



Government of Western Australia
Energy Policy WA

Review of energy customer contract regulations

Final Recommendations Report

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Glossary

Term	Definition
AGA Code	Australian Gas Association Natural Gas Customer Service Code AG 755-1998.
Code of Conduct	This term references the Gas Marketing Code of Conduct 2017 when used in the context of the Energy Coordination (Customer Contracts) Regulations 2004, and the Code of Conduct for the Supply of Electricity to Small Use Customers 2018 when used in the context of the Electricity Industry (Customer Contracts) Regulations 2005.
Compendium	The Compendium of Gas Customer Licence Obligations regulates and controls the conduct of gas retailers and distributors who supply small use customers. The Compendium is administered by the Economic Regulation Authority and was developed to protect the interests of customers with limited market power.
distributor	This term references the holder of a licence to operate the distribution system through which gas or electricity is supplied to a customer.
Electricity Customer Code	The Code of Conduct for the Supply of Electricity to Small Use Customers 2018 regulates and controls the conduct of retailers, distributors and marketing agents who supply electricity to small use customers. The Code is administered by the Economic Regulation Authority.
Electricity Regulations	The Electricity Industry (Customer Contracts) Regulations 2005 set out minimum requirements for electricity standard form contracts and non-standard contracts.
Gas Marketing Code	The Gas Marketing Code of Conduct 2017 regulates and controls the conduct of the holders of gas trading licensees and gas marketing agents, with the object of protecting customers from undesirable marketing conduct and defining standards of conduct in the marketing of gas to customers. The Code is administered by the Economic Regulation Authority.
Gas Regulations	The Energy Coordination (Customer Contracts) Regulations 2004 set out the minimum requirements for gas standard form contracts and non-standard contracts.
refundable advance or security deposit	In the Gas Regulations (refundable advance) or Electricity Regulations (security deposit) means <i>an amount of money required by a retail supplier from a customer as security against the customer defaulting on a payment due to the retail supplier under a customer contract.</i>

Executive summary

The report presents Energy Policy WA's (EPWA) final recommendations arising from the review of energy customer contract provisions contained within the Energy Coordination (Customer Contracts) Regulations 2004 (the Gas Regulations) and the Electricity Industry (Customer Contracts) Regulations 2005 (the Electricity Regulations).

The purpose of the review is to provide a streamlined and consistent framework for delivering customer protections by removing outdated references to the *Australian Gas Association Natural Gas Customer Service Code AG 755-1998* (the AGA Code) within these regulations and removing duplicated requirements contained in other regulatory instruments.

Stakeholder submissions in response to the Issues Paper and Draft Recommendations Report associated with the review have been considered in the preparation of these final recommendations. Stakeholders were broadly supportive of the findings contained in the Issues Paper and the proposed recommendations outlined in the Draft Recommendations Report. Stakeholders were unanimous in their support of the deletion of references to the AGA Code in the Gas Regulations.

While most of the final recommendations remain unchanged from those presented in the Draft Recommendations Report, two recommendations have had minor changes following the consideration of stakeholder submissions. Several stakeholders, although supportive of the intent of Recommendation 8 in the Draft Recommendations Report requiring retailers to notify customers of the expiry of temporary benefits or incentives, queried how the recommendation would be implemented. EPWA agreed with stakeholders that the implementation requirement should not be excessively prescriptive and that retailers are likely to be best placed to decide how the information should be delivered to customers, and as such amended the recommendation to reflect this position.

In addition, Recommendation 22 in the Draft Recommendations Report, relating to a requirement for customers to provide acceptable identification as a pre-condition to forming a standard form contract with a retailer, has been extended to the Gas Regulations at the suggestion of stakeholders.

Final recommendations endorsed by the Minister for Energy will be implemented through amendments to the Gas and Electricity Regulations and related regulatory instruments. Where the recommendation relates to the Gas Marketing Code of Conduct (Gas Marketing Code), Compendium of Gas Customer Licence Obligations (Compendium) or the Code of Conduct for the Supply of Electricity to Small Use Customers (Electricity Customer Code), EPWA will request that the Economic Regulation Authority (ERA) give consideration to implementation of the changes.

Summary of recommendations

Recommendation 1:

Amend the term 'retail supplier' within the Gas Regulations to 'retailer' (without changing the definition of that term) to improve consistency with the Gas Marketing Code and Compendium.

Recommendation 2:

Amend the definition of 'Code of Conduct' within the Gas Regulations to refer to the most up-to-date version of the Code by reference to the Code as defined in section 11ZPL of the *Energy Coordination Act 1994*.

Recommendation 3:

Delete sub-regulations 12(6) and (7) of the Gas Regulations as these sub-regulations refer to AGA Code clauses relating to disconnection and reconnection, which largely duplicate provisions of the Compendium.

Recommendation 4:

EPWA to request that the ERA consider inserting a requirement into gas distribution licences, in so far as is practicable, to require distributors to:

- minimise interruptions for planned maintenance or augmentation of the distribution system; and
- following an interruption, restore supply as soon as practicable.

Recommendation 5:

EPWA to request the ERA to consider inserting new requirements into the Compendium and Electricity Customer Code broadly equivalent to rules 39 to 45 and 112 of the National Energy Retail Rules. Regulations 13 and 37 of the Gas Regulations and regulations 12 and 30 of the Electricity Regulations should be subsequently deleted.

Alternatively, if these new requirements are not adopted by the ERA similar provisions should be incorporated into the Gas and Electricity Regulations.

Recommendation 6

The Gas and Electricity Regulations are amended to require that both standard and non-standard customer contracts must set out:

- the circumstances in which a retailer may ask the customer to pay a security deposit;
- how the amount of the security deposit is calculated;
- the maximum amount that the retail supplier may ask the customer to pay as a security deposit;
- under what circumstances the retailer may apply the security deposit against amounts owed by the customer; and
- the circumstances in which a retailer must repay a security deposit.

Recommendation 7:

- Delete sub-regulations 14(3) and (4) of the Gas Regulations and replace with a requirement that a customer contract must describe how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.
- Amend regulation 13 of the Electricity Regulations to include a requirement that the customer contract describes how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.

Recommendation 8:

Include a requirement in the Gas and Electricity Regulations that a customer contract must specify that the retailer is to:

- notify customers, no earlier than 40 business days and no later than 20 business days before the end of benefits provided under the initial portion of an ongoing contract (such as a temporary price discount on energy consumption charges for a set period), that the benefits are due to expire and include detail of the options for supply that are available to the customer after the expiry of the benefit; and
- describe how they will provide the above information to their customers.

Recommendation 9:

Delete all the text from regulation 15 of the Gas Regulations and replace with a requirement that the customer contract must describe the procedures to be followed by the retailer in relation to the preparation, issue and review of a customer's bill; similar to requirements under regulation 14 of the Electricity Regulations.

Recommendation 10:

Delete sub-regulation 20(2) of the Gas Regulations (that references AGA Code obligations relating to offers of instalment plans, bill redirection and the provision of information about government assistance programs and independent financial counselling services) on the basis that equivalent obligations are included in the Compendium.

