 - (c) is a **small customer** in respect of one or more of those **connection points**; and
 - (d) the aggregate of the **annual energy consumption level** for those **connection points** equals or exceeds:
 - (i) in the case of a proposed electricity contract, 160MWh of electricity per annum;
 - (ii) in the case of a proposed gas contract, 1TJ of gas per annum; or
 - (iii) in the case of a proposed **dual fuel contract**, 160MWh of electricity per annum or 1TJ of gas per annum.

2. COMPLIANCE

- 2.1 A **retailer** must comply with the *Energy Marketing Code*.

- 2.2 A **non-regulated marketer** is encouraged to comply with the *Energy Marketing Code*.
- 2.3 A **retailer** is responsible under this *Energy Marketing Code* for the conduct of any person who is employed, engaged or authorised by the **retailer** to carry out **marketing** on the **retailer's** behalf, including a **non-regulated marketer** whose actions result, or are intended to result, in the **retailer** entering into a **customer sale contract** with a **small customer** for the sale of **energy**.
- 2.4 A **retailer** will not be responsible for the conduct of a **non-regulated marketer** who is employed, engaged or authorised by a **small customer** or group of **small customers** to act on their behalf, whose actions result, or are intended to result, in the **small customer** or group of **small customers** entering into a **customer sale contract** with a **retailer** for the sale of **energy**.

3. STATEMENT OF COMPLIANCE

- 3.1 A **retailer** must use its **best endeavours** to obtain a written statement from a **non-regulated marketer** confirming the **non-regulated marketer's** compliance with this *Energy Marketing Code* where the **non-regulated marketer** has introduced a **small customer** to the **retailer** or has arranged or facilitated a **customer sale contract** on behalf of that **retailer**.

4. GENERAL CONDUCT STANDARDS

- 4.1 A marketer or salesperson must while engaged in marketing:
- (a) comply with all applicable Commonwealth and State laws; and
 - (b) not engage in misleading, deceptive or unconscionable conduct, whether by act or omission; and
 - (c) not exert undue pressure on a **small customer**, nor harass or coerce a **small customer**; and
 - (d) use words and images that promote **small customers'** comprehension of **customer sale contracts**; and
 - (e) ensure that information provided to **small customers** is truthful and in plain language; and
 - (f) ensure that information provided to individual **small customers** is relevant to that **small customer's** circumstances; and
 - (g) provide only timely, accurate, verifiable and truthful comparisons.

5. TIME OF CONTACT

- 5.1 Except by prior appointment, a **marketer** or **salesperson** must not visit or telephone a **small customer** for the purpose of **marketing a customer sale contract**:
- (a) at any time on a Sunday or other public holiday; or
 - (b) on a Saturday, except between 9.00 am and 5.00 pm; or
 - (c) on any other day except between 9.00 am and 8.00 pm.

6. IDENTIFICATION

- 6.1 As soon as practicable following the commencement of any **marketing contact** with a **small customer**, a **marketer** or **salesperson** must advise the **small customer** of the purpose of the **marketing contact** and use its best endeavours to provide a **small customer** with the following information prior to completion of the **marketing contact**:
- (a) the name of the **salesperson**; and
 - (b) the name of the **marketer** and, if different, the name of the **retailer** on whose behalf the **marketer** is acting.

7. PROVISION OF CONTACT DETAILS

- 7.1 Prior to completion of a **marketing contact** with a **small customer**, the **marketer** or **salesperson** must use its best endeavours to provide a **small customer** with contact details for the **marketer** and, if different, the **retailer** on whose behalf the **marketer** or **salesperson** is acting.

8. TERMINATION OF MARKETING CONTACTS

- 8.1 If a **small customer** requests the termination of a **marketing contact**, the **marketer** or **salesperson** must:
- (a) immediately comply with that request; and
 - (b) refrain from contacting that **small customer** again for a period of 20 **business days** from the date of the request, unless otherwise advised by the **small customer**; and
 - (c) advise the **small customer** of the existence of the dispute resolution service provided by the **marketer**, or, if the **marketer** is not a **retailer**,

the **retailer** on whose behalf the **marketer** or **salesperson** is acting;
and

- (d) if requested by the **small customer**, provide details, including contact details, of that dispute resolution service

8.2 For the avoidance of doubt, clause 8.1 does not apply where a **small customer** defers a **marketing contact** to another date.

