



**Code of Conduct for Marketing  
Retail Energy in Victoria**

**January 2009**

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## INTRODUCTION

### Purpose

The purpose of this *Code* is to specify standards and conditions for the marketing of energy including *cooling off* and *explicit informed consent*.

The *Code* applies to:

- all domestic *consumers*
- for electricity purposes, small business *consumers*, who consume less than 40MWh of electricity per year and
- for gas purposes, small business *consumers*, who consume less than 1000GJ of gas per year.

### Objectives

The *Code* will:

- protect *consumers* and promote *consumer* confidence in the retail energy industry by identifying high standards of behaviour for *marketing* energy;
- promote honesty, fairness and disclosure of information to *consumers*;
- enhance efficient retail market operation by clarifying standards and promoting certainty;
- reinforce that energy retail *contracts* are made with informed customer consent.

### Relevant legislation

This *Code* is made under section 11 of the *Essential Services Commission Act 2001*, which empowers the Commission to do all things necessary or convenient to be done for or in connection with the performance of its functions and to enable it to achieve its objectives.

This *Code* supplements and shall not limit any rights a *consumer* may have under the *Trade Practices Act 1974* (Cth), the *Fair Trading Act 1999* (Vic) or any other legislation or at law, and does not affect any rights a *consumer* may have to seek redress through the court system, tribunal or other public or private dispute resolution mechanism.

### Commencement

This *Code* will take effect from 1 January 2009.

### Amendment to this Code

This *Code* may be amended by the *Commission* on its own initiative or in response to a proposal by a *retailer* or other stakeholders.

The *Commission* will not amend this *Code* until *retailers* and other stakeholders have had a reasonable opportunity to make representations and those representations have been considered, in accordance with the *Commission's* Charter of Consultation and Regulatory Practice.

The *Commission* will give reasonable notice to *retailers* of any amendments to this *Code*.

Repealed

## 1. Marketing Representatives - Training<sup>1</sup>

**Retailers** shall provide initial and ongoing training and testing of **marketing representatives** to ensure all representatives understand and comply with this **Code** and maintain their understanding and compliance. In their training **retailers** will provide information on and examples of:

- the principles of **consumer** protection laws, such as those set out in the *Trade Practices Act 1974* and the *Fair Trading Act 1999* and in particular Part 4 Off-Business-Premises Sales and other sales of the *Fair Trading Act 1999* and other relevant legislation;
- what is misleading, deceptive or unconscionable conduct and false representation (including what is coercion and harassment); and
- basic contractual rights and the meaning and importance of the need for a **consumer's explicit informed consent** to a **contract**.
- the ability to clearly explain the arrangements for competition in energy supply in Victoria;
- the **consumer's** right to freely choose a **retailer**;
- product knowledge, including:
  - tariffs, billing procedures, payment options;
  - eligibility requirements for concessions, rebates or grants;
  - knowledge of **retailer's** policies for customers experiencing financial hardship; and
  - availability of instalment plans.
- understanding of basic contractual rights and the meaning and importance of the need for a **consumer's explicit informed consent** to a **contract**;
- customer service skills including dealing with **consumers** with special needs and those without or with limited English language skills;
- the terms and requirements of this **Code**; and
- other areas as directed by the Commission.

**Retailers** shall ensure that copies of training manuals be retained for at least one year after the date they were last used for training, and ensure that records are kept of the training

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<sup>1</sup> This section is not required by the *Fair Trading Act 1999*.

undertaken by *marketing representatives* for at least one year after the date on which the training took place.

The manuals and records shall be made available for independent audit as required.

## 2. Contact with Consumers

### 2.1 Personal contact

At all times in connection with any *marketing*, a *marketing representative* must identify himself or herself to a *consumer*. Identification involves the *marketing representative* using best endeavours to provide the *consumer* with:

- the *marketing representative's* name;
- any relevant identification number;
- the name of the *retailer* on whose behalf the *marketing* is being undertaken and contact details for the *retailer*;
- sufficient contact details to enable the *consumer* to contact the *retailer*; and
- advice as to the purpose of the *marketing* contact.

Where *marketing* is conducted in person, a *marketing representative* must wear an identification badge showing the *marketing representative's* photograph, name and the name of the *retailer* on whose behalf the *marketing* is being undertaken.