Recommendation 11:

Delete all the text from regulation 21 of the Gas Regulations and replace with a requirement that customer contracts must describe the procedures to be followed by the retailer in responding to a complaint made by the customer, replicating regulation 18 of the Electricity Regulations.

Recommendation 12:

Delete sub-regulation 28(2) of the Gas Regulations that reference AGA Code provisions relating to a retailer's obligations regarding the supply of gas and largely duplicate provisions of the Compendium or other regulatory instruments.

Recommendation 13:

EPWA to request that the ERA consider inserting a requirement into gas distribution licences for distributors to make supply available at new connections within 20 business days, subject to:

- adequate supply being available at required volume and pressure at the boundary of a new supply address;
- the natural gas installation at the supply address complying with regulatory requirements; and
- the customer providing necessary safe, convenient and unhindered access to the supply address.

Recommendation 14:

Delete sub-regulation 33(3) of the Gas Regulations that references an AGA Code provision regarding the obligations of a retailer or distributor when seeking access to a supply address, as similar obligations are contained in other regulatory instruments.

Recommendation 15:

Delete sub-regulation 35(2) of the Gas Regulations that refers to AGA Code clauses relating to a customer leaving a supply address, which largely duplicate provisions of the Compendium.

Recommendation 16:

Delete regulation 27 of the Gas Regulations and regulation 22 of the Electricity Regulations to remove redundant requirements relating to unsolicited contracts.

Recommendation 17:

Amend the cooling off period in sub-regulation 40(2) of the Gas Regulations and sub-regulation 32(2) of the Electricity Regulations to 10 business days, to align with the cooling-off period for unsolicited consumer agreements under the Australian Consumer Law.

Recommendation 18:

Amend sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations to require that:

- a standard form contract informs the customer that the provisions of the contract may be amended without the customer's consent; and
- a non-standard contract informs the customer that the provisions of the contract may be amended without the customer's consent to the extent that the amendment is required to maintain consistency with applicable legislation or regulation.

Recommendation 19:

Amend sub-regulation 14(2)(c) of the Gas Regulations to ensure that the supply charge includes a fixed component and a usage component, unless agreed otherwise by the retailer and the customer.

Recommendation 20:

Delete regulation 45 and sub-regulation 19(a) from the Gas Regulations which require a gas retailer to provide a copy of its customer service charter to a customer on request.

Recommendation 21:

Extend, to all retailers, the requirement in regulation 40 of the Electricity Regulations to supply electricity under a standard form contract to a customer who requests supply.

- For existing connections, the obligation would fall on the default supplier identified under regulation 36 of the Electricity Regulations.
- For new connections, the obligation would continue to fall on Synergy for areas within the South West Interconnected System (SWIS) and on Horizon Power for other areas of the State.

Recommendation 22:

Amend regulation 40 of the Electricity Regulations and insert a new requirement into the Gas Regulations to permit a retailer to require a customer to provide acceptable identification as a pre-condition of forming a standard form contract with the retailer.

Recommendation 23:

Amend regulation 22 of the Gas Regulations and regulation 19 of the Electricity Regulations to set out that the customer contract meets the requirements of this regulation if the contract specifies:

- that the retailer's privacy policy sets out the steps that are to be taken by the retailer to ensure that information that it holds about a customer is dealt with in a confidential manner; and
- how the customer can obtain a copy of the retailer's privacy policy free of charge.

1. Introduction

1.1 Purpose

This report sets out Energy Policy WA's (EPWA) final recommendations to the Minister for Energy arising from a review of the Energy Coordination (Customer Contracts) Regulations 2004 (the Gas Regulations) and the Electricity Industry (Customer Contracts) Regulations 2005 (the Electricity Regulations) (the Review).

1.2 Background

The aim of the Review is to provide a more streamlined and consistent framework for delivering customer protections, to improve regulatory certainty and reduce red tape, by the removal of outdated references contained within the Gas Regulations and duplication with other instruments.

Additional suggestions for improvements to the Gas Regulations and Electricity Regulations were also sought from stakeholders as part of the review process.

The Gas Regulations incorporate references to the *Australian Gas Association Natural Gas Customer Service Code AG 755-1998* (the AGA Code). The AGA Code has not been updated for many years and does not represent regulatory best practice in energy consumer protection. Many of the AGA Code references in the Gas Regulations are also duplicated in other regulatory instruments.

Regulatory changes requiring amendment to primary legislation (i.e. an Act of Parliament) are outside the scope of this review.

1.2.1 Guiding Principles

The review principles are to:

1. Minimise inconsistency between the customer protection arrangements for electricity and gas. Unless there is a clear reason for inconsistency, the default position is to recommend changes to ensure consistency between the two regulatory frameworks.
2. Remove unnecessary overlap between regulatory instruments. Where the substance of AGA Code provisions and *Compendium of Gas Customer Licence Obligations* (Compendium) provisions overlap but do not perfectly align, EPWA considers that the Compendium represents more up-to-date and fit-for-purpose regulation due to the frequent reviews and stakeholder consultation on this regulatory instrument.
3. Evaluate customer protection arrangements under other regimes, such as the National Energy Retail Rules, to ensure recommendations to improve the local regulatory framework deliver proven and up-to-date customer protections.

1.2.2 Review Process

A structured approach (Figure 1) was followed to review the energy customer contract regulations. The final recommendations presented in this Report are the product of two rounds of consultation.

In July 2017, the former Public Utilities Office published an Issues Paper seeking the views of stakeholders on the removal of outdated references in the Gas Regulations.

Four submissions were received in response to the Issues Paper¹.

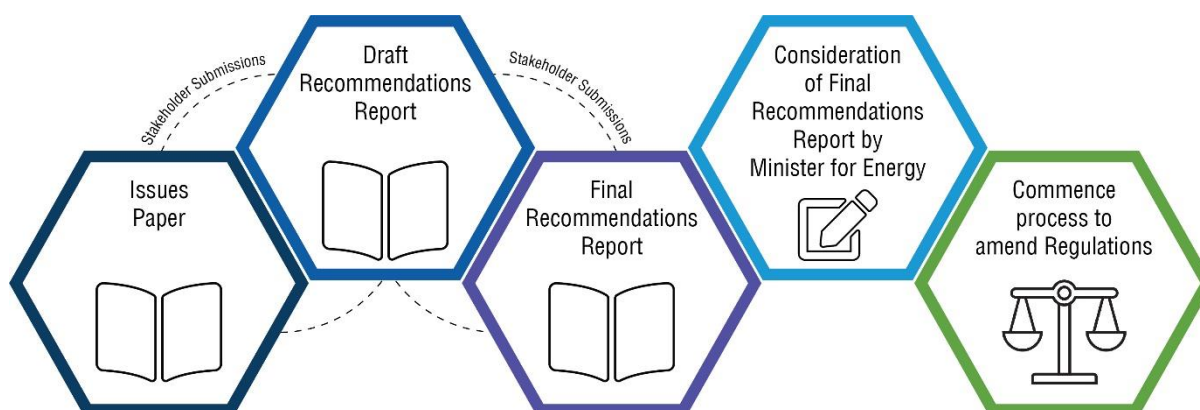
1. Alinta Sales Pty Ltd (Alinta Energy)
2. Origin Energy Retail Ltd (Origin)
3. Synergy
4. Department of Mines, Industry Regulation and Safety – Consumer Protection Division (confidential submission)

A Draft Recommendations Report that invited further public comment was published in May 2019². This report contained 23 draft recommendations and took into consideration submissions received from stakeholders on the Issues Paper.