9. MARKETING IN PERSON

9.1 A **marketer** or **salesperson** who makes a **marketing contact** by visiting a **small customer** must wear an identification card on his or her chest containing:

- (a) the name of the **marketer** or **salesperson**; and
- (b) a photograph of the **marketer** or **salesperson**; and
- (c) the name of the **marketer** or **salesperson** and, if different, the **retailer** on whose behalf the **marketer** is acting.

9.2 A **marketer** or **salesperson** who makes a **marketing contact** by visiting a **small customer** must also provide the **small customer** with:

- (a) the **retailer's** telephone number for enquiries, verifications and complaints; and
- (b) if requested by the **small customer**, the address for service of the **retailer** on whose behalf the **marketer** or **salesperson** is acting.

10. INFORMATION AND DETAILS TO BE PROVIDED IN WRITING WHERE MARKETING IS IN PERSON

10.1 Information or details required to be provided to a **small customer** under clause 6, 7 or 8 must be provided to the **small customer** in writing if the **marketer** or **salesperson** is making the **marketing contact** by visiting the **small customer**.

11. MARKETING BY TELEPHONE

11.1 A **marketer** or **salesperson** who makes a **marketing contact** with a **small customer** by telephone must use its best endeavours to:

- (a) comply with the requirements of clauses 6 and 7; and

- (b) provide the **small customer** with sufficient contact details so that the **small customer** can contact the **marketer** or a **salesperson** by return telephone call if he or she requires.

12. MARKETING BY ELECTRONIC MEANS

12.1 A **marketer** or **salesperson** who makes a **marketing contact** with a **small customer** by means of an electronic communication must:

- (a) comply with the requirements of clauses 6 and 7; and
- (b) provide the **small customer** with sufficient contact details so that the **small customer** can contact the **marketer** or a **salesperson** by return electronic communication if he or she requires.

13. RECORD KEEPING STANDARDS

13.1 To enable the identification of **marketers** and **salespeople** by **small customers** and to assist **marketers** and **small customers** in dealing with enquiries, verifications and complaints, a **marketer** must for at least one year from the date of a **marketing contact** use its **best endeavours** to keep records of:

- (a) all **marketing contacts** with **small customers**, whether initiated by the **marketer** or the **small customer**; and
- (b) **small customer** requests not to be contacted by the **marketer**; and
- (c) **marketing contacts** which have been terminated at the request of the **small customer**.

14. WRITTEN DISCLOSURE STATEMENT

14.1 When a **marketing contact** results, or is intended to result, in a **small customer** entering into a **customer sale contract**, or when a **small customer** contacts a **marketer** for the purposes of entering into a **customer sale contract**, the following information must be provided in writing to the **small customer** by the **marketer** in a written disclosure statement at the time the **customer sale contract** is entered into:

- (a) the name and address for service of the **marketer**, or, if different, the **retailer** on whose behalf the **marketer** is acting;

- (b) the postal address, facsimile number and e-mail address of the **marketer** or, if different, the **retailer** on whose behalf the **marketer** is acting;
- (c) the date of commencement of the **customer sale contract**;
- (d) the prices, charges, tariffs and service levels that will be applicable in respect of the **customer sale contract**;
- (e) if the prices, charges, tariffs or service levels are able to be changed by the **retailer** under the **customer sale contract**, the manner in which any such change may be effected;
- (f) the costs to the **small customer** associated with entering into the **customer sale contract**, outside of the prices, charges and tariffs payable (including any costs associated with the provision of infrastructure such as meters);
- (g) the type and frequency of bills which will be rendered under the **customer sale contract**;
- (h) the payment methods and options which are available in respect of the **customer sale contract**;
- (i) the early termination charges which may apply in the event that the **small customer** terminates a fixed-term contract prior to its expiry date and the method of calculation of those charges;
- (j) the enforcement expenses which may become payable in the event of a breach of the **customer sale contract** by the **small customer**;
- (k) the dispute resolution options which are available to **small customers**;
- (l) details of the right conferred on the **small customer** to rescind the **customer sale contract** in accordance with the *Energy Retail Code*;
- (m) if a commission, fee or reward is to be paid for the introduction of business to the **retailer**.
 - (i) a statement of that fact; and
 - (ii) details of the person by whom the commission, fee or reward is payable; and
 - (iii) details of the person to whom the commission, fee or reward is payable.

