

# Gas Industry Code

made under the *Gas Supply Act 2003*

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effective 1 July 2009**

This Second Edition of the Gas Industry Code —

- was made under section 270A of the *Gas Supply Act 2003* ('**the Act**') by the Minister for Mines and Energy as Minister under the Act, on 28 June 2007. Pursuant to section 270C of the Act, a notice was published in the Queensland Government Gazette on 29 June 2007 stating the *Minister* had made the *Code*; and
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# Gas Industry Code

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# Gas Industry Code

## CHAPTER 1: THIS CODE

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### 1.1 Introduction

#### 1.1.1 Code objective

The objective of this *Code* is to promote efficient investment in, and efficient use of, *processed natural gas* services for the long-term interests of Queensland *customers* of *processed natural gas* about price, quality, safety, reliability and security of *supply* of *processed natural gas*.

#### 1.1.2 Scope

The scope of this *Code* is to:

- (a) require *retailers* and *distributors* to comply with specified *customer* protection provisions for *small customers*;
- (b) set out *distributors*' and *retailers*' obligations where a *customer* transfers from one *retailer* to another; and
- (c) require *retailers* to comply with retail marketing and price disclosure rules.

#### 1.1.3 Authority

This First Edition of the *Code* is made by the *Minister* under section 270A of the *Gas Supply Act*.

#### 1.1.4 Date of effect

Subject to section 270C(2) of the *Gas Supply Act*, this Second Edition of the *Code* takes effect on and from 1 July 2009.

#### 1.1.5 Application

- (a) Each *distributor* must comply with this *Code* as a condition of its *distribution authority*.
- (b) Each *retailer* must comply with this *Code* as a condition of its *retail authority*.

#### 1.1.6 Obligation to remedy

- (a) If a *distributor* or *retailer* breaches this *Code*, it must remedy that breach as soon as practicable.

#### 1.1.7 Amendment of *Code*

This *Code* can only be amended in accordance with the procedures and consultation processes set out in *gas legislation*.

### **1.1.8 Interpretation**

Words appearing like *this* are defined in clause 6.1.1.

### **1.1.9 Other relevant instruments**

Not all aspects of a *distributor's* or *retailer's* obligations are regulated by this *Code*. Their obligations and some aspects of their relationships with a *customer* are also affected by other instruments, including:

- (a) the *Gas Supply Act*;
- (b) the *Gas Supply Regulation*;
- (c) the *National Gas (Queensland) Act*;
- (d) the *National Gas (Queensland) Law*;
- (e) the *National Gas (Queensland) Regulations*;
- (f) the *National Gas Rules*;
- (g) the *Petroleum and Gas Act*;
- (h) the *Petroleum and Gas Regulations*; and
- (i) a *distributor's distribution authority* and a *retailer's retail authority*.

## CHAPTER 2: CUSTOMER CONNECTION SERVICES

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### 2.1 Application of this Chapter

This Chapter applies to *distributors* in relation to *small customers*.

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### 2.2 Minimum terms

For the purposes of section 109B(2) of the *Gas Supply Act*, clauses 2.3 to 2.4 are minimum terms for the provision of *customer connection services* to *small customers*.

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### 2.3 Disconnection and recommencement

#### 2.3.1 When a *distributor* may *disconnect*

- (a) The *distributor* may only *disconnect* a *small customer's premises* on the following grounds:
  - (i) because of an emergency or for a health or safety reason;
  - (ii) the *disconnection* has been directed under a dangerous situation direction under the *Petroleum and Gas Act*;
  - (iii) to carry out work that needs to be carried out without delay to prevent an emergency or a health or safety incident;
  - (iv) to carry out work to the *distributor's distribution system* if:
    - (A) the work is reasonably required and is done at a reasonable time; and
    - (B) the *small customer* is given reasonable notice of the *disconnection*;
  - (v) *customer connection services* to the *premises* are denied or limited under an insufficiency of *supply* direction;
  - (vi) the *small customer* has contravened section 130 of the *Gas Supply Act* by preventing the officers of the *distributor* from safely exercising their powers of entry as granted by section 138 of the *Gas Supply Act*;
  - (vii) if the *small customer* has fraudulently acquired or intentionally consumed gas otherwise than in accordance with *gas legislation*;
  - (viii) on request by a *retailer*; and
  - (ix) as otherwise permitted under *gas legislation*.
- (b) The *disconnection* may be to the extent and for the period that the *distributor* reasonably believes is appropriate in the circumstances.

### 2.3.2 When *distributor* must *disconnect*

If the *distributor* receives a *disconnection request* from a *retailer*, the *distributor* must, within five *business days*, comply with the request unless the *distributor* reasonably believes it would be unsafe or impractical to comply.