### 2.2 Telephone contact -

*Marketing representatives* who are conducting negotiations with a *consumer* on the telephone, which may lead to a *consumer* entering a *contract* or for an incidental or related purpose, must:

- provide at the earliest reasonable opportunity:<sup>2</sup>
  - the first name and on request the operator identification number of the *marketing representative* making the telephone call;
  - the name of the *retailer* on whose behalf the call is being made; and
  - the purpose of the telephone call; and
- on request, provide the name of the field or telesales agency, if any, that the *marketing representative* is employed by.<sup>3</sup>

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<sup>2</sup> The following items are not required by the *Fair Trading Act 1999*.

<sup>3</sup> Refer to the *Fair Trading Act 1999* and the *National Telecommunications Industry Standard* for further information.

### 2.3 No contact lists<sup>4</sup>

*Retailers* must keep records of *consumers* who have requested that they not be contacted for *marketing* purposes at all or in a specified medium (ie. in person, by email, by telephone or by post) and, at the request of the *consumer*, must provide written confirmation that the *consumer* has been placed on a no contact list maintained by the *retailer*. Each no contact list must contain the name and address of each relevant *consumer* and the *marketing* media to which the no contact request relates.

*Retailers* must not contact a *consumer* for the purpose of *marketing* in the medium specified on the no contact list maintained by the *retailer* in respect of that *consumer*.

If a *consumer* changes address, the *retailer* may remove that *consumer's* details from the no contact list.

*Retailers* must respect no canvassing signs.

### 2.4 Visit records<sup>5</sup>

To enable the identification of *marketing representatives* and to assist in dealing with enquiries and complaints, *retailers* will ensure that *marketing* records are maintained detailing the following information about personal visits made by *marketing representatives* to *consumers*:

- the premises visited at which contact with a *consumer* was made;
- the dates and times of such visits including the time at which the visit concluded; and
- the names of *marketing representatives* conducting *marketing* at the relevant time and place.

These records are to be kept for one year after the date of the visit and shall be made available for independent audit as required.

### 2.5 Telephone records<sup>6</sup>

To enable the identification of *marketing representatives* and to assist in dealing with *consumer* enquiries and complaints, *retailers* must maintain *marketing* records which include the following information about telephone contacts made by *marketing representatives* with *consumers*:

- where the *marketing representative* initiates the call to the *consumer*, the telephone number called;

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<sup>4</sup> This clause is not required by the *Fair Trading Act 1999*. See also the *Do Not Call Register Act 2006 (Cth)*.

<sup>5</sup> This clause is not required by the *Fair Trading Act 1999*.

<sup>6</sup> This clause is not required by the *Fair Trading Act 1999*. However, the *Fair Trading Act 1999* requires that explicit informed consent records for telephone marketing agreements must be kept for twelve months.

- the time and dates of calls; and
- the names of the relevant *marketing representatives* at each relevant time.

*Retailers* must retain these records for one year after the date of each relevant call and must make the records available for independent audit as required.

### 3. Information-

#### 3.1 Clear language<sup>7</sup>

Information that this *Code* requires to be provided to *consumers* shall be written in plain English and designed to be readily understood by *consumers*.<sup>8</sup>

#### 3.2 Conduct

Marketers must, and retailers must ensure that marketers, comply with all applicable Commonwealth and State and Territory laws in relation to:

- (a) misleading, deceptive or unconscionable conduct;
- (b) undue pressure, harassment or coercion; and
- (c) the quality, form and content of marketing information.

#### 3.3 Pre-contractual information

A *retailer* must provide the following information to a *consumer* before entering into a *contract*:

- (a) for a proposed *market contract* or a *standing offer*, details of all applicable prices, charges<sup>9</sup>, tariffs and service levels that will apply to the *consumer*, where the *retailer* must declare that the price offered is inclusive of all costs, including GST; and
- (b) in addition, for a market contract:
  - the type, frequency of bills and payment methods the *consumer* will receive;
  - the details of all applicable prices, charges,<sup>10</sup> tariffs and service levels that will apply to the *consumer*, where the *retailer* must declare that the price offered is inclusive of all costs, including GST;

<sup>7</sup> Section 163 of the *Fair Trading Act 1999* requires consumer contracts to be “easily legible”, in a minimum 10 point font and “clearly expressed”.