Seven submissions were received in response to the Draft Recommendations Report.

- | | |
|------------------------------------|--|
| 1. AGL Energy Ltd (AGL) | 5. Economic Regulation Authority (ERA) (confidential submission) |
| 2. Alinta Energy | 6. Origin |
| 3. ATCO Australia Pty Ltd (ATCO) | 7. Synergy |
| 4. Australian Energy Council (AE). | |

Figure 1: Energy customer contract regulations review process



1.2.3 Summary of submissions

All submissions received broadly supported a majority of the recommendations outlined in the Draft Recommendations Report, particularly the proposed removal of references to the AGA Code. Where commentary was provided in response to the draft recommendations, it has been noted and responded to in this report.

AGL noted that its submission related only to the Gas Regulations and associated instruments.

¹ The Issues Paper, Draft Recommendations Report and associated submissions are available at <https://www.wa.gov.au/government/document-collections/review-of-energy-customer-contract-regulations>.

² *ibid.*

The AEC and Synergy revisited two matters identified during earlier consultations. The former Public Utilities Office considered and discussed these matters in the Draft Recommendations Report and formed a view that they did not warrant further consideration. These matters are summarised for completeness in this report and EPWA maintains the position as presented in the Draft Recommendations Report.

ATCO also submitted that, separate to this review process, consideration should be given to mandating gas services as essential services. EPWA notes that while neither access to electricity or gas supplies are designated as 'essential services' in Western Australian energy legislation, the regulatory framework is predicated on the assumption of a wider availability of electricity supplies.

EPWA notes that a requirement to ensure the availability of gas supplies to all energy consumers would be expected to create additional cost impacts on existing and new gas consumers and that detailed investigation would be required to fully understand the costs and benefits of the proposal, which is outside the scope of this review.

1.3 Final Recommendations Report

This Final Recommendations Report details EPWA recommendations to be submitted to the Minister for Energy for consideration and approval and is not open for public comment. In some cases where the report indicates that a draft recommendation has remained unchanged the wording of the recommendation has been modified to assist readability and clarity, without modification to the intended outcome.

1.3.1 Next steps

Recommendations endorsed by the Minister for Energy will form the basis of drafting instructions EPWA will provide to the Parliamentary Counsel's Office.

EPWA is cognisant of the need to provide retailers with enough time to review and amend their standard form contracts and of the interface between these recommendations and the ERA reviews of the Compendium and *Code of Conduct for the Supply of Electricity to Small Use Customers* (Code of Conduct). EPWA will ensure that commencement dates for any regulatory changes will accommodate those processes.

EPWA will consult with stakeholders on drafting of the amendment regulations resulting from the review process.

1.4 Information requests

Requests for information relating to the review will be treated in accordance with the *Freedom of Information Act 1992* (WA) and EPWA processes.

2. Addressing inconsistencies in terminology

Recommendation 1:

Amend the term 'retail supplier' within the Gas Regulations to 'retailer' (without changing the definition of that term) to improve consistency with the Gas Marketing Code and Compendium.

Recommendation 2:

Amend the definition of 'Code of Conduct' within the Gas Regulations to refer to the most up-to-date version of the Code by reference to the Code as defined in section 11ZPL of the *Energy Coordination Act 1994*.

Recommendations 1 and 2 are intended to address inconsistencies in the terminology used in the regulatory framework.

- The Gas Marketing Code and the Compendium refer to 'retailer', while the Gas Regulations refer to 'retail supplier' and the AGA Code to 'supplier'. As these terms have the same meaning – the holder of a gas trading licence who retails gas to the customer – EPWA recommends that the term 'retail supplier' within the Gas Regulations is amended to 'retailer'.
- The Gas Regulations define the 'Code of Conduct' as 'the Gas Marketing Code of Conduct of 2004'. As this version of the Code has since been repealed and replaced, EPWA recommends that the definition is updated to refer to the current version of the Code.

The final recommendations are unchanged from those outlined in the Draft Recommendations Report (draft recommendations) and were not the subject of any stakeholder comment in response to that report.

3. Removing references to the AGA Code and associated changes

3.1 Customer disconnection and reconnection

Recommendation 3:

Delete sub-regulations 12(6) and (7) of the Gas Regulations as these sub-regulations refer to AGA Code clauses relating to disconnection and reconnection, which largely duplicate provisions of the Compendium.

Recommendation 3 to delete Regulations 12(6) and (7) of the Gas Regulations, which reference and modify several AGA Code provisions relating to customer disconnection and reconnection, is made on the basis that most of these provisions are duplicated within the Compendium.

Table 3.1 summarises the AGA Code clauses referenced in sub-regulations 12(6) and (7) of the Gas Regulations, their equivalent clauses within the Compendium and the associated draft recommendation (See Appendix A for a comparison of the full text of the relevant provisions).

Recommendation 3 was not the subject of any stakeholder comment in response to the draft recommendation and has remained unchanged.

Table 3.1: AGA Code provisions referred to in regulations 12(6) and (7) of the Gas Regulations

AGA Code Provision	Equivalent clause in Compendium	Draft recommendation for changes to Gas Regulations
5.1.1 Disconnection for unpaid bills	7.1, 7.2; see also 6.11	Delete and do not replace AGA Code reference.
5.1.2 Disconnection for denying access to meter	7.4	Delete and do not replace AGA Code reference.
5.1.3 Disconnection for emergencies	7.5	Delete and do not replace AGA Code reference.
5.1.4 Disconnection for health and safety reasons	N/A, although see 7.5	Delete and do not replace AGA Code reference ³ .
5.1.5 Disconnection for planned maintenance	N/A	Request that the ERA insert a requirement into gas distribution licenses for distributors to use best endeavours to minimise interruptions and restore supply as soon as practicable. (See Recommendation 4 of this report.)
5.1.6 Disconnection for unauthorised utilisation	7.6(3)	Delete and do not replace AGA code reference.
5.1.7 Disconnection for refusal to pay refundable advances	N/A	Delete and replace with a new framework for security deposits. (See Recommendation 5 of this report.)

³ In practice, it is difficult to envisage a situation where there is a health and safety concern that is severe enough to warrant disconnection, yet there is no actual or imminent occurrence of an event that threatens to endanger a person's health and safety. EPWA (and the former Public Utilities Office) has maintained the view that this reference to the AGA Code may be deleted, without replicating the substance of the provision in another regulatory instrument.