### 2.3.3 Recommencement

- (a) This clause 2.3.3 applies if:
  - (i) under clause 2.3.2, the *distributor* has *disconnected* a *small customer's* premises; and
  - (ii) a *retailer* gives the *distributor* a notice asking for the provision of *customer connection services* to be recommenced.
- (b) If the relevant *processed natural gas* installation and meters comply with all requirements under the *Petroleum and Gas Act* and any other relevant Act, the *distributor* must recommence the *customer connection services* within five *business days*.
- (c) The obligation to recommence is subject to the limits on the *distributor's* obligation to provide *customer connection services* under section 109 of the *Gas Supply Act*.

### 2.3.4 Compensation for failure to *disconnect* or *recommence*

- (a) This clause 2.3.4 applies if a *distributor* contravenes clauses 2.3.2 or 2.3.3 and a person as follows (the *claimant*) suffers a cost, damage or loss because of the contravention:
  - (i) a person who wants to recommence *processed natural gas supply*;
  - (ii) for clause 2.3.2 - the *retailer* who made the *disconnection request*;
  - (iii) for clause 2.3.3 - the *retailer* that gave the notice asking for *customer connection services* to be recommenced.
- (b) The *distributor* must pay compensation for the cost, damage or loss suffered by the *claimant*.

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## 2.4 Indemnity and liability

### 2.4.1 No indemnity

A *distributor* must ensure that any *connection contract* it enters into with a *small customer* does not include an indemnity or other term or condition the effect of which is to entitle the *distributor* to recover from the *small customer* in respect of:

- (a) any breach by the *small customer* of the contract; or
- (b) any negligence by the *small customer* in relation to the contract,

any greater amount than that which, under common law (including in equity) or statute, the *distributor* is entitled to as compensation for the *small customer's* breach of contract or negligence.

#### **2.4.2 Restrictions on *distributors'* limitation of liability in *connection contracts***

A *distributor* must ensure that any clause in any *connection contract* it enters into with a *small customer* limiting the contractual liability of the *distributor* to the *small customer* does not provide any greater limitation of contractual liability than that provided for in clauses 2.4.3 to 2.4.4.

#### **2.4.3 Implied terms and the *Trade Practices Act***

- (a) The *Trade Practices Act 1974* (Cwlth) and other laws imply certain conditions, warranties and rights into contracts that cannot be excluded or limited.
- (b) Unless one of these laws requires it, the *distributor* gives no condition, warranty or undertaking, and makes no representation to the *small customer* about the condition or suitability of gas, its quality, fitness for purpose or safety, other than those set out in the *connection contract*.
- (c) Any liability the *distributor* has to the *small customer* under these laws that cannot be excluded but that can be limited is (at the *distributor's* option) limited to:
  - (i) providing equivalent goods or services provided under this contract to the *small customer's premises*; or
  - (ii) paying the *small customer* the cost of replacing the goods or services provided under the *connection contract* to the *small customer's premises*, or acquiring equivalent goods or services.

#### **2.4.4 Non-exclusion**

Clause 2.4.3 is in addition to, and does not vary or exclude, the operation of sections 315 and 316 of the *Gas Supply Act* or section 856 of the *Petroleum and Gas Act*.

### 3.1 Application of this Chapter

This Chapter applies to *retailers* in relation to *small customers*.

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### 3.2 Minimum terms and conditions

For the purposes of sections 205(5)(b) and 210(2) of the *Gas Supply Act*, clauses 3.3 to 3.6 (as applicable) are minimum terms for the provision of *customer retail services* to *small customers*.

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### 3.3 Cooling off

- (a) A *retailer* must ensure that each *negotiated retail contract* it enters into with a *small customer* confers on the *small customer* the right to rescind that *negotiated retail contract* in accordance with this clause within the period of 10 *business days* commencing on, and including, the date of receipt by the *small customer* of the disclosure statement provided in respect of that *negotiated retail contract*.
- (b) A right of rescission conferred under this clause may be exercised notwithstanding affirmation of the contract by the *small customer*.
- (c) Notice of rescission must be provided to the *retailer* by the *small customer* in a form which clearly indicates an intention on the part of the *small customer* to rescind the *negotiated retail contract*.
- (d) A notice of rescission provided in writing by a *small customer* will be deemed to have been received by the *retailer* on the date it was sent where the notice was sent by:
  - (i) post to the *retailer's* postal address as stated in the disclosure statement provided in respect of the *negotiated retail contract*;
  - (ii) facsimile to the *retailer's* facsimile number as stated in the disclosure statement provided in respect of the *negotiated retail contract*; or
  - (iii) email to the *retailer's* email address as stated in the disclosure statement provided in respect of the *negotiated retail contract*.
- (e) Nothing in this clause affects other rights in law or in equity which a *small customer* may have in relation to the *negotiated retail contract* or the conduct of a *retailer*.
- (f) A *retailer* must include in each *negotiated retail contract* it enters into with a *small customer* express provisions setting out the rights and obligations provided for by this clause 3.3.
- (g) A *retailer* must retain records of a notice of rescission given by a *small customer* under paragraph (c) for a period of two years in a format which permits the *retailer* to answer any enquiries relating to that notice by the *small customer*, the

*QCA*, the *Energy Ombudsman* or any other entity permitted by *gas legislation* to access that information.