<sup>8</sup> It is noted that Section 6.1 of the *Code* requires that the marketer ensure that it has received consumer consent prior to transfer. This must be taken into account by marketers when dealing with a consumer who may not be able to read English.

<sup>9</sup> Subject to the retailer being aware of all charges which may apply to that consumer or the consumer’s premises.

<sup>10</sup> Subject to the retailer being aware of all charges which may apply to that consumer or the consumer’s



- the full name, address<sup>11</sup> and telephone number of the *retailer*;
- any rights the *consumer* has to cancel the *contract*, the charges, if any, that would apply on cancellation and the circumstances where these charges would apply;<sup>12</sup>
- that the *consumer* may be contacted as part of an audit procedure, to confirm their understanding of and consent to the *contract*;
- all relevant information about any difference between the *contract's* terms and conditions and the basic terms and conditions under the *Energy Retail Code*;
- in the case of *contracts* formed by *marketing representatives* in person off the business premises of the *retailer*, the full terms of the *contract* including the period of the *contract*;<sup>13</sup> and
- whether the *marketing representative* will receive a commission or fee from the retailer if the customer enters into a *contract*.<sup>14</sup>

A *retailer* must provide the *consumer* with a reasonable opportunity to consider this information before entering into the *contract*.

### 3.4 Cooling off

- (a) A *consumer* may cancel a *market contract*.<sup>15</sup>
- (b) Unless the *consumer* has a longer cancellation period under the *FT Act*, to cancel a *market contract* a *consumer* must give a cancellation notice to the *retailer* within:
  - if the *market contract* is for electricity and it is an *energisation contract* or it is for gas and is in respect of a *supply point* which requires only unplugging or installation of a *meter* to allow the flow of gas, 5 *business days* from and including the *relevant date*; and
  - otherwise, 10 *business days* from and including the *relevant date*.

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premises.

<sup>11</sup> This must be a street address, not a post box address. This amendment has been made for consistency with the *Fair Trading Act 1999*

<sup>12</sup> This amendment results from a recommendation made by the Marketing Code Advisory Committee.

<sup>13</sup> For telephone marketing agreements, the explicit informed consent provisions of section 67D of the *Fair Trading Act 1999* requires that "all matters relevant to the consent of the purchaser" and the right to cancel must be disclosed.

<sup>14</sup> This amendment results from a recommendation made by the Marketing Code Advisory Committee.

<sup>15</sup> This does not affect any additional rights a consumer may have under the *Fair Trading Act 1999* to cancel a market contract which is a *door-to-door agreement*, *telephone marketing agreement* and *non-contact sales agreement*.

- (c) Appendix 1 applies in respect of the cancellation of a *market contract* which is neither a *door-to-door agreement*, a *non-contact sales agreement* nor a *telephone marketing agreement*.

### 3.5 Contract information

- (a) On or before the second *business day* after the *relevant date* in respect of a *contract*, a *retailer* must give a *consumer*:

- a copy of the *contract* or other document evidencing the *contract* which sets out the *tariff* and all of the terms and conditions of the *contract* including:
  - (A) the total consideration to be paid or provided by the *consumer* under the *contract* or, if the total consideration is not ascertainable at the time the *contract* is entered into, the manner in which it is to be calculated; and
  - (B) any *additional retail charges* or other charges or fees to be paid by the *consumer* or which the *consumer* may become liable to pay, including any payable on cancellation.

The *retailer* must comply with any relevant *guideline* in preparing this document;

- if the *consumer* has a right to cancel the *contract*, a notice advising the *consumer* of the *consumer's* right to cancel the *contract*, accompanied by a further form of notice which sets out the name and address of the *retailer* and the date and details of the *contract* which may be used by the *consumer* to cancel the *contract*;
  - information relating to Government energy assistance schemes which may be available to the *consumer*;<sup>16</sup>
  - details of how to make a complaint to, or enquiry of, the *retailer* and details of the Energy and Water Ombudsman, Victoria;<sup>17</sup> and
  - information regarding the existence and general scope of this *Code* and how to access *Code* compliance procedures.<sup>18</sup>
- (b) A *retailer* will be taken to have given the document, notices or information required by clause 3.5(a) on the second *business day* after the *relevant date* if by then the *retailer* has posted the document, notices or information to the *consumer*.