AGA Code Provision	Equivalent clause in Compendium	Draft recommendation for changes to Gas Regulations
5.1.8 When a supplier shall not disconnect	7.2, 7.6	Delete and do not replace AGA Code reference.
5.2.2 Time and response for reconnection	8.1, 8.2	Delete and do not replace AGA Code reference.

3.2 Disconnection for planned maintenance

Recommendation 4:

EPWA to request that the ERA consider inserting a requirement into gas distribution licences, in so far as is practicable, to require distributors to:

- minimise interruptions for planned maintenance or augmentation of the distribution system; and
- following an interruption, restore supply as soon as practicable.

Recommendation 4 proposes that similar obligations to those in clause 5.1.5 of the AGA Code are retained within the regulatory framework, following the deletion of sub-regulations 12(6) and 12(7) of the Gas Regulations (refer to Recommendation 3 of this report).

Clause 5.1.5 of the AGA Code permits a retailer or distributor to disconnect or interrupt supply to a customer's supply address for the purposes of planned maintenance to, or augmentation of, the distribution system under certain conditions. It requires the retailer or distributor to use best endeavours to give the customer at least four days' notice of its intention to disconnect and to use best endeavours to minimise interruptions and restore supply as soon as practicable.

Broadly similar obligations are placed on an electricity distributor in clauses 10(1) and 11 of the *Electricity Industry (Network Quality and Reliability of Supply) Code 2005*. EPWA also notes that clause 11(b)(i) of the Code requires the electricity distributor to notify customers at least 72 hours prior to the start of planned interruptions and that an equivalent notification period for gas distributors could be considered by the ERA.

This matter was not subject to extensive commentary in stakeholder submissions received in response to the draft recommendation and has remained unchanged. Alinta, ATCO and Origin provided no commentary on the recommendation. AGL supported the recommendation and agreed that a distribution licence is the appropriate instrument for these obligations.

The AEC and Synergy indicated that references to clauses 5.1.4 and 5.1.5 of the AGA Code should be removed from the Gas Regulations irrespective of the proposed gas licence amendments. EPWA confirms that the recommendation to remove these references from the Gas Regulations remains unchanged (refer to Recommendation 3 of this report).

Synergy also noted that the Issues Paper did not consider the adequacy of gas distribution related customer protections provided in other legislation and regulatory instruments in respect of the matters being considered under the review process.

The examples of other regulatory instruments that Synergy provided were:

- clause 12 of a gas distribution licence⁴;
- *Gas Standards Act 1972*;
- *Gas Standards (Gas Supply and System Safety) Regulations 2000*;
- Retail Market Procedures (WA).

EPWA has not been able to identify any potential overlap between the instruments identified by Synergy and the two distribution licence requirements proposed for consideration by the ERA.

3.3 Security Deposits

Recommendation 5:

EPWA to request the ERA to consider inserting new requirements into the Compendium and Electricity Customer Code broadly equivalent to rules 39 to 45 and 112 of the National Energy Retail Rules. Regulations 13 and 37 of the Gas Regulations and regulations 12 and 30 of the Electricity Regulations should be subsequently deleted.

Alternatively, if these new requirements are not adopted by the ERA similar provisions should be incorporated into the Gas and Electricity Regulations.

Recommendation 6:

The Gas and Electricity Regulations are amended to require that both standard and non-standard customer contracts must set out:

- the circumstances in which a retailer may ask the customer to pay a security deposit;
- how the amount of the security deposit is calculated;
- the maximum amount that the retail supplier may ask the customer to pay as a security deposit;
- under what circumstances the retailer may apply the security deposit against amounts owed by the customer; and
- the circumstances in which a retailer must repay a security deposit.

Sub-regulations 13(1) and (2) of the Gas Regulations refer to and modify clause 4.4.6 of the AGA Code relating to the use of refundable advances, permitting retailers to offset any amount owed by the customer to the retailer under certain circumstances. Sub-regulation 12(6) of the Gas Regulations, proposed to be deleted under Recommendation 3, also relates to security deposits and permits a retailer to disconnect a customer where the customer refuses to pay a refundable advance (another term for a security deposit) or a bank guarantee.

The Compendium does not contain any similar clauses to those contained in the AGA Code in relation to security deposits.

In practice, security deposits are not typically required from customers in the Western Australian retail gas or electricity markets.

⁴ Clause 12 of a Gas Distribution Licence refers to a licensee giving notice to the ERA prior to a permanent cessation or substantial decrease in its licensed activities.

In 2017-18, no gas retailer required a residential customer to pay a security deposit, while eight small use business (gas) customers were required to provide a security deposit by Kleenheat⁵. Nevertheless, with increasing competition there is the potential that gas retailers may request security deposits from their residential customers more often in the future.

EPWA is of the view that the current framework for security deposits contained in clauses 5.1.7 and 4.4.6 of the AGA Code does not provide adequate customer protections and recommends the adoption of a more comprehensive customer protection framework, broadly equivalent to the security deposit provisions of the National Energy Retail Rules. Appendix B to this report summarises and compares the security deposit provisions of the National Energy Retail Rules against existing Western Australian security deposit requirements.

Recommendation 5 would align the treatment of security deposit arrangements between the Electricity and Gas Regulations. EPWA considers that this form of customer protection should be the same, irrespective of the retailer or fuel type, to the extent possible under existing heads of power.

The Electricity Regulations do not contain comprehensive or up-to-date provisions regarding the treatment of security deposits. The Regulations incorporate provisions of the *Energy Operators Powers Act 1979* which have caused some practical difficulties for industry participants in interpreting and including these requirements in standard form contracts. Some elements of the Regulations also impose differing requirements on the government owned retailers (Synergy and Horizon Power) compared to other electricity retailers (e.g. regarding the requirement to pay interest on a security deposit).

Recommendation 5 was not subject to extensive commentary in stakeholder submissions received in response to the draft recommendation and has remained unchanged. Of the retailers, AGL and Synergy provided commentary, while Alinta Energy, AEC, ATCO and Origin offered no commentary on this matter.

AGL supported the deletion of sub-regulations 13(1) and (2) of the Gas Regulations that refer to the clause 4.4.6 of the AGA Code and the updating of regulation 37. AGL also noted that the regulatory provision for security deposits does not appear to be a necessity, but expressed support for inserting equivalent provisions to rules 39 to 45 and 112 of the National Energy Retail Rules into the Compendium (and for similar changes to be made to the Electricity Regulations), should an update to security deposits beyond the changes to delete regulation 13 and 37 be considered necessary.

Synergy indicated that while it does not consider new security deposit regulation to be warranted and that the rationale for changes proposed appeared to be based on a perceived need for jurisdictional consistency, it was not averse to the matter being considered as part of the ERA's next scheduled Compendium and Code of Conduct reviews.

Recommendation 6 extends the current security deposit information requirements for standard form contracts to non-standard contracts and ensures a consistent approach for gas and electricity consumers⁶. The recommendation is unchanged from the draft recommendation on this matter.

The recommendation was not subject to extensive commentary in stakeholder submissions received in response to the draft recommendation. Alinta Energy, AEC, ATCO and Origin provided no commentary on the recommendation.

⁵ Economic Regulation Authority, *2018 Annual Performance Report, Energy Retailers*, page 17.

