

WACOSS Response to the Review of the Gas Marketing Code of Conduct 2004



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Western Australian
Council of Social Service Inc

*Ways to make
a difference*

**Response by the
Western Australian Council of Social Service
to the Gas Marketing Code Consultative Committee's
Review of the Gas Marketing Code of Conduct 2004.**

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Background to WACOSS

The Western Australian Council of Social Service Incorporated (WACOSS) is the peak body of the community service sector across Western Australia. Since 1956, WACOSS has been developing and strengthening the non-government community services sector's capacity to assist all Western Australians. With over 350 members, WACOSS has strong relationships with the social services sector and seeks to represent their interests, and those of the disadvantaged individuals and families they assist at a service level. Given this relationship, WACOSS is in a unique position to comment on issues in our society that socially impact upon disadvantaged members of the community.

In March 2005, WACOSS commenced the Consumer Utilities Project, funded through the Department of Consumer and Employment Protection. This Project builds upon the utility policy work WACOSS has undertaken over the past 4 years.

The Consumer Utilities Project has been established to work with consumers and representative organisations to achieve better outcomes in the provision of essential services. WACOSS has earned a reputation as being an authoritative voice for consumers with regard to energy market reform in Western Australia.

WACOSS has developed strong networks with utility policy workers across Australia, which provides us with information and expert opinion on National Energy Market issues.

WACOSS also has direct access to the issues of low-income and disadvantaged consumers through our Consumer Reference Group, which includes representatives from the Emergency Relief sector, Unions, Financial Counsellors and Community Legal Centres. These agencies provide us with policy information and direction in relation to our work and look to us to represent the interests of their clients with regard to utility issues. We have taken on this role due to the level and severity of the utility issues being raised by community agencies and the absence of any other resourced body in Western Australia representing these issues.

Introduction

As a participating member of the Gas Marketing Code Consultative Committee (GMCCC) WACOSS has been involved in the review of the Gas Marketing Code. While we have supported the process, outcomes and recommendations of the GMCCC we have done so on the condition that the Code Review would lead to an outcome whereby gas consumers have consumer protection measures comparable to those of electricity consumers.

The proposed Gas Marketing Standard and the proposed Draft Guide to Consumer Protection in the Gas Industry in their present form do not provide sufficient information for consumers and require improvement in order to achieve the required outcomes of the review process.

WACOSS' intention in providing comment to the proposed outcome of the GMCCC's Draft Review of the Gas Marketing Code of Conduct 2004 is to provide additional explanation of our position and outline where improvements can be made, for interested parties and consumers.

WACOSS Recommendations

Recommendation 1

WACOSS recommends that a Gas Code be developed in consultation with appropriate representation that offers improved consumer protection measures comparable to electricity consumers.

Recommendation 2

WACOSS recommends that the Authority undertake further work, through a separate committee, to consider the development of a more comprehensive code, converging gas and electricity consumer protection regulation

Recommendation 3

WACOSS recommends that the proposed elements in the Gas Marketing Standard remain in a code, forming the basis from which a comprehensive Energy Code can be developed.

Recommendation 4

WACOSS recommends that the information provided within the Guide to Consumer Protection in the Gas Marketing Industry be further developed to articulate all of the protections for gas consumers, where they sit legislatively or in alternative regulatory instruments how they are monitored, how compliance is enforced, and how consumers can access their rights under each instrument.

Recommendation 5

WACOSS recommends that the Authority establish a separate committee to develop an Energy Code of Conduct.

Executive Summary

WACOSS represents and advocates the interests of consumers in essential energy markets, in particular through its Consumer Utilities Project. It is in this capacity that WACOSS is interested in commenting on the proposed outcomes of the Draft Review of the Gas Marketing Code of Conduct 2004.

The GMCCC's Draft Report for Review of the Marketing Code of Conduct 2004 proposed a series of recommendations to the Economic Regulation Authority (Authority) in relation to the Gas Marketing Code of Conduct, the most significant of which was the recommendation that the Gas Code be repealed by the Authority.