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## 3.4 Bills and information

### 3.4.1 Obligation to bill at least quarterly

- (a) A *retailer* must use its best endeavours to give each of its *small customers* a bill for *customer retail services* provided to the *small customer* at least once every 3 months.
- (b) The provisions of paragraph (a) may be varied in a *negotiated retail contract* with the *explicit informed consent* of the *small customer*.

### 3.4.2 Particulars on each bill

A bill from a *retailer* to a *small customer* must state each of the following:

- (a) the *small customer's* name, mailing address and bill number;
- (b) the address of the *premises* at which the relevant *customer retail services* were given;
- (c) from the time notified by the *QCA* (after consultation with *distributors* and *retailers*) and only for *MIRN premises*, the *MIRN* and *MIRN checksum*;
- (d) the days on which the bill period started and ended;
- (e) the total charge the *small customer* must pay;
- (f) the charges from services provided or arranged by the *retailer* and any other fees or charges imposed on the *small customer*;
- (g) for the fees and charges mentioned in paragraph (f), the amount of:
  - (i) the charges for *processed natural gas* sales;
  - (ii) the charges for other services; and
  - (iii) any other fees and charges imposed on the *small customer*;
- (h) the day by which the total charge must be paid;
- (i) the amount of any arrears and the day by which the arrears must be paid;
- (j) the amount of any credit received;
- (k) the methods by which an amount owing to the *retailer* may be paid;
- (l) particulars of relevant meter readings;
- (m) the estimated or measured amount of *processed natural gas* in *MJ*;
- (n) particulars of any rates of charge for the *processed natural gas* supplied;

- (o) a contact telephone number at which the *retailer* will answer bill inquiries;
- (p) if the bill contains a *disconnection warning*, details of the existence and operation of the *Energy Ombudsman*, including the *Energy Ombudsman's* contact details;
- (q) particulars, in *MJ*, of the average daily consumption of all *processed natural gas* supplied during the billing period;
- (r) if the *retailer* gave the *small customer* a bill for the corresponding billing period in the previous year - particulars, in *MJ*, of the average daily consumption of all *processed natural gas* supplied during that billing period; and
- (s) a contact telephone number at which the *distributor* can be advised of emergencies, leakages, faults, unplanned interruptions and any other situation relevant to the *distributor* that relates to safety.

### 3.4.3 Publication of *customer information statement*

A *retailer* must publish on its website an information statement containing:

- (a) a summary of the procedures under the *Energy Ombudsman Act 2006 (Qld)* for a dispute between *retailers* and their *small customers*;
- (b) a telephone number for the *QCA* at which advice may be obtained about how to refer disputes to the *Energy Ombudsman*; and
- (c) a telephone number for the *retailer* at which information may be obtained about the provision of *customer retail services* by the *retailer* and matters related to the provision of the services.

### 3.4.4 Obligations to provide a copy of *standard retail contract*

- (a) A *retailer* must, if asked by a *small customer* of the *retailer* or before the *retailer* first starts to sell *processed natural gas* to the *small customer's premises*, give the *small customer* a copy of the terms of its *standard retail contract*.
- (b) Subject to paragraph (c), the copy must be free of charge.
- (c) If a *small customer* has already received a copy of a *retailer's standard retail contract* under paragraph (a), the *retailer* may charge the *small customer* a reasonable charge for the provision of the *retailer's standard retail contract* on any subsequent request from the *small customer* within a 12 month period.

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## 3.5 Disconnection

### 3.5.1 Request by *retailer to disconnect*

- (a) The *retailer* may only request a *distributor* to *disconnect* a *small customer's premises* (a *disconnection request*):

- (i) if:
    - (A) the *small customer* has failed to pay a bill or has agreed to an *instalment plan* or other payment option but has failed to make a payment in accordance with that plan or option;
    - (B) the *small customer* has failed to provide a *security deposit* if and when it is required under the *retail contract*;
    - (C) the *small customer* has failed to give reasonable advance payments for the services, as requested by the *retailer*;
    - (D) the *small customer* fails to allow, for three consecutive scheduled meter readings, access to its *premises* for a meter reading;
    - (E) the *small customer* refuses or fails to provide *acceptable identification* when requested by the *retailer*,

and

    - (F) the *retailer* has given the *small customer* at least two notices (*disconnection warnings*) of the *retailer's* intention to request the *distributor* to *disconnect* the *small customer's premises*;
  - (ii) because of a ground mentioned in clause 2.3.1(a);
  - (iii) if the *small customer* asks the *retailer* to arrange for the *disconnection*;  
or
  - (iv) as otherwise permitted by, and in accordance with, *gas legislation*.
- (b) The *disconnection warnings* must:
- (i) be given at an interval of at least one week; and
  - (ii) state each of the following:
    - (A) the grounds on which the *retailer* proposes to give the *disconnection request*;
    - (B) the day on which the *retailer* proposes to give the *disconnection request* or the day on which the *small customer* will be disconnected;
    - (C) that if the *small customer* disputes that the *retailer* is not obliged to provide, or continue to provide, the *customer retail services* the *small customer* may, in writing, refer the dispute to the *Energy Ombudsman*.
- (c) The stated day must be at least 10 *business days* after the first *disconnection warning* is given.
- (d) The *disconnection request* must not be given or purport to be given to a *distributor* on the ground that the *retailer* is not obliged to provide, or continue

to provide, *customer retail services* to the *small customer* unless the *retailer* has given the *disconnection warnings* as required under this clause 3.5.