⁶ Current security deposit information requirements for standard form customer contracts are contained in regulation 37 of the Gas Regulations and regulation 30 of the Electricity Regulations.

AGL supported amending the Gas Regulations⁷, while Synergy suggested that the level of detail proposed by the draft recommendation was more suited to a 'guideline or procedure' rather than being in a standard contract. EPWA remains of the view that the inclusion of this information in all customer contracts is a basic customer right.

3.4 Notice of tariffs and tariff variations

Recommendation 7:

Delete sub-regulations 14(3) and (4) of the Gas Regulations and replace with a requirement that a customer contract must describe how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.

Amend regulation 13 of the Electricity Regulations to include a requirement that the customer contract describes how the retailer will publish its tariffs and how it will give notice of any variations to those tariffs.

Sub-regulations 14(3) and (4) of the Gas Regulations reference clauses 4.1.2 and 4.1.3 of the AGA Code, which require retailers to give notice:

- of its tariffs or any variation in its tariffs in the Government Gazette, newspaper, directly to each customer or as otherwise agreed; and
- to customers affected by any variations as soon as practicable, however no later than the customer's next bill.

Recommendation 7 seeks to retain the current level of protections available to customers following the removal of references to the AGA Code provisions in regulation 14 of the Gas Regulations. The recommendation also provides for a consistent approach between the Gas and Electricity Regulations.

There was no substantive comment on the draft recommendation on this matter and the final recommendation has remained unchanged. Alinta Energy, AGL, ATCO and Origin provided no commentary on the recommendation, while submissions from Synergy and the AEC expressed similar views that:

- Clause 10.1 of the Code of Conduct provided for adequate tariff disclosure information.
- It would create a regulatory burden for retailers to amend a standard form contract if the form to publish, and mechanism to notify, tariffs were to be specified in the contract and then subsequently change.
- Regulation 13 of the Electricity Regulations provides a sufficient safeguard to protect customer interests regarding tariff information and publication.

⁷ Refer to AGL commentary on sub-regulations 13(1), 13(2) and regulation 37 provided on Recommendation 5.

The Issues Paper and the Draft Recommendations Report acknowledged that the requirements of the AGA code referred to in regulation 14(3) and (4) of the Gas Regulations are largely equivalent to the requirements of Clause 10.1 of the Compendium. However, the Draft Recommendations Report also noted that the Compendium provisions are less prescriptive than the AGA Code about 'how' notice is to be given.

Under the existing arrangements, gas retailers are already required to provide information on 'how' they will publish and give notice on tariffs and variations to tariffs in standard form customer contracts. EPWA is not aware that this requirement has created any difficulties for gas retailers.

Recommendation 8:

Include a requirement in the Gas and Electricity Regulations that a customer contract must specify that the retailer is to:

- notify customers, no earlier than 40 business days and no later than 20 business days before the end of benefits provided under the initial portion of an ongoing contract (such as a temporary price discount on energy consumption charges for a set period), that the benefits are due to expire and include detail of the options for supply that are available to the customer after the expiry of the benefit; and
- describe how they will provide the above information to their customers.

The Draft Recommendations Report indicated the view that where a gas or electricity customer contract provides a temporary benefit or incentive, retailers should notify customers, in writing, no earlier than 40 business days and no later than 20 business days before the benefit or incentive expires, that the benefit is due to expire and include detail of the supply options available to the customer after the expiry of the benefit.

This recommendation is consistent with a recent change to the National Energy Retail Rules where new rules 48A and 48B were introduced to address a concern where customers on 'special offer' contracts were unaware that their benefits had expired and were paying rates higher than those available under other contracts.

This draft recommendation (restated below) was the subject of commentary from most stakeholders and has been modified in response to these comments.

Draft recommendation 8

Include a requirement in the Gas Regulations and Electricity Regulations, similar to Rule 48A of the National Energy Retail Rules, whereby retailers are to notify customers, in writing, no earlier than 40 business days and no later than 20 business days before the end of benefits provided under the initial portion of an ongoing contract, that the benefits are due to expire and include detail of the options for supply that are available to the customer after the expiry of the benefit.

Alinta Energy and AGL were generally supportive of the intent of the recommendation, while Synergy was of the view that market failure in this area is not evidenced and, as such, regulation is not warranted. The AEC expressed similar views to those of Synergy. Origin offered no commentary on the recommendation.

Alinta Energy agreed that customers should have access to information that is clear and easy to understand, including as to when benefits are about to come to an end under a contract, and that timely communication of changes can encourage customers to actively seek product offers that best meet their needs. However, it also noted that Western Australia's gas retail market is less complex than Australian Energy Regulator jurisdictions, and as such, the requirements around benefit change notices should not be excessively prescriptive and could, along with a definition of a benefit change, be incorporated into the Gas Compendium.

AGL queried how the proposal would be implemented, noting that rule 48 (of the National Energy Retail Rules) also references relevant guidelines. It supported the alignment with rule 48A, if necessary, but expressed interest in reviewing further drafting of any regulatory changes.

Alinta Energy and the AEC considered that retailers are best placed to decide how information on the benefit change should be delivered to their customers, noting the range of differing customer circumstances. Both stakeholders were of the view that the introduction of an obligation on retailers to issue benefit notices may require modifications to billing systems and other internal processes, and that therefore sufficient time should be allowed to make any required process and system changes.

Synergy and the AEC indicated that the recommendation would require retailers to implement costly system upgrades to accommodate these changes, possibly disincentivising retailers from making voluntary offers. Synergy also suggested that provided information is adequately disclosed up front, as required by the Australian Consumer Law (ACL), there should not be the need for a second contact with customers.

EPWA considers that while the ACL prohibits retailers from representing discounts in a manner which misleads or deceives consumers⁸, the intent of this recommendation is complementary to the ACL. It will provide customers greater transparency around changes that take place over the course of their contract and encourage greater engagement by consumers in actively considering whether to remain in their existing contract after a benefit expires.

EPWA agrees that the requirement should not be excessively prescriptive and that retailers are likely to be best placed to decide how the information should be delivered to customers. The final recommendation has been amended accordingly by requiring retailers to include in their customer contracts notice of how they will provide customers with information related to the expiry of a benefit.

⁸ *Competition and Consumer Act 2010* (Cth) Schedule 2 Australian Consumer Law ss 18, 29(1)(g), 29(1)(i).

3.5 Billing

Recommendation 9:

Delete all the text from regulation 15 of the Gas Regulations and replace with a requirement that the customer contract must describe the procedures to be followed by the retailer in relation to the preparation, issue and review of a customer's bill; similar to requirements under regulation 14 of the Electricity Regulations.

Regulation 15 of the Gas Regulations references and modifies provisions of the AGA Code that relate to billing, with these Code clauses duplicating provisions within the Compendium. Table 3.2 sets out the equivalent clauses within the Compendium to the AGA Code provisions and the draft recommendation proposed by the former Public Utilities Office for the removal of reference to each AGA Code clause from the Gas Regulations.