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<sup>16</sup> This item is not required by the *Fair Trading Act 1999*.

<sup>17</sup> This item is not required by the *Fair Trading Act 1999*.

<sup>18</sup> This item is not required by the *Fair Trading Act 1999*.

### 3.6 Electronic commerce information<sup>19</sup>

In the case of *contracts* formed through electronic commerce, the *retailer* shall have on line processes to ensure the *consumer* has received the information required by Section 3.5 of the *Code*, prior to entering into the *contract* and shall supply such information required by Section 3.5 via email to the *consumer* immediately after entering into the *contract*.

### 3.7 Off retailer business premises contracts<sup>20</sup>

*Retailers* must comply with Part 4 of the *Fair Trading Act 1999* that deals with Off-Business-Premises Sales. This includes, among other provisions, that *retailers* must provide specified information about: the *contract*, cooling off periods, when a *consumer* may cancel the *contract*, the effect of cancellation, what a *retailer* and a *consumer* must do in the event of cancellation, and what charges a *retailer* can charge on cancellation.

In addition to complying with relevant sections of Division 2 of Part 4 of the *Fair Trading Act 1999* retailers shall comply with and provide to the *consumer* the consumer protection provisions of the Division as if they applied to all negotiations carried on by *marketing representatives* in person in the presence of the *consumer*, not at the business premises of the *retailer*, which lead to a *contract*. The consumer protection provided by this Section extends to all person-to-person negotiations for *contracts* that are negotiated/entered into away from the *retailer's* business premises. It is designed to ensure that the same standards apply whether the negotiations are conducted at the *consumer's* home, workplace, in public or in other places and whether the *consumer* is an individual or a *body corporate*.<sup>21</sup>

## 4. Consumer Consent

### 4.1 Consumer transfer<sup>22</sup>

- (a) A *retailer* shall not transfer a *consumer* to itself from another *retailer* without first obtaining that *consumer's explicit informed consent* to such transfer.
- (b) Clause 4.1(a) does not apply if the transfer is made in connection with a new *energy contract* arising from the *consumer's* acceptance of the *retailer's standing offer*.

### 4.2 Contract terms

An agreement between a *retailer* and a *consumer* to include a term or condition which is inconsistent with a term or condition set out in the *Energy Retail Code* which is marked with

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<sup>19</sup> Division 3 of Part 4 of the *Fair Trading Act 1999* applies to e-sales and requires the seller to pre-disclose the price and other charges, any cancellation rights, and the full name of the seller and either the business address or the telephone number. This information must also appear in any agreement subsequently made (see section 69 of *Fair Trading Act 1999*).

<sup>20</sup> The *Electricity Industry Act 2000* and the *Gas Industry Act 2001* have been amended resulting in the following clauses of the *Fair Trading Act 1999* not applying in certain circumstances: 61(g), 67E(1), 67E(3)(c), 67H, 67I, 67J, 67K, 67L, and 67M.

<sup>21</sup> The protections of Part 4 of the *Fair Trading Act 1999* do not apply to a body corporate. See section 59(d).

<sup>22</sup> This clause is not required by the *Fair Trading Act 1999*. However, for telephone marketing agreements, the explicit informed consent provisions of section 67D apply.

an asterisk (\*) in a new *contract* or in addition to or in substitution of the terms and conditions of an existing *contract* is only effective once the *consumer* has given its *explicit informed consent* to the incorporation of the inconsistent term or condition.

#### 4.3 Sales to minors and “authorised” consumers<sup>23</sup>

The *retailer* will take reasonable steps to conduct *contract* negotiations with a person who has the authority to enter into a *contract* for electricity supplied to the actual site.

Where it is shown that an adult was resident at the site, the onus will be upon the *retailer* to prove that a minor was the appropriate authorised *consumer* to enter into a *contract*.

### 5. Commencement of Retail Service<sup>24</sup>

A *retailer* will advise the *consumer* at the time of entering into the *contract* of the expected date of when the *retailer* will be responsible for electricity and/or gas retail service to the supply address. Any changes of more than one week to this date shall be advised to the *consumer* as soon as reasonably possible after the *retailer* becomes aware of such change.