### 3.5.2 Obligation to give recommencement notice

If, under clause 2.3.2, the *distributor* has *disconnected* a *small customer's premises*, the *retailer* must give the *distributor* notice under clause 2.3.3 asking for the *services* to be recommenced if, within 10 *business days* of the *disconnection*, the *small customer*:

- (a) asks the *retailer* to give the notice;
- (b) if the *disconnection* was other than at the *small customer's* request - rectifies the ground on which the *disconnection* was based; and
- (c) pays the *retailer* any reasonable fee the *retailer* requires for the recommencement.

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## 3.6 Indemnity and liability

### 3.6.1 No indemnity

A *retailer* must ensure that any *retail contract* it enters into with a *small customer* does not include an indemnity or other term or condition the effect of which is to entitle the *retailer* to recover from the *small customer* in respect of:

- (a) any breach by the *small customer* of the contract; or
- (b) any negligence by the *small customer* in relation to the contract,

any greater amount than that which, under common law (including in equity) or statute, the *retailer* is entitled to as compensation for the *small customer's* breach of contract or negligence.

### 3.6.2 Restrictions on *retailers' limitation of liability in retail contracts*

A *retailer* must ensure that any clause in any *retail contract* it enters into with a *small customer* limiting the contractual liability of the *retailer* to the *small customer* does not provide any greater limitation of contractual liability than that provided for in clauses 3.6.3 to 3.6.5.

### 3.6.3 Implied terms and the *Trade Practices Act*

- (a) The *Trade Practices Act 1974* (Cwlth) and other laws imply certain conditions, warranties and rights into contracts that cannot be excluded or limited.
- (b) Unless one of these laws requires it, the *retailer* gives no condition, warranty or undertaking, and makes no representation to the *small customer* about the condition or suitability of gas, its quality, fitness for purpose or safety, other than those set out in the *retail contract*.
- (c) Any liability the *retailer* has to the *small customer* under these laws that cannot be excluded but that can be limited is (at the *retailer's* option) limited to:

- (i) providing equivalent goods or services provided under this contract to the *small customer's premises*; or
- (ii) paying the *small customer* the cost of replacing the goods or services provided under the *retail contract* to the *small customer's premises*, or acquiring equivalent goods or services.

#### **3.6.4 Not liable for gas**

- (a) So far as the law allows, a *retailer* is not liable for any loss or damage the *small customer* suffers (whether due to negligence or otherwise), because of the gas the *retailer* sells to the *small customer* under the *retail contract*.
- (b) In particular, the *retailer* is not liable for any loss or damage the *small customer* may suffer because:
  - (i) there is a failure of gas *supply*, or there is a defect in the gas *supplied* (however caused); or
  - (ii) some characteristic of the gas makes it unsuitable for some purpose.

#### **3.6.5 Non-exclusion**

Clauses 3.6.3 and 3.6.4 are in addition to, and do not vary or exclude, the operation of section 315 and 316 of the *Gas Supply Act* or section 856 of the *Petroleum and Gas Act*.

## CHAPTER 4: RETAIL MARKETING CONDUCT

### Preamble

Chapter 4 of this *Code* is intended to operate in conjunction with laws of general application. To the extent that there is any inconsistency between this Chapter and an applicable Commonwealth or State law, that law will take precedence.

Sections 270ZJA and 270ZJB of the *Gas Supply Act* deal with the interaction of this Chapter 4 and the *Fair Trading Act*.

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### 4.1 Application of this Chapter

#### 4.1.1 Application

This Chapter applies:

- (a) to all *retailers*;
- (b) unless otherwise specified, in relation to *small customers*,

and *non-regulated marketers* are encouraged to comply with this Chapter 4.

#### 4.1.2 Non-application by agreement

This Chapter 4, or specified provisions of this Chapter 5, will not apply to a *retailer*, or a *marketer* acting on the *retailer's* behalf, where the *retailer* has agreed in writing with a *customer*, by obtaining that *customer's explicit informed consent*, that this Chapter 4, or specified provisions of this Chapter 4, will not apply in respect of that *customer*, if:

- (a) the *customer*:
  - (i) is a *business customer*;
  - (ii) has one or more *premises* or a group of *premises*;
  - (iii) is a *small customer* in respect of one or more of those *premises*; and
- (b) the aggregate of the actual or expected annual energy consumption level for those *premises* equals or exceeds:
  - (i) in the case of a proposed gas contract, 1*TJ* of gas per annum; or
  - (ii) in the case of a proposed dual fuel contract, 100MWh of electricity per annum or 1*TJ* of gas per annum.