WACOSS have consistently maintained that the provision of gas to households is an essential service, especially for tenants and low income households reliant on gas as their major energy source. Gas is essential for good hygiene and health practices, heating, cooking and social participation. Many people do not have the choice or the means to an alternative energy source and as such need to have their rights and service standards protected.

We are completely dependent on an affordable and uninterrupted supply of energy for living and working and as such access to an affordable supply of gas must always be a prime consideration of policy makers. For those reliant on gas as their major energy source, being without it, even for a short period of time, can have severe social and economic ramifications on communities, families and individuals. For many consumers gas is an essential service for ensuring adequate standards of living and social participation. These rights are recognised in international Human Rights standards accepted by Australian governments and must be upheld.

Codes are an appropriate way of delivering consumer protection in what is inarguably an essential service market and our support for the recommendation that the Gas Code be repealed by the Authority has at all times been conditional on the development of an alternative Energy Code that offers comprehensive protection for gas and electricity consumers.

On March 20 2006, in a letter to the GMCCC Chair, WACOSS commented that;

WACOSS is happy to for the GMCCCC to proceed with its proposed review of the Gas Marketing Code of Conduct; however, as we have expressed previously, we do not support any weakening of consumer protection regulation for gas customers...

On June 20 2006, in a letter to the GMCCC Chair, WACOSS commented that;

WACOSS is happy to support this way forward providing that the Authority undertake further work through a separate committee to consider the development of a more comprehensive code, converging gas and electricity consumer protection regulation.

WACOSS does not support the proposal to replace the Gas Code with the current proposed Gas Standard as a regulatory instrument as it does not deliver adequate consumer protection consistent with best-practice gas market regulation.

Response to the Draft Gas Marketing Standard

In the WACOSS submission to the GMCCC Draft Review of the Gas Marketing Code of Conduct 2004 WACOSS' support for Recommendation 1, that the Gas Marketing Code of Conduct 2004 should be repealed by the Authority, was based on the proviso that the replacement offered comparable consumer protection and that the Authority undertake further work, through a separate committee, to consider the development of a more comprehensive code, converging gas and electricity consumer protection regulation.

We have argued that this work is essential to fill the current gap in regulatory protection for gas consumers in WA.

We are concerned that the GMCCC has moved away from a Code and instead has developed a Standard which is somewhat ambiguous in its nature and further entrenches inconsistencies between energy markets, rather than streamlining them.

An appropriate regulatory environment is important to ensuring market integrity and creating consumer confidence. This is particularly important in essential service markets such as energy and water where consumers are in need of specific regulation that safeguards them and reinforces or complements generalist consumer protection measures.

Recommendation 1

WACOSS recommends that a Gas Code be developed in consultation with appropriate representation that offers improved consumer protection measures comparable to electricity consumers.

Recommendation 2

WACOSS recommends that the Authority undertake further work, through a separate committee, to consider the development of a more comprehensive code, converging gas and electricity consumer protection regulation

Codes and Standards

Codes offer essential consumer protection and are an appropriate means of regulation which help to articulate the relationship and conduct between industry and consumers.

Mandatory codes of conduct are codes that have legislative backing. "This may include codes which are developed by industry but which have some government enforcement. It may also include schemes where membership of a code is mandated by government but it is left to industry to develop the detailed rules of the code"¹.

Codes offer appropriate consumer protection in that a mandatory code of conduct is legally enforceable, and penalties for non-compliance can be imposed on licensees who have been found to be in breach of the code. This is vital for consumer protection,

¹ <http://www.consumeraffairs.govt.nz/policylawresearch/industry-led-regulation/discussion/discussion-03.html>

consumer confidence and consumer participation in the market. Also important in a developing essential services market is the fact that codes are 'living' documents that can be amended and updated as a market grows and develops².

In contrast a standard is a consensus-based document "which set out minimum technical or performance requirements in areas such as safety or consumer protection. They are often developed by the industry, or a subset of the industry"³.