When, pursuant to a *contract*, the *retailer* is not responsible for electricity and/or gas retail service to the supply address until at least three months after the date of the *contract* for electricity or at least two months after the date of the *contract* for gas, the *retailer* shall after the expiry of the period and before commencing to take responsibility at the site, take reasonable steps to keep the *consumer* informed that the *consumer* has entered into a *contract* and of the expected date of commencement of that *retailer's* responsibility.

### 6. Marketing and Consumer Information<sup>25</sup>

*Retailers* shall not represent that they are conducting market research when a purpose of the contact with the *consumer* is an attempt to encourage the customer enter into a *contract* with the *retailer*.

*Retailers* shall establish and abide by procedures that, so far as is relevant for *marketing*, comply with the National Privacy Principles, as outlined in the amendments to the *Privacy Act 1988*. *Retailers* will also comply with any relevant Guideline issued by the Commission.

### 7. Dispute Resolution<sup>26</sup>

#### 7.1 Dispute resolution - internal

*Retailers* shall have an internal process for handling complaints and resolving disputes arising from the *retailer's marketing* activities, which complies with the Australian Standard on Complaints Handling (AS ISO 1002-2006). This process will be provided at no cost to *consumers*.

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<sup>23</sup> This clause is not required by the *Fair Trading Act 1999*.

<sup>24</sup> This clause is not required by the *Fair Trading Act 1999*.

<sup>25</sup> This clause is not required by the *Fair Trading Act 1999*.

<sup>26</sup> This clause is not required by the *Fair Trading Act 1999*.

If a *consumer* complaint is not resolved internally in a manner acceptable to the *consumer*, the *retailer* shall:

- provide reasons for the outcome to the *consumer* and, if the *consumer* so requests, the *retailer* shall supply such reasons in writing; and
- provide information to the *consumer* on further action the *consumer* may take including information about and contact details for the Energy and Water Ombudsman (Victoria) (EWOV).

The *retailer* shall retain records of the grounds for complaint, the outcome including the reasons for the outcome of the complaint and statistics of the number of complaints made to the *retailer*. These records shall be kept for two years after the date on which the complaint was made and shall be made available for an independent audit on request.

## 7.2 Dispute resolution - external

If a *consumer* complaint has not been resolved to the satisfaction of the *consumer* within one month of the *consumer* complaint being made to the *retailer*, the *retailer* shall provide written or verbal information to the *consumer* advising the *consumer* of the right to lodge a complaint with EWOV.

## 7.3 Dispute resolution - information

*Retailers* shall:

- make available information which:
  - promotes *consumer* access to and understanding of complaints handling processes and procedures;
  - defines the time-frame within which a complaint will be addressed by the *retailer*; and
- provide *consumers* with information about the *retailer's* complaints handling process and the existence and role of EWOV.

## 8. Definitions

In this *Code*:

***additional retail charge*** means a charge relating to the sale of *energy* by a *retailer* to a *consumer* other than a charge based on the *tariff* applicable to the *consumer* and which must be calculated in accordance with clause 31 of the *Energy Retail Code*. To avoid doubt:

- (a) any network charge relating to the supply, but not sale, of *energy* to a *consumer's supply address* is not an ***additional retail charge*** (whether or not the network charge is bundled in the *retailer's tariff*);

- (b) without limiting paragraph (a), any charge the *retailer* may impose as a direct pass through of a distribution tariff, excluded service charge for electricity, ancillary reference tariff for gas or other charge imposed on the *retailer* by a *distributor* for *connection* to, or use of, the *distributor's* distribution system is not an *additional retail charge*; and
- (c) any amount payable by a *consumer* to a *retailer* for the *consumer's* breach of their *contract*, whether under an *agreed damages term* or otherwise, is not an *additional retail charge*.

*agreed damages term* means a term or condition of a *contract* under which a *consumer* and a *retailer* have agreed the amount, or a basis for determining the amount, that will be payable by the *consumer* to the *retailer* for the *consumer's* breach of their *contract*.