Table 3.2: AGA Code Provisions regarding billing matters referenced in Regulation 15 of the Gas Regulations

AGA Code Provision	Equivalent clause in Compendium	Commentary	Draft recommendation for changes to Gas Regulations
4.2.1 When bills are issued	4.1	The Compendium is more comprehensive and applies a minimum billing period as well as a maximum.	Delete and do not replace AGA Code reference
4.2.3 Contents of a bill	4.5, 10.2	The AGA Code deals with goods and services; the Compendium only deals with services (not goods such as gas appliances). The AGA Code requires some additional items on a bill, but this information is generally available to customers via other channels.	Delete and do not replace AGA Code reference
4.2.4 The basis of a bill	4.6, 4.7, 4.8, 4.9, 4.10	Clause 4.2.4.2 of the AGA Code is more generous to the customer where a meter reading by the customer turns out to be in error but may encourage gaming. Clause 4.2.4.3 of the AGA Code is more prescriptive about why a retailer is unable to base a bill on a meter reading; the Compendium is more general.	Delete and do not replace AGA Code reference

AGA Code Provision	Equivalent clause in Compendium	Commentary	Draft recommendation for changes to Gas Regulations
4.2.10 Calculation of consumption	N/A	<p>The AGA Code provision allows the retailer to calculate consumption as specified, but it does not oblige it to do so.</p> <p>The distributor must calculate energy consumption in accordance with the Gas Retail Market Procedures (WA) ⁹.</p>	Delete and do not replace AGA Code reference
4.3.2 Methods of making payment	5.2, 5.3, 5.4, 5.5	The Compendium reflects common payment options that were not available when the AGA Code was developed.	Delete and do not replace AGA Code reference

Recommendation 9 is unchanged from the draft recommendation that was not the subject of any substantive comment in stakeholder submissions.

3.6 Payment Difficulties

Recommendation 10:

Delete sub-regulation 20(2) of the Gas Regulations (that references AGA Code obligations relating to offers of instalment plans, bill redirection and the provision of information about government assistance programs and independent financial counselling services) on the basis that equivalent obligations are included in the Compendium.

This recommendation deletes sub-regulation 20(2) of the Gas Regulations that references clause 4.3.5.1 of the AGA Code, which requires the retailer to:

- offer instalment plan options;
- redirect a bill to a third person, on request;
- provide information about government assistance programs; and
- provide information on independent financial counselling services for residential customers experiencing payment difficulties.

These obligations are largely equivalent to those under clauses 6.7 and 6.8 of the Compendium. Part 6 of the Compendium also provides more comprehensive requirements for the assistance to be offered to customers experiencing payment difficulties or financial hardship.

Recommendation 10 is unchanged from the draft recommendation that was not the subject of any substantive comment. AGL did however query whether regulation 20 of the Gas Regulations should be amended to align with regulation 31 of the Electricity Regulations, in order to apply only to standard form contracts.

⁹ The Retail Market Procedures are part of the approved retail market scheme. Section 11ZOC of the *Energy Coordination Act 1994* requires that the distributor must comply with the relevant provisions of an approved retail market scheme for the distribution system.

EPWA acknowledges this disparity but is of the view that aligning regulation 20 of the Gas Regulations with regulation 31 of the Electricity Regulations would reduce the level of protections currently afforded to gas customers on non-standard form contracts.

Further to this, EPWA is of the view that with the rise of alternative electricity supply arrangements and varying pricing arrangements being offered to customers it will become more important for the interests of financially disadvantaged consumers to be recognised in non-standard contracts for electricity supplies. This would instead require an extension of the requirements of regulation 31 of the Electricity Regulations to non-standard contracts, to reflect a similar level of protection to regulation 20 of the Gas Regulations.

As this form of proposal has not previously been considered by the Review, EPWA will explore this aspect of customer protection within the context of the separate Retail Electricity Licensing and Exemptions Review.

3.7 Dispute Resolution

Recommendation 11:

Delete all the text from regulation 21 of the Gas Regulations and replace with a requirement that customer contracts must describe the procedures to be followed by the retailer in responding to a complaint made by the customer, replicating regulation 18 of the Electricity Regulations.

Regulation 21 of the Gas Regulations references and modifies clauses 2.5.1 and 2.5.2 of the AGA Code, which relate to dispute resolution. These clauses place obligations on a retailer regarding its complaints handling process and confer rights on a customer to make a complaint. Clause 12.1 of the Compendium provides more comprehensive and up-to-date provision for complaints handling. Refer to Appendix C for a comparison of the full text of the relevant provisions.

The recommendation removes the references to the AGA Code clauses from the Gas Regulations and replaces them with a general requirement that customer contracts must describe the procedures to be followed by a retailer in responding to a complaint made by a customer, thereby replicating regulation 18 of the Electricity Regulations.

Recommendation 11 is unchanged from the draft recommendation that was not the subject of any stakeholder comment.

3.8 Retailer's obligations in relation to supply

Recommendation 12:

Delete sub-regulation 28(2) of the Gas Regulations that reference AGA Code provisions relating to a retailer's obligations regarding the supply of gas and largely duplicate provisions of the Compendium or other regulatory instruments.

Recommendation 13:

EPWA to request that the ERA consider inserting a requirement into gas distribution licences for distributors to make supply available at new connections within 20 business days, subject to:

- adequate supply being available at required volume and pressure at the boundary of a new supply address;
- the natural gas installation at the supply address complying with regulatory requirements; and
- the customer providing necessary safe, convenient and unhindered access to the supply address.

Sub-regulation 28(2) of the Gas Regulations references clauses 3.1.1, 3.1.2 and 3.1.3 of the AGA Code that relate to a retailer's obligations regarding the supply of gas and largely duplicate provisions of the Compendium or other regulatory instruments.

- Clause 3.1.1 of the AGA Code requires a retailer or a distributor to provide, install and maintain:
 - equipment for the supply of natural gas up to the point of supply; and
 - metering equipment at the supply address.

The Gas Retail Market Procedures (WA) contain equivalent obligations. Clause 134 of the Procedures requires a gas network operator to provide, install, operate and maintain a meter at each delivery point.

- Clause 3.1.2 of the AGA Code requires the retailer to use best endeavours to connect a customer at an existing supply address within one business day or within a period agreed with the customer, subject to certain conditions being met (e.g. the customer making an application, agreeing to pay relevant fees and charges and providing contact details). The AGA Code further requires the retailer or distributor to connect the address in accordance with distribution standards.

Other existing regulatory instruments reflect the requirements of this clause:

- Part 3 of the Compendium contains an obligation on retailers to forward connection applications to the distributor within prescribed timeframes; and
 - the Gas Retail Market Procedures (WA) place obligations on distributors in relation to connections (e.g. clause 119 requires a distributor to reconnect a delivery point within two business days on receipt of a valid reconnection notice).
- Clause 3.1.3 of the AGA Code requires the retailer and distributor to use best endeavours to supply a new supply address at a date agreed with the customer or otherwise within 20 business days. This obligation is subject to certain conditions. Some of the conditions relate to the supply point, while other conditions relate to the customer complying with certain requirements.