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### 4.2 Compliance

#### 4.2.1 Compliance

- (a) A *retailer* is responsible under this Chapter 4 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 *retail contract* with a *small customer* for the provision of *customer retail services*.

- (b) 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 *retail contract* with a *retailer* for the provision of *customer retail services*.

#### 4.2.2 Statement of compliance

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 Chapter 4 where the *non-regulated marketer* has introduced a *small customer* to the *retailer* or has arranged or facilitated a *retail contract* on behalf of that *retailer*.

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### 4.3 General conduct standards

A *marketer* or *salesperson* must while engaged in *marketing*:

- (a) comply with all applicable Commonwealth and State laws;
- (b) not engage in misleading, deceptive or unconscionable conduct, whether by act or omission;
- (c) not exert undue pressure on a *small customer*, nor harass or coerce a *small customer*;
- (d) use words and images that promote *small customers'* comprehension of *retail contracts*;
- (e) ensure that information provided to *small customers* is truthful and in plain language;
- (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.

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### 4.4 Time of contact

#### 4.4.1 Door knocking

- (a) Subject to paragraph (b), except by prior appointment, a *marketer* or *salesperson* must not visit a *small customer* for the purpose of *marketing* a *retail contract*:
  - (i) at any time on a Sunday or a public holiday;
  - (ii) on a Saturday:
    - (A) between midnight and 9.00 a.m.; or

- (B) between 5.00 p.m. and midnight; or
- (iii) on any other day:
  - (A) between midnight and 9.00 a.m.; or
  - (B) between 6.00 p.m. and midnight.
- (b) If a *retailer* has an exemption under section 71A of the *Fair Trading Act* in relation to contact times, the *retailer* and its *marketers* or *salespersons* must comply with that exemption to the extent of any inconsistency.

#### **4.4.2 Telephone marketing**

Except by prior appointment, a *marketer* or *salesperson* must not telephone a *small customer* for the purpose of *marketing* a *retail contract*:

- (a) at any time on a Sunday or a public holiday;
- (b) on a Saturday:
  - (i) between midnight and 9.00 a.m.; or
  - (ii) between 5.00 p.m. and midnight; or
- (c) on any other day:
  - (i) between midnight and 9.00 a.m.; or
  - (ii) between 8.00 p.m. and midnight.

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## **4.5 Marketing Contacts**

### **4.5.1 Identification**

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:

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

### **4.5.2 Contact details**

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.

#### 4.5.3 Termination of *marketing contacts*

- (a) If a *small customer* requests the termination of a *marketing contact*, the *marketer* or *salesperson* must:
  - (i) immediately comply with that request;
  - (ii) 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*;
  - (iii) 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
  - (iv) if requested by the *small customer*, provide details, including contact details, of that dispute resolution service.
- (b) To avoid doubt, paragraph (a) does not apply where a *small customer* defers a *marketing contact* to another date.

#### 4.5.4 *Marketing in person*

- (a) 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:
  - (i) a photograph of the *marketer* or *salesperson*; and
  - (ii) the name of the *marketer* or *salesperson* and, if different, the *retailer* on whose behalf the *marketer* is acting.
- (b) A *marketer* or *salesperson* who makes a *marketing contact* by visiting a *small customer* must also provide the *small customer* with:
  - (i) the *retailer's* telephone number for enquiries, verifications and complaints; and
  - (ii) if requested by the *small customer*, the address for service of the *retailer* on whose behalf the *marketer* or *salesperson* is acting.

#### 4.5.5 Information and details to be provided in writing where *marketing* is in person

Information or details required to be provided to a *small customer* under clause 4.5.1, 4.5.2 or 4.5.3 must be provided to the *small customer* in writing if the *marketer* or *salesperson* is making the *marketing contact* by visiting the *small customer*.

#### 4.5.6 *Marketing by telephone*

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 4.5.1 and 4.5.2; 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.

#### **4.5.7 Marketing by electronic means**

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 4.5.1 and 4.5.2; 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.

#### **4.5.8 Record keeping standards**

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*;
- (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*.

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### **4.6 Written disclosure statement**

When a *marketing contact* results, or is intended to result, in a *small customer* entering into a *negotiated retail contract*, or when a *small customer* contacts a *marketer* for the purposes of entering into a *negotiated retail 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 *negotiated retail contract* is entered into or, if the contract is entered into over the telephone, within two *business days* of the *negotiated retail contract* being 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 email address of the *marketer* or, if different, the *retailer* on whose behalf the *marketer* is acting;
- (c) the date of commencement of the *negotiated retail contract*;
- (d) the prices, charges, tariffs and service levels that will be applicable in respect of the *negotiated retail contract*;

- (e) if the prices, charges, tariffs or service levels are able to be changed by the *retailer* under the *negotiated retail contract*, the manner in which any such change may be effected;
- (f) the costs to the *small customer* associated with entering into the *negotiated retail 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 *negotiated retail contract*;
- (h) the payment methods and options which are available in respect of the *negotiated retail 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 *negotiated retail 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 *negotiated retail contract* in accordance with the *Code*; and
- (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;
  - (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.