*applicable regulatory instruments* may include (but is not necessarily limited to) one or more of the following:

- (a) for electricity:
- the *National Electricity Rules*;
  - the *Metrology Procedure*;
  - the *Electricity Customer Transfer Code*; and
  - the *Electricity Customer Metering Code*; and
- (b) for gas:
- the *Gas Distribution System Code*;
  - the *Retail Rules*; and
  - the *Market and System Operation Rules*;

or any other regulatory instrument which substitutes, amends or supplements any of the above.

*billing cycle* means the regular recurrent period in which a *consumer* receives a bill from a *retailer*.

*body corporate* means a company.

*business day* means a day other than a Saturday or Sunday or a *public holiday*.

*Code* means this Code of Conduct for Marketing Retail Energy in Victoria.

*Commission* means the Essential Services Commission under the *Essential Services Commission Act 2001*.

*competent* in terms of *explicit informed consent* means:

If it can be established that a person has given consent, the *Commission* would generally be prepared to assume that the person was competent to do so. General rules of relevance to competence, however, apply in these circumstances. In this regard:

- (a) in order for a *customer* to be competent to give consent, the *customer* must be capable of understanding issues, forming views based on reasoned judgement and communicating their decision; and
- (b) in order for a person to be competent to give consent on behalf of another, the person must have legal authority to do so.

A minor will generally be assumed not to be competent to provide consent to a contract unless the relevant retailer can establish that the preconditions to the validity of such a contract are satisfied.

*connect* means:

- (a) for electricity, the making and maintaining of contact between the electrical systems of two persons allowing the supply of electricity between those systems; and
- (b) for gas, the joining of a *natural gas installation* to a distribution system *supply point* to allow the flow of gas.

*consumer* means consumers of less than 160 MWh per year electricity or less than 10,000 gigajoules per year gas, includes prospective purchasers of less than 160 MWh per year electricity or less than 10,000 gigajoules per year gas, and includes individuals and bodies corporate.

*contract* means an agreement for the supply of electricity and/or gas between a *retailer* and a *consumer*.

*cooling-off period* in respect of a *contract* means any period within which the *consumer* has a right to cancel the *contract* under clause 6.3 of this Code or the *FT Act*.

*deemed* in respect of a contract means a contract deemed to apply between a *consumer* and a *retailer* under the *Electricity Industry Act 2000* and/or *Gas Industry Act 2001*.

*distributor* means a person who holds, or in the case of electricity only is exempt from holding, a distribution licence under the *Electricity Act* or the *Gas Act*.

*door-to-door agreement* means a contact sales agreement under and to which Division 2 of Part 4 of the *FT Act* applies.

*dual fuel contract* means a *contract* for the sale of electricity and for the sale of gas by a *retailer* to a *consumer*, or two *contracts* between the same *consumer* and the same *retailer*, one an *electricity contract* and one a *gas contract*, under which *billing cycles* for electricity and gas are synchronised. The *dual fuel contract* may also oblige the *retailer* to *connect* the *consumer's supply address* or to otherwise procure the supply of electricity or of gas or of both electricity and gas.

*Electricity Act* means the Electricity Industry Act 2000.

*electricity contract* means a contract for the sale of electricity by a *retailer* to a *consumer*. The *electricity contract* may also oblige the *retailer* to *connect* the *consumer's supply address* or to otherwise procure the supply of electricity.

*energisation contract* means an *electricity contract* under which, or in connection with, the *consumer's supply address* must be *connected* and all that is required to effect the *connection* is the insertion of a fuse or the operation of switching equipment which results in there being a non-zero voltage beyond the point of supply.

*Electricity Customer Metering Code* means the industry code of that name certified by the *Commission*.

*Electricity Customer Transfer Code* means the industry code of that name certified by the *Commission*.

*energy* means electricity or gas or both electricity and gas.

*energy contract* means an *electricity contract* or a *gas contract* and may include a *dual fuel contract*.

*Energy Retail Code* means the Code of that name setting out terms and conditions relevant to contracts for the supply or sale of energy effective 1 January 2005.

*explicit informed consent* means consent given:

- (a) by the consumer directly to the *retailer* or the *retailer's marketing representative*:
  - (i) in writing or by electronic communication signed by the *consumer*; or
  - (ii) orally;
- (b) only after the *retailer* or the *retailer's marketing representative* has clearly, fully and adequately disclosed in plain English all matters relevant to the consent of the *consumer*, including each specific purpose and use of the consent; and
- (c) by a person *competent* to do so.