According to *Designing to Codes and Standards*;

Codes tell the user what to do and when and under what circumstances to do it. Codes are often legal requirements that are adopted by local jurisdictions that then enforce their provisions. Standards tell the user how to do it and are usually regarded only as recommendations that do not have the force of law... Standards are frequently collected as reference information when codes are being prepared. It is common for sections of a local code to refer to nationally recognized standards. In many instances, entire sections of the standards are adopted into the code by reference, and then become legally enforceable⁴.

It is marketing codes of conduct and not standards that are being used in other jurisdictions throughout Australia with gas licensees having to comply with a Gas Marketing Code of Conduct (QLD, NSW, TAS), an Energy Marketing Code (SA) or a Code of Conduct for Marketing Retail Energy (VIC). WACOSS are concerned that this proposal is a move away from a widely used and accepted form of consumer protection regulation. Gas consumers in Western Australia are entitled to the same consumer protection measures as they would receive in other jurisdictions.

WACOSS does not believe that a Standard can effectively and comprehensively safeguard consumer interests in an essential energy market.

Recommendation 3

WACOSS recommends that the proposed elements in the Gas Marketing Standard remain in a code, forming the basis from which a comprehensive Energy Code can be developed.

Response to the Removal of Duplication

Energy-specific regulation does not duplicate generalist protection, but rather complements or builds upon it, creating robust and comprehensive protection for consumers. In essential service markets such as energy, water and finance, consumers are particularly vulnerable and in need of specific regulation that safeguards them and reinforces or complements generalist consumer protection measures.

² *Consumer protections in the National Energy Market – The Need for Comprehensive Energy-Specific Consumer Protections*. The Consumer Action Law Centre

³ <http://www.consumeraffairs.govt.nz/policylawresearch/industry-led-regulation/discussion/discussion-03.html>

⁴ *Designing to Codes and Standards* – Knowledge article from www.key-to-steel.com

WACOSS' support for the removal of duplication in the Code was given on the provision that it would not result in any weakening of consumer protection, or detract from the purpose of the regulatory instrument.

The WACOSS preference would be for the duplicated elements that have been removed from the regulatory instrument to be articulated in a detailed and comprehensive Guide to Consumer Protection in Gas Marketing since it is focused only on that aspect of the gas industry. We are concerned that the current Draft Guide to Consumer Protection in the Gas Industry does not provide sufficient information for consumers and as a result weakens and detracts from the purpose of the regulatory instrument.

Gas Marketing Standard (consumer friendly version)

WACOSS considers it unnecessary for the Authority to produce a consumer friendly version of the regulatory instrument. It is more important that the GMCCC implement the most detailed and legally appropriate regulatory instrument rather than adopting the consumer friendly version of the Gas Marketing Standard.

A consumer friendly version of the regulatory instrument would be better developed by government and consumer representatives to complement and further clarify consumer protections within the proposed regulatory instrument.

Through the amalgamation of sections relating to marketing by telephone, marketing at a person's premises and marketing by personal contact other than at a person's premises into a single section headed 'contact for the purposes of marketing' consumers may remain unaware of their rights and the obligations of the marketer.

WACOSS is concerned that this further weakens what remains of the regulatory instrument after the removal of duplication.

Response to the Proposed Educative Document

Whilst WACOSS supported the development of an Educative Document by the Authority we are disappointed with the proposed Draft Guide to Consumer Protection in the Gas Industry.

As the Guide is concerned with consumer protection in the Gas Marketing Industry we believe it should be renamed Draft Guide to Consumer Protection in the Gas Marketing Industry to better reflect its purpose.

The proposed draft does not give consumers sufficient information or confidence to understand and use generalist consumer protection provisions such as the Fair Trading Act (FTA) and Trade Practices Act (TPA).

In Western Australia's newly competitive market, stakeholders are not sufficiently informed to rely solely on generalist consumer provisions and individual consumers may

have increased difficulties in getting complaints addressed through these alternative protections.