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## 4.7 Dispute resolution

- (a) A *retailer* must, within 20 *business days* after it first markets *retail contracts* to a *small customer*, prepare and submit to the *QCA*, for approval, its procedures to resolve *small customer* complaints and disputes with respect to *marketing*.
- (b) The procedures must deal with at least the following matters:
  - (i) how complaints are to be notified by *small customers*;
  - (ii) the handling of complaints;
  - (iii) method of response (for example, in writing);
  - (iv) referral to the *Energy Ombudsman* where the complaint is not satisfactorily resolved; and
  - (v) any other matter required by the *QCA*.

- (c) Any procedures referred to the *QCA* under this clause 4.7 will come into effect 20 *business days* after the *retailer* is notified by the *QCA* that approval has been granted.
- (d) If the *QCA* notifies the *retailer* that it does not approve the procedures, the *retailer* must submit revised procedures as soon as practicable until a set of procedures are approved.

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## 4.8 Consent

- (a) Whenever a *marketer* is required to obtain the consent of a *small customer*, including the consent to enter into a *retail 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 4.6).
- (b) A *marketer* must retain records of any *explicit informed consent* obtained under Chapter 4 of this *Code* for at least two years.
- (c) Records retained under paragraph (b) must be retained by the *marketer* in a format which permits the *marketer* to answer any enquiries relating to a *customer's explicit informed consent* by that *small customer*, the *QCA*, the *Energy Ombudsman* or any other entity permitted by *gas legislation* to access that information.

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## 4.9 Training and product knowledge

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 Chapter 4 of this *Code* and all other relevant legislative requirements.

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## 4.10 Privacy

While engaged in *marketing*, a *marketer* must, in dealing with *customers' information*, comply with:

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

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

### 5.1 Application of this Chapter

This Chapter applies to all *retailers*.

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### 5.2 Price fact sheets

#### 5.2.1 Publishing price fact sheets

For each *negotiated retail contract* that a *retailer* offers to *residential customers* the *retailer* must, in relation to that *negotiated retail contract*:

- (a) publish a price fact sheet on its website;
- (b) in combination with, or included within, any written disclosure statement provided to a *residential customer* under the requirements of clause 4.6 of this *Code* provide a price fact sheet; and
- (c) provide a price fact sheet to a *residential customer* on request.

#### 5.2.2 Contents of price fact sheet

A price fact sheet published or provided in accordance with clause 5.2.1 must include at least the following information:

- (a) the estimated annual cost of the *negotiated retail contract* (assuming consumption is spread evenly over the year and excluding rebates or fees listed below in paragraphs (b) to (g)) for a *customer* with an annual gas consumption level of:
  - (i) 5GJ;
  - (ii) 10GJ; and
  - (iii) 15GJ,
- (b) the amount of any loyalty rebate;
- (c) the amount of any entry rebate;
- (d) the amount of any account establishment fees;
- (e) the amount of any exit fees;
- (f) the amount of any direct debit rebate; and
- (g) the amount of any other new fees and charges.

### 5.2.3 Form of price fact sheet

Nothing in this clause 5.2 restricts a *retailer* providing the price fact sheets in conjunction with other *marketing* or information material.

### 5.2.4 Expression of price information

In any promotional or *marketing* information provided by a *retailer* or on behalf of a *retailer* to a *residential customer*, prices must be expressed as inclusive of *GST*.

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## 5.3 Provision of information to the QCA

### 5.3.1 Provision of information to the QCA

In relation to each type of the *negotiated retail contracts* that a *retailer* offers to *residential customers*, the *retailer* must provide the *QCA* with accurate and full information about that type of *negotiated retail contract* including:

- (a) price and price structures;
- (b) loyalty rebates;
- (c) entry rebates;
- (d) account establishment fees;
- (e) exit fees;
- (f) any other new fees and charges;
- (g) direct debit rebates; and
- (h) non-price incentives, including but not limited to:
  - (i) loyalty schemes; and
  - (ii) product vouchers.

### 5.3.2 Changes to *negotiated retail contracts*

- (a) A *retailer* must inform the *QCA* of any changes to the information provided under clause 5.3.1 no more than 24 hours after the changes have taken effect.
- (b) A *retailer* may notify the *QCA* of any changes to the information provided under clause 5.3.1 by telephone, fax or email.
- (c) If notification is made by telephone, written confirmation of any changes to the information provided under clause 5.3.1 must be provided to the *QCA* within five *business days* of the date of that notification.