- The Compendium contains an obligation on retailers to forward connection applications to the distributor within prescribed timeframes, while the gas distribution licence places an obligation on the distributor to offer to connect residential premises if requested to do so by a retailer.

Recommendation 12 is unchanged from the draft recommendation that was not the subject of any stakeholder comment.

Recommendation 13 reflects that there are no equivalent requirements in the Compendium, or elsewhere, for supply to be made available within 20 business days subject to the customer ensuring safe, convenient and unhindered access to the new supply address; adequate supply being available at the required volume and pressures at the boundary of a new supply address; and the installation complying with regulatory requirements.

Recommendation 13 is unchanged from the draft recommendation and was not the subject of any substantive stakeholder comment. ATCO supported the recommendation and requested further consultation with the ERA on the proposed wording for distribution licences. ATCO also requested that consideration be given to the new connection requirements referencing the 'obligation to connect' clause in Schedule 3 of the gas distribution licence. EPWA will draw ATCO's request to the attention of the ERA.

3.9 Access to supply address

Recommendation 14:

Delete sub-regulation 33(3) of the Gas Regulations that references an AGA Code provision regarding the obligations of a retailer or distributor when seeking access to a supply address, as similar obligations are contained in other regulatory instruments.

Sub-regulation 33(3) of the Gas Regulations references clause 3.5.2 of the AGA Code regarding the obligations of a retailer or distributor when seeking access to a supply address. This regulation only applies to standard form contracts.

The obligations under clause 3.5.2 of the AGA Code include providing a certain amount of prior notice to undertake inspections, repairs, testing or maintenance (except in the case of emergency, suspected illegal use, or a routine meter replacement). The clause also obliges the retailer or distributor's representative to wear identification (e.g. a name tag with photo) in a visible manner when seeking access to a customer's supply address.

Recommendation 14 removes the references to this AGA Code provision from the Gas Regulations.

EPWA is of the view that the following provisions of the *Energy Operators (Powers) Act 1979*¹⁰ provide similar and sufficient customer protections to the AGA Code provision.

- Section 46(11) contains requirements for an energy operator to give notice of its intention to enter onto land.
- Section 46(16) requires an energy operator's representative to 'produce evidence of their appointment and the authority under which the energy operator claims a right of entry'.
- Section 48 gives entry rights to an energy operator in an emergency.

¹⁰ Schedule 2 of the *Energy Coordination Act 1994* applies Sections 46(11) and (16), and Section 48 of the *Energy Operators (Powers) Act 1979* to gas retailers and distributors.

Recommendation 14 is unchanged from the draft recommendation that was not the subject of any stakeholder comment.

3.10 Customer leaving supply address

Recommendation 15:

Delete sub-regulation 35(2) of the Gas Regulations that refers to AGA Code clauses relating to a customer leaving a supply address, which largely duplicate provisions of the Compendium.

Sub-regulation 35(2) of the Gas Regulations references clause 4.3.10 of the AGA Code which states that a customer contract may require the customer to give the retailer at least three business days' notice prior to vacating and a forwarding address for the final bill. This regulation only applies to standard form contracts.

Recommendation 15 removes the reference to the AGA Code clause from the Gas Regulations.

The requirements under the AGA Code are largely equivalent to those under clause 5.7 of the Compendium, which contains further customer protections for a customer vacating a supply address. Sub-regulation 35(1) of the Gas Regulations also ensures that the customer contract contains relevant information regarding a customer leaving a supply address.

Recommendation 15 is unchanged from the draft recommendation that was not the subject of any stakeholder comment.

4. Removing overlap with the Australian Consumer Law

4.1 Cooling off periods – unsolicited standard form contracts

Recommendation 16:

Delete regulation 27 of the Gas Regulations and regulation 22 of the Electricity Regulations to remove redundant requirements relating to unsolicited contracts.

Regulation 27 of the Gas Regulations and Regulation 22 of the Electricity Regulations provide for a cooling off period of 10 days for standard form contracts resulting from door-to-door sales practices. Part 3-2, Division 2 of the ACL provides customer protections for unsolicited agreements and imposes a more comprehensive termination period (equivalent to a cooling off period) of at least 10 business days for unsolicited contracts.

Recommendation 16 is unchanged from the draft recommendation that was not the subject of any stakeholder comment.

4.2 Cooling off periods – non-standard form contracts

Recommendation 17:

Amend the cooling off period in sub-regulation 40(2) of the Gas Regulations and sub-regulation 32(2) of the Electricity Regulations to 10 business days, to align with the cooling off period for unsolicited consumer agreements under the Australian Consumer Law.

The ACL has a 10 business day cooling off period for non-solicited contracts, whereas regulation 40 of the Gas Regulations and regulation 32 of the Electricity Regulations stipulate a ‘10 day’ cooling off period for non-standard contracts, whether solicited or unsolicited.

Recommendation 17 amends the cooling off period in regulation 40 of the Gas Regulations and sub-regulation 32(2) of the Electricity Regulations to 10 business days to align with the provisions of the ACL.

The final recommendation is unchanged from the draft recommendation that was not the subject of any substantive stakeholder comment. Alinta Energy, ATCO and Origin provided no commentary on the recommendation. AGL supported the recommendation and noted that it also aligns with rule 47 of the National Energy Retail Rules.

However, Synergy’s submission proposed that action to mandate cooling off periods for solicited contracts under the Electricity Regulations and Gas Regulations is “contrary to the intent of the ACL”. The AEC queried whether there is a case for customer protections provided in the ACL to be replicated in energy regulations and questioned the need for cooling off periods to apply to solicited contracts.

In response to Synergy and AEC’s comments, EPWA notes that the ACL is a principles-based form of regulation that can operate concurrently with more detailed industry specific regulation and is of the view that the removal of these provisions, as proposed by Synergy, would reduce existing protections for customers on non-standard contracts.

EPWA is not aware of any retailer difficulties experienced with the current 10 day cooling off period for non-standard contracts (both unsolicited and solicited).

4.3 Amending contracts

Recommendation 18:

Amend sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations to require that:

- a standard form contract informs the customer that the provisions of the contract may be amended without the customer's consent; and
- a non-standard contract informs the customer that the provisions of the contract may be amended without the customer's consent to the extent that the amendment is required to maintain consistency with applicable legislation or regulation.

Sub-regulation 17(1) of the Gas Regulations and sub-regulation 16(1) of the Electricity Regulations potentially allow unilateral amendment or assignment of contracts and may be considered unfair under the ACL.

Recommendation 18 brings the regulations into line with the ACL, in expressly permitting the amendment of contract provisions without the customer's consent to the extent that the amendment is required to maintain consistency with applicable legislation or regulation. It is noted that section 26(1)(c) of the ACL limits the application of the ACL's unfair contracts protections in situations where a contract term is "required, or expressly permitted, by a law of the Commonwealth, a State or a Territory".