An educative document would be a valuable tool for consumers and WACOSS believes it is important that gas customers are aware of all the relevant consumer protections relating to gas. Removal of duplication from the regulatory instrument has resulted in the process for people accessing their rights being made less accessible and as such it is imperative that the proposed document should articulate all of the protections for gas consumers, where they sit legislatively or in alternative regulatory instruments how they are monitored, how compliance is enforced, and how consumers can access their rights under each instrument.

The Guide to Consumer Protection in the Gas Marketing Industry is an important document and as such should be created in consultation with key stakeholders and consumer representatives who can advise on the development, content, layout and promotion of the guide.

Recommendation 4

WACOSS recommends that the information provided within the Guide to Consumer Protection in the Gas Marketing Industry be further developed to articulate all of the protections for gas consumers, where they sit legislatively or in alternative regulatory instruments how they are monitored, how compliance is enforced, and how consumers can access their rights under each instrument.

Response to the Draft Licence Condition

The inclusion of a compliance condition with the regulatory instrument as a licence condition for gas licensees is essential to enforcing mandatory compliance, which is in the interest of consumers, retailers and the public good.

This should also be complemented by performance indicator monitoring as a licence condition of the *regulatory instrument*. A regulation is neither effective nor efficient if it is not successfully monitored and enforced. Applicable penalties are a deterrent to non-compliance.

Access to performance and compliance information is fundamental to policy and advocacy work and provides a means of ensuring that consumers are able to make informed choices in a competitive essential services market.

Moving Towards an Energy Code of Conduct

Recommendation 5 of the GMCCC's Draft Review of the Gas Marketing Code of Conduct 2004 stated that "At the completion of the review of the Code of Conduct (for the Supply of Electricity to Small Use Customers), the Authority should establish a committee with appropriate representation to discuss the development of an Energy

Code of Conduct covering both gas and electricity licensees, with implementation of this Code through a regulatory instrument incorporated into the gas and electricity licences⁵.

WACOSS supports the recommendation that a separate committee with appropriate representation be developed to discuss the development of an Energy Code of Conduct after completion of the review of the Code of Conduct (for the Supply of Electricity to Small Use Customers) with the expectation that the outcome is a more comprehensive code, converging gas and electricity consumer protection regulation.

The level of protection currently extended to gas consumers is unacceptable and the development of an Energy Code of Conduct is an important step in developing regulatory continuity across the two essential service markets of gas and electricity.

The development of an Energy Code of Conduct will help to fill the current gap in regulatory protection for gas consumers in WA.

Recommendation 5

WACOSS recommends that the Authority establish a separate committee to develop an Energy Code of Conduct.

Conclusion

WACOSS supports the GMCCC's proposed move towards a converging Energy Code of Conduct 2004 believing that gas consumers are entitled to the same consumer protection measures as electricity consumers. However WACOSS does not support the replacement of the current Gas Marketing Code with the proposed Gas Marketing Standard.

The GMCCC's recommendations in the Draft Review of the Gas Marketing Code of Conduct 2004 was accepted with a provision that the regulatory instrument be developed in consultation with appropriate representation, that it will lead to an outcome whereby gas consumers are afforded improved consumer protection measures comparable to electricity consumers and that it not detract from the purpose of the Code.

WACOSS believes that codes are an appropriate way of delivering consumer protection in the gas and electricity market. The conduct of licensees, who are selling essential services in the community, has a direct bearing on people's well being and must be responsibly regulated. We do not believe that the proposed Standard offers the same regulatory protection for consumers as a comprehensive Gas Code would and urge the GMCCC and the Authority not to set a precedent for the potential erosion of consumer protection for gas customers by the abandonment of codes.

We are hopeful that the recommendations and comments made in this submission assist in furthering consumer protections for gas consumers in Western Australia.

⁵ Draft Review of the Gas Marketing Code of Conduct 2004