### 5.3.3 Confidentiality of information

- (a) When providing the *QCA* with information about a *negotiated retail contract* under clause 5.3.1 or 5.3.2, the *retailer* may request the *QCA* not to disclose the information publicly.
- (b) If the *QCA* determines that a claim for confidentiality made under paragraph (a) is reasonable and in the public interest, the *QCA* must not publicly disclose the information provided under clause 5.3.1 or 5.3.2 through any of the *QCA*'s price comparison services.

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## 5.4 Price comparator

### 5.4.1 Development of price comparator

- (a) The *QCA* must develop and make available on its website a price comparator so that *residential customers* can compare an offer it receives to enter into a *negotiated retail contract* against the types of *negotiated retail contracts* offered by *retailers*.
- (b) The price comparator must:
  - (i) be developed with the objective of enabling *residential customers* to compare types of *negotiated retail contracts* and each *retailer's standard retail contract*;
  - (ii) prompt the *residential customer* to provide details of gas consumption from their bills (up to four) and details from any offer they have received from a *retailer*; and
  - (iii) show the estimated annual gas costs under each type of *negotiated retail contract* and each *retailer's standard retail contract* when gas consumption details are entered by *residential customers* and any savings the *residential customer* could make by entering into a *standard retail contract* with the *retailer* or a *negotiated retail contract* other than the offer they have received from the *retailer*.
- (c) The price comparator will only be a guide and this should be made clear to *residential customers* that use the price comparator.
- (d) The price comparator need only deal with price components of *negotiated retail contracts* in monetary terms and need not deal with non-cash rewards such as vouchers, discounts on other products or services or any eligibility for an energy concession in financial comparisons. However, the price comparator must include a field that provides for a text description of any non-cash rewards offered by the *retailer* under the contract.
- (e) Nothing in this clause 5.4 prohibits the *QCA* from developing and making available a single price comparator that compares prices for the provision of both gas and electricity.

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## **5.5 Review of developments in full retail contestability**

### **5.5.1 QCA monitoring and reporting role**

The *QCA* must, following the *FRC commencement date*:

- (a) monitor the Queensland gas market;
- (b) publish on annual basis by *retailer* the information on *customer disconnections* provided by *retailers* under clause 5.5.2; and
- (c) publish on annual basis by *retailer* the information on *customer* complaints provided by the *retailers* under clause 5.5.3.

### **5.5.2 Retailers to supply customer disconnection**

Each *retailer* must, within two months after the end of each year following the *FRC commencement date*, supply to the *QCA* data that details:

- (a) the number of the *retailer's small customers* that were *disconnected* due to non payment; and
- (b) the number of the *retailer's small customers* that were *disconnected* at a *premises* due to non payment but who have been reconnected within seven days with the same name at the *premises*,

for the previous year.

### **5.5.3 Retailers to supply customer complaint data**

Each *retailer* must, within two months after the end of each year following the *FRC commencement date*, supply to the *QCA* data that details the number of complaints received in respect of their actions or omissions as a *retailer*, for the following categories:

- (a) total number of complaints;
- (b) billing or account complaints; and
- (c) other complaints,

for the previous year.

## 6.1 Definitions and interpretation

### 6.1.1 Definitions

*acceptable identification* in relation to:

- (a) a *residential customer*, includes one or more of the following:
  - (i) a driver's licence, a current passport or other form of photographic identification;
  - (ii) a Pensioner Concession Card or other entitlement card issued by the State or Commonwealth Government;
  - (iii) a birth certificate;
- (b) a *business customer* which is a sole trader or partnership, includes one or more of the forms of identification for a *residential customer* for each of the individuals that conduct the business; and
- (c) a *business customer* which is a body corporate, includes the body corporate's Australian Company Number or Australian Business Number.

*business customer* means a *customer* who is not a *residential customer*.

*business day* means a day, other than a Saturday, a Sunday or a Queensland wide public holiday (as appointed under the *Holidays Act 1983* (Qld)).

*claimant* has the meaning given in clause 2.3.4(a).

*Code* means this Gas Industry *Code*.

*connection contract* has the meaning given in the *Gas Supply Act*.

*customer* has the meaning given in the *Gas Supply Act*.

*customer connection services* has the meaning given in the *Gas Supply Act*.

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

*customer retail services* has the meaning given in the *Gas Supply Act*.

*disconnect* has the meaning given in the *Gas Supply Act*.

*disconnection request* has the meaning given in clause 3.5.1.

*disconnection warning* has the meaning given in clause 3.5.1.

*distribution authority* has the meaning given in the *Gas Supply Act*.

**distribution system** has the meaning given in the *Gas Supply Act*.

**distributor** means an entity that holds a *distribution authority*.

**Energy Ombudsman** means the *Energy Ombudsman* established under the *Energy Ombudsman Act 2006* (Qld).

**explicit informed consent** is the consent provided by a *customer* where:

- (a) the *customer* provides express conscious agreement;
- (b) the relevant *retailer* has fully and adequately disclosed all matters relevant to that *customer*, including each specific purpose for which the consent will be used; and
- (c) all disclosures referred to in paragraph (b) are truthful and have been provided in plain English.