*FT Act* means the *Fair Trading Act 1999*.

*Gas Act* means the *Gas Industry Act 2001*.

*gas contract* means a contract for the sale of gas by a *retailer* to a *consumer*. The *gas contract* may also oblige the *retailer* to *connect* the *consumer's supply address* or to otherwise procure the supply of gas.

*Gas Distribution System Code* means the code of that name certified by the *Commission*.

*goods* has the meaning set out in clause 10 of appendix 1.



**guideline** means a guideline published by the *Commission*.

**market contract** means a *contract* between a *consumer* and a *retailer* which is not a *deemed contract* nor a *contract* arising from the acceptance of a *standing offer*.

**Market and System Operation Rules** means the rules referred to in Division 1 of Part 4 of the *Gas Act*.

**marketing** includes advertising, sales promotion, public relations and negotiations which may or do lead to a contract being made between the *retailer* and the *consumer*.

**marketing representative** includes an employee, agent, representative, contractor or person acting on behalf of a *retailer*, who is engaged in marketing and or selling the *retailer's contracts*.

**meter** in respect of a *consumer* means:

- (a) for electricity, the device which measures and records the consumption of electrical energy consumed at the *consumer's supply address*; and
- (b) for gas, an instrument that measures the quantity of gas passing through it and includes associated equipment attached to the instrument to filter, control or regulate the flow of gas.

**Metrology Procedure** means the Victorian Electricity Supply Industry Metrology Procedure published under the *National Electricity Rules*.

**National Electricity Rules** means the Rules made under the National Electricity (Victoria) Law applicable in Victoria as a result of the operation of section 6 of the *National Electricity (Victoria) Act 2005*.

**natural gas installation** means any gas equipment located at a *consumer's supply address* downstream of the *supply point* that is not part of a distribution system.

**non-contact sales agreement** means a non-contact sales agreement under and to which Division 3 of Part 4 of the *FT Act* applies.

**public holiday** means a public holiday appointed under the *Public Holidays Act 1993*.

**related contract or instrument** in relation to a *contract* means any other contract or instrument that is collateral or related to the *contract*.

**relevant date** in respect of a *contract* means:

- (a) the date on which the *consumer* and the *retailer* agree to enter into the *contract*; or
- (b) if the *consumer's explicit informed consent* is required before the *contract* can commence to be effective, the date on which the *explicit informed consent* is given.

*responsible* in respect of a *retailer* and a *supply address* means the *retailer* is responsible for the *energy* supplied at the *supply address* for the purposes of settlement of a relevant wholesale *energy* market under *applicable regulatory instruments*.

*Retail Rules* means the relevant retail gas market rules (as defined in Division 2 of Part 4 of the *Gas Act*) applicable to the *consumer's supply point*.

*retailer* means a person who holds a retail energy licence issued by the *Commission*.

*standing offer* means an offer made by a *retailer* as contemplated by section 35 of the *Electricity Act* and/or by section 42 of the *Gas Act*.

In addition:

- the singular includes the plural and vice versa; and
- persons shall include companies, corporations, public bodies and other bodies corporate.

*supply address* includes:

- (a) for electricity, the relevant market connection point (as defined in the *National Electricity Rules*) in respect of that supply address; and
- (b) for gas, the point where gas leaves the distribution system before being supplied to a *consumer*, whether or not it passes through facilities owned or operated by another person after that point and before being so supplied.
- (c) *supply point* means the point where gas or electricity leaves the distribution system before being supplied to the *consumer*, whether or not it passes through facilities owned or operated by another person after that point and before being so supplied.

*tariff* means a price for the supply or sale of *energy*.

*telephone marketing agreement* means a telephone marketing agreement under and to which Division 2A of Part 4 of the *FT Act* applies.

## Appendix 1 Cooling-off Where Fair Trading Act 1999 does not Apply

### 1. Application

Appendix 1 applies in respect of the cancellation of a *contract* which is neither a *door-to-door agreement* nor a *non-contact sales agreement*. As such this appendix 1 covers [*telephone marketing agreements* and] *contracts* to which Part 4 of the *FT Act* does not apply.