15. DISPUTE RESOLUTION

- 15.1 A **retailer** must, within 20 **business days** after it first markets **customer sale contracts** to a **small customer**, prepare and submit to the **Commission**, for approval, its procedures to resolve *Energy Marketing Code* **small customer** complaints and disputes.
- 15.2 The procedures must deal with at least the following matters:
- (a) how complaints are to be notified by **small customers**;
 - (b) the handling of complaints;
 - (c) method of response (for example, in writing);
 - (d) referral to the **Industry Ombudsman** where the complaint is not satisfactorily resolved; and
 - (e) any other matter required by the **Commission**.
- 15.3 Any procedures referred to the **Commission** under clause 15.1 will come into effect 20 **business days** after the **retailer** is notified by the **Commission** that approval has been granted.
- 15.4 A **retailer** whose dispute resolution processes for **small customers** are approved by the **Commission** for the purposes of the *Energy Retail Code*, or whose dispute resolution processes for **small customers** were approved by the **Commission** for the purposes of the *Electricity Retail Code*, will be considered to have complied with this clause 15 if that **retailer** intends to use those same approved procedures for disputes arising under this *Energy Marketing Code*.

16. CONSENT

- 16.1 Whenever a **marketer** is required to obtain the consent of a **small customer**, including the consent to enter into a **customer sale contract**, that consent must be the **explicit informed consent** of a **small customer** obtained only after timely, accurate, verifiable and truthful information on the consequences of providing consent has been made available to the **small customer** by the **marketer** (for example, through the use of a disclosure statement under clause 14 of this **industry code**).
- 16.2 A **marketer** must retain records of any **explicit informed consent** obtained under this *Energy Marketing Code* for at least 2 years.

16.3 Records retained under clause 16.2 must be retained by the **marketer** in a format which permits the **marketer** to answer any enquires relating to a customer's **explicit informed consent** by that **small customer**, the **Commission**, the **Industry Ombudsman** or any other entity permitted by an applicable law to access that information.

17. TRAINING AND PRODUCT KNOWLEDGE

17.1 A **marketer** must ensure that the **marketer's** employees, agents and contractors have sufficient training and knowledge so as to be able to comply with this *Energy Marketing Code* and all other relevant legislative requirements.

18. PRIVACY

18.1 While engaged in **marketing**, a **marketer** must, in dealing with **small customer information**, comply with:

- (a) the *Privacy Act 1988 (Cth)*; and
- (b) any instrument issued by the **Commission** regarding privacy.

18.2 A **marketer** must inform a **small customer** of the **marketer's** privacy obligations at the request of the **small customer**.

SCHEDULE 1: DEFINITIONS

“**annual energy consumption level**” has the same meaning:

- (a) in the case of a small electricity customer, as is given to that term in the *Electricity Act 1996*;
- (b) in the case of a small gas customer, as is given to that term in the *Gas Act 1997*.

“**business day**” means a day on which banks are open for general banking business in Adelaide, other than a Saturday or a Sunday.

“**best endeavours**” means to act in good faith and use all reasonable efforts, skill and resources;

“**business customer**” has the same meaning as is given to that term in the *Energy Retail Code*.

“**Commission**” means the Essential Services Commission established under the *Essential Services Commission Act 2002*.

“**connection point**” means:

- (a) in the case of a **small electricity customer**, the agreed point of **supply** between the **small electricity customer’s** electrical installation and the distribution network; and
- (b) in the case of a **small gas customer**, the agreed point of **supply** between the **small gas customer’s** gas installation and the distribution system.

