

5. RETAIL MARKETING CONDUCT

Preamble

Chapter 5 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 5 and the *Fair Trading Act*.

Words appearing like *this* are defined below.

5.1 Application of this Chapter

5.1.1 Application

This Chapter applies:

- (a) to all *retailers*;
- (b) unless otherwise specified, in relation to *small customers*,
- (c) and *non-regulated marketers* are encouraged to comply with this Chapter 5.

Non-application by agreement

This Chapter 5, 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 5, or specified provisions of this Chapter 5, 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.

5.2 Compliance

5.2.1 Compliance

- (a) *A retailer is responsible under this Chapter 5 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.*

5.2.2 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 5 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.

5.3 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.

5.4 Time of contact

5.4.1 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.

5.4.2 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.

5.5 Marketing Contacts

5.5.1 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.

5.5.2 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.

5.5.3 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.

5.5.4 *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.

5.5.5 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 5.5.1, 5.5.2 or 5.5.3 must be provided to the *small customer* in writing if the *marketer* or *salesperson* is making the *marketing contact* by visiting the *small customer*.

5.5.6 *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 5.5.1 and 5.5.2; 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.

5.5.7 *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 5.5.1 and 5.5.2; and
- (a) 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.

5.5.8 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*.

5.6 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.

5.7 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 5.7 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.

5.8 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 5.6).
- (b) A *marketer* must retain records of any *explicit informed consent* obtained under Chapter 5 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.

5.9 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 5 of this *Code* and all other relevant legislative requirements.

5.10 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*.

Definitions and interpretation

Definitions

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)).

Code means the *Gas Industry Code*.

customer 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*.

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.

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, Gas Pipelines Access (Queensland) Act* and regulations, standards, codes, protocols and rules made under those acts.

Gas Pipelines Access (Queensland) Act means the *Gas Pipelines Access (Queensland) Act 1998 (Qld)*.

Gas Pipelines Access (Queensland) Regulations means the *Gas Pipelines Access (Queensland) Regulations 2000 (Qld)*.

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

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*.

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)*.

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

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

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.

TJ means one terajoule which equals 1×10^{12} joules.

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