### 2. Related contracts and instruments

A *retailer* and a *consumer* must not enter into a *related contract or instrument* unless the *related contract or instrument* provides that, if the *contract* is cancelled during the *cooling-off period*, the *related contract or instrument* is deemed to be void.

### 3. Retailer must comply

The *retailer* cannot enforce the *contract* against the *consumer* if the *retailer* fails to comply with clause 6.4.

### 4. How can the consumer cancel the contract?

(a) A notice of cancellation must be in *writing* and may be given:

- by leaving it at or posting it to the address of the *retailer* shown on the form of notice of cancellation accompanying the notice given by the *retailer* under clause 6.4; or
- by faxing it to the facsimile number of the *retailer* shown on that form; or
- if the form of notice of cancellation is not given by the *retailer* to the *consumer*, by leaving it at or posting it to the last known place of business of the *retailer*.

(b) **A consumer will be taken to have given notice of cancellation by the end of the cooling-off period if by then the consumer has posted the notice to the retailer.**

### 5. What is the effect of cancellation?

(a) If a *contract* is cancelled during the *cooling-off period*:

- the *contract* is deemed to have been rescinded by mutual consent;
- any *related contract or instrument* is void; and
- by mutual consent, a new agreement is entered into under which the *retailer*

and the **consumer** have the respective rights and obligations contemplated by paragraphs 6, 7 and 8 of this appendix 1.

- (b) Any such new agreement is not a **related contract or instrument** in relation to the **contract**.
- (c) Despite paragraph 5(a) of this appendix 1, no such new agreement is entered into by a **consumer** and a **retailer** if, on cancellation of the **contract**, there is **deemed** to be another **contract** between them under:
  - for electricity, section 39(2) of the **Electricity Act**; and
  - for gas, section 46(2) of the **Gas Act**.

#### 6. What must the retailer do on cancellation?

If the **contract** is cancelled within the **cooling-off period**, the **retailer** must immediately repay to the **consumer** any money paid by the **consumer** under the **contract** or a **related contract or instrument**.

#### 7. What can the retailer charge on cancellation?

- (a) The **retailer** may impose an **additional retail charge** for any **goods** supplied under the **contract** which the **consumer** is unable to return on cancellation of the **contract** and for any **goods** consumed by the **consumer** after cancellation.
- (b) If the **goods** contemplated by paragraph 7(a) of this appendix 1 include an amount of **energy** supplied to a **supply address** for which the **retailer** is **responsible**, the **retailer** may apply the **tariff** applicable to the **retailer's deemed contracts** under:
  - for electricity, section 39 of the **Electricity Act**; and
  - for gas, section 46 of the **Gas Act**,

to the amount of **energy** as part of the **additional retail charge**.

- (c) The **retailer** may impose an **additional retail charge** for services rendered under the **contract** before it is cancelled.
- (d) Despite paragraphs 7(a) and (c) of this appendix 1, a **retailer** may not impose any charge in respect of any costs incurred by the **retailer** in performing its obligation under clause 6.4.
- (e) The **retailer** may deduct an amount payable by a **consumer** under this paragraph 7 from any money required to be paid to the **consumer** under paragraph 6 of this appendix 1.

#### 8. What must the consumer do on cancellation?

- (a) If the *consumer* cancels a *contract* during the *cooling-off period*, the *consumer* must immediately return any *goods* supplied by the *retailer* under the *contract* which the *consumer* is able to return or notify the *retailer* of the place where the *retailer* may collect the *goods*.
- (b) If the *consumer* gives such a notice to the *retailer* and the *retailer* does not collect the *goods* within 30 days after the cancellation of the *contract*, the *goods* become the property of the *consumer* free of any other right or interest.
- (c) If the *consumer* fails to take reasonable care of *goods* which are returned to the *retailer* or collected by the *retailer* under this clause 8 of appendix 1, the *consumer* is liable to pay compensation to the *retailer* for any damage to or depreciation in the value of the *goods*.

#### **9. Payment for services during cooling-off period**

During the *cooling-off period*, the *consumer* is not required to pay for any *goods* or services provided under the *contract* during that period. Nothing in this clause removes the *consumer's* existing obligation to pay for electricity or gas supplied under an existing *contract*.

#### **10. Goods includes electricity and gas**

In this appendix 1, *goods* includes electricity and gas.

Repealed