“**customer**” means a customer as defined in the *Electricity Act 1996* or the *Gas Act 1997*, as the context requires, who buys or proposes to buy **energy** from a **retailer**;

“**customer information**” means information relating to a specific **small customer** obtained by a **marketer**, its employees, agents or contractors through the process of **marketing customer sale contracts** to the **small customer**, and includes information obtained without the consent of the **small customer**.

“**customer sale contract**” means a contract for the sale or sale and supply of **energy** to a **small customer**.

“**date of receipt**” means, in relation to the receipt by a **small customer** of a written disclosure statement given by a **marketer** under clause 14 of this *Energy Marketing Code*:

- (a) in the case where the **marketer** hands the notice to the **small customer**, the date the **marketer** does so;
- (b) in the case where the **marketer** sends a notice by facsimile or by e-mail before 5pm on a **business day**, on that **business day**, otherwise on the next **business day**;
- (c) in the case where the **marketer** leaves the notice at the **small customer's supply address**, the date the **marketer** does so;
- (d) in the case where the **marketer** gives the notice by post or, registered mail or lettergram, a date 2 **business days** after the date the **marketer** sent the notice.

“energy” means either or both of gas and electricity;

“explicit informed consent” means the consent provided by a **small customer** in accordance with any relevant provisions of the *Customer Transfer and Consent Code* made by the **Commission**.

“industry code” means a code made by the **Commission** under the *Essential Services Commission Act 2002*.

“Industry Ombudsman” means the ombudsman appointed under the scheme approved by the **Commission** in accordance with the **retailer's** licence.

“marketer” means a person who carries on the business of **marketing customer sale contracts** and includes a **retailer** and **non-regulated marketer**.

“marketing” includes, but is not limited to, advertising, sales, promotions, market research, public relations, discussions or negotiations by any means in the nature of a personal contact with a **small customer** whether solicited or unsolicited for the purposes of entering into a **customer sale contract**.

“marketing contact” means a contact made by a **marketer** with a **small customer** for the purposes of **marketing a customer sale contract**.

“non-regulated marketer” means a person who carries on the business of **marketing customer sale contracts** for the sale of **energy to small customers** but is not licensed by the **Commission**.

“person” includes a body corporate.

“retailer” means a person licensed under the *Electricity Act 1996* to sell electricity and a person licensed under the *Gas Act 1997* to sell and supply gas;

“salesperson” means an employee or contractor acting on behalf of a **marketer** in the **marketing of customer sale contracts**, and **salespeople** has a corresponding meaning.

“small customer” means either or both of **small electricity customer** and **small gas customer**.

“small electricity customer” has the same meaning as is given to the term “small customer” in the *Electricity Act 1996*.

“small gas customer” has the same meaning as is given to the term “small customer” in the *Gas Act 1997*.

“supply address” means:

- (a) the address for which a **small customer** purchases **energy** from a **retailer** where there is only one **connection point** at that address; or
- (b) where there is more than one **connection point** at the address, each **connection point** through which the **small customer** purchases **energy** from the same **retailer**.

SCHEDULE 2: INTERPRETATION

In this industry code, unless the context otherwise requires:

1. Headings and footnotes are for convenience or information only and do not affect the interpretation of this industry code or of any term or condition set out in this industry code.
2. Words importing the singular include the plural and vice versa.
3. 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.
4. A reference to a clause or appendix is to a clause or appendix of this industry code.
5. A reference to any statute includes all statutes varying, consolidating, re-enacting, extending or replacing them and a reference to a statute includes all regulations, proclamations, ordinances, by-laws and determinations issued under that statute.
6. 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.
7. A reference to a person includes that person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and permitted assigns.
8. Other parts of speech and grammatical forms of a word or phrase defined in this industry code have a corresponding meaning.
9. A period of time:
 - (a) which dates from a given day or the day of an act or event is to be calculated exclusive of that day; and
 - (b) which commences on a given day or the day of an act or event is to be calculated inclusive of that day.
10. A reference to:
 - (a) a day is a reference to a period commencing immediately after midnight and ending the following midnight; and
 - (b) a month is a reference to a calendar month.

11. An event which is required under any term or condition set out in this industry code to occur on or by a stipulated day which is not a **business day**, may occur on or by the next **business day**.

AMENDMENT RECORD

EMC/01

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