**FRC commencement date** means 1 July 2007.

**Fair Trading Act** means the *Fair Trading Act 1989* (Qld).

**fixed-term contract** means a *retail contract* which has start and finish dates set expressly under the terms and conditions of that *retail contract*.

**gas legislation** means the *Gas Supply Act, Petroleum and Gas Act, National Gas (Queensland) Act* and regulations, standards, codes, protocols and rules made under those acts.

**gas retail market procedures** has the meaning given in the *Gas Supply Act 2003* (Qld) as amended by the *Mines and Energy Legislation Amendment Act 2009*.

**Gas Supply Act** means the *Gas Supply Act 2003* (Qld).

**Gas Supply Regulation** means the *Gas Supply Regulation 2007* (Qld).

**GJ** means one gigajoule which equals  $1 \times 10^9$  joules.

**GST** has the meaning it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

**instalment plan** means a plan for a *customer* to pay to the *retailer*, by periodic instalments, all arrears (including any *disconnection* or reconnection charges) and charges relating to continued usage of gas but, to avoid doubt, does not include an informal arrangement under which a *customer* is granted additional time to pay an amount owed.

**marketer** means a person who carries on the business of *marketing retail 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 *retail contract*.

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

**Minister** means the *Minister* under the *Gas Supply Act*.

**MIRN** has the meaning given in the *gas retail market procedures*.

**MIRN checksum** means a Meter Installation Registration Number checksum associated with a *MIRN*.

**MIRN premises** has the meaning given in the *Gas Supply Act*.

**MJ** means one megajoule which equals  $1 \times 10^6$  joules.

**National Gas (Queensland) Act** means the *National Gas (Queensland) Act 2008* (Qld).

**National Gas (Queensland) Law** means the law applying in Queensland under section 7 of the *National Gas (Queensland) Act*.

**National Gas (Queensland) Regulations** means the regulations applying in Queensland under section 8 of the *National Gas (Queensland) Act*.

**negotiated retail contract** has the meaning given in the *Gas Supply Act*.

**non-regulated marketer** means a person who carries on the business of *marketing retail contracts* for the provision of *customer retail services* to *small customers* but does not have an authority issued by the *regulator*.

**Petroleum and Gas Act** means the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

**Petroleum and Gas Regulations** means the *Petroleum and Gas (Production and Safety) Regulations 2004* (Qld).

**premises** means the address at which *customer retail services* or *customer connection services* (as the context requires) are provided to a *customer*.

**processed natural gas** has the meaning given in the *Gas Supply Act*.

**QCA** means the Queensland Competition Authority established under the *Queensland Competition Authority Act 1997* (Qld).

**regulator** has the meaning given in the *Gas Supply Act*.

**residential customer** means a *customer* whose primary use of gas is for household purposes.

**retail authority** has the meaning given in the *Gas Supply Act*.

**retail contract** has the meaning given in the *Gas Supply Act*.

**retailer** means an entity that holds a *retail authority*. **salesperson** means an employee or contractor acting on behalf of a *marketer* in the *marketing of retail contracts*, and **salespeople** has a corresponding meaning.

*security deposit* means an amount of money or other arrangement acceptable to the *retailer* as a security against a *customer* defaulting on a bill.

*small customer* has the meaning given in the *Gas Supply Act*.

*standard retail contract* has the meaning given in the *Gas Supply Act*.

*supply* has the meaning given in the *Gas Supply Act*.

*TJ* means one terajoule which equals  $1 \times 10^{12}$  joules.

Other grammatical forms of words defined in the dictionary are taken to have a corresponding meaning.

## 6.1.2 Interpretation

Unless the contrary intention appears, a reference in this *Code* to:

- (a) **(headings)** headings are for convenience only and do not affect the interpretation of this *Code*;
- (b) **(variations or replacement)** a document (including this *Code*) includes any variation or replacement of it;
- (c) **(clauses, schedules and annexures)** a clause, schedule or annexure is a reference to a clause in or schedule or annexure to this *Code*;
- (d) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (f) **(singular includes plural)** the singular includes the plural and vice versa;
- (g) **(person)** the word “person” includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any government agency;
- (h) **(dollars)** \$ is a reference to the lawful currency of Australia;
- (i) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (j) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (k) **(meaning not limited)** the words “include”, “including” or “for example” are not used as, nor are they to be interpreted as, words of limitation, and, when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;

- (l) **(next business day)** if an event under this agreement must occur on a stipulated day which is not a *business day* then the stipulated day will be taken to be the next *business day*;
- (m) **(reference to anything)** anything (including any amount) is a reference to the whole and each part of it;
- (n) **(footnotes)** footnotes are for reference only and do not affect the interpretation of this *Code*.