The recommendation therefore proposes that:

- standard form contracts may be amended without the customer's consent, noting that this type of contracts is subject to approval by the ERA; and
- non-standard contracts may be amended without the customer's consent to the extent that the amendment is required to maintain consistency with applicable legislation or regulation. This will permit, for instance, retailers to amend their non-standard contracts to reflect changes to the Compendium or the Gas Regulations without needing to obtain customer consent.

Recommendation 18 is unchanged from the draft recommendation that was not the subject of any substantive stakeholder comment. Synergy expressed support for the recommendation and noted that although the changes proposed would "result in greater regulatory oversight", they will bring Western Australian regulation in line with the ACL provisions.

AGL and AEC did not support the recommendation in terms of market (non-standard) contracts. Both stakeholders expressed similar views that the current regulation provides adequate safeguards for customers entering into market contracts and suggested that the implementation of this recommendation may result in an administrative burden for retailers.

AGL and AEC noted that the recommendation does not consider the impact of a change in favour of the customer, or inconsequential changes to a contract that do not require customer consent, such as typographical errors, and that the change may impact the ability to vary rates, fees and charges over the term of the contract.

In response to these comments, EPWA notes that the regulations are not intended to provide an avenue to correct possible typographical errors or to facilitate other unilateral changes to contract terms such as the rate, fees and charges; even if the change is 'in favour' of the customer. Retailers are required to ensure that their contracts comply with the ACL at all times and the recommendation brings the regulations into line with the ACL unfair contract provisions.

Sub-regulation 18(2) of the Gas Regulations and sub-regulation 17(2) of the Electricity Regulations also require that a customer contract "set out the circumstances in which the customer's rights and obligations under the contract may be assigned without the customer's consent". EPWA maintains the view that no changes are required to these provisions, as customer contracts can only be assigned to another licensed retailer and this sub-regulation already requires the customer contract to set out the circumstances in which assignment can occur without the customer's consent.

5. Other amendments

5.1 Components of the gas supply charge

Recommendation 19:

Amend sub-regulation 14(2)(c) of the Gas Regulations to ensure that the supply charge includes a fixed component and a usage component, unless agreed otherwise by the retailer and the customer.

Sub-regulation 14(2)(c) of the Gas Regulations refers to a supply charge being comprised of a fixed component and a usage component related to the quantity of gas consumed by the customer. In response to the Issues Paper, Alinta Energy submitted that this inflexible structure restricts gas retailers developing and offering a wider range of retail products to customers.

EPWA is of the view that regulatory requirements should not limit innovation that may benefit customers. Recommendation 19 amends sub-regulation 14(2)(c) of the Gas Regulations to provide that the supply charge includes a fixed component and a usage component, unless agreed otherwise by the retailer and the customer. This approach is similar to that of the National Energy Retail Rules where rule 20(1)(b)(iv) allows retailers the option of basing a customer's consumption of gas on a method agreed to by the retailer and customer.

Recommendation 19 is unchanged from the draft recommendation that was not the subject of any substantive stakeholder comment. AGL expressed support for alignment of the provision with rule 20(1)(b)(iv) of the National Energy Retail Rules.

5.2 Gas customer service charter

Recommendation 20:

Delete regulation 45 and sub-regulation 19(a) from the Gas Regulations which require a gas retailer to provide a copy of its customer service charter to a customer on request.

The ERA removed the requirement for a retailer to develop a customer service charter from gas trading licences in 2010¹¹, however regulation 45 and sub-regulation 19(a) of the Gas Regulations require a retailer to provide a copy of its customer service charter to a customer on request.

Recommendation 20 proposes the deletion of regulation 45 and sub-regulation 19(a) and is unchanged from the draft recommendation that was not the subject of any stakeholder comment.

5.3 Electricity supply under a deemed standard form contract

Synergy revisited its proposal to amend regulation 37 of the Electricity Regulations to enable recovery of the fixed daily supply charge from the owner of a premise when there is no customer contract in place.

Synergy acknowledged that it can partially recover the cost of supply charges from vacant sites via regulated tariff revenue but indicated that it does not consider this approach to be in the long-term interests of consumers. The AEC provided commentary in support of Synergy's views.

¹¹ <https://www.erawa.com.au/gas/gas-licensing/document-archive/customer-service-charters>

EPWA continues to acknowledge that Synergy and other retailers have some financial exposure from unrecoverable or difficult-to-recover daily supply charges associated with vacant premises. It is considered however that the level of exposure to these unrecoverable or difficult-to-recover daily supply charges is small, being limited to the contestable small use customer market ¹².

Daily fixed charges associated with vacant premises in the supply of electricity to contestable customers could also be considered as an underlying cost of a retailer's business and predicted as part of the retailer's budget cycle. Retailers in the contestable small use market are able to determine how their business costs are recovered, such as by adjusting tariffs. To avoid these charges, retailers can also pursue the removal of unused meters, noting that in these circumstances, the retailer would become liable for the removal costs.

Synergy's proposed amendment to expand a customer's financial liability to situations where a customer is 'capable' of taking supply, transfers the financial risk associated with vacant premises from the retailer to contestable small use customers. EPWA considers this to be an inappropriate transfer of risk, however small.

EPWA's position to not support Synergy's proposal to amend regulation 37 of the Electricity Regulations remains unaltered.

5.4 Obligation to offer supply of electricity under a standard form contract

Recommendation 21:

Extend, to all retailers, the requirement in regulation 40 of the Electricity Regulations to supply electricity under a standard form contract to a customer who requests supply.

- For existing connections, the obligation would fall on the default supplier identified under regulation 36 of the Electricity Regulations.
- For new connections, the obligation would continue to fall on Synergy for areas within the South West Interconnected System (SWIS) and on Horizon Power for other areas of the State.

Sub-regulation 40(1) places an obligation on Synergy and Horizon Power to offer supply of electricity under a standard form contract following a customer request for supply.

Synergy submitted that sub-regulation 40(1) of the Electricity Regulations is no longer appropriate and proposed that the obligation apply equally to all retailers who supply small use customers or be removed on the basis that:

- the obligation has been in existence for 12 years and during that time there has been significant retail market activity, new retailer entry and churn;
- it is the only retailer in the contestable electricity market in the SWIS that has an obligation to offer to supply under a standard form contract. Given the level of market maturity and the need to provide a level playing field, this obligation should be removed;

¹² In 2018-19, only 0.05% of residential and 9.2% of small use business customers in the SWIS were contestable. (Source: Economic Regulation Authority, 2018-19 Annual Data Report – Energy Retailers, page 3).

- Synergy's market share of contestable small use customers within the SWIS has reduced from 90% in 2007-08 to 64% in 2015-16¹³; and
- the Electricity Reform Task Force originally recommended that the obligation to supply apply to all licensed retailers that supply tariff customers. Synergy claims, however, that the obligation ultimately only applied to Synergy.

EPWA considers the obligation to supply under a standard form contract is an important protection for small use customers and should be retained. Therefore, the obligation should be extended to all retailers.

Section 22 of the National Energy Retail Law requires a designated retailer to make offers to customers at the standing offer prices and under the retailer's standard form contract. The designated retailer means the retailer currently or most recently supplying the premises for existing connections, and a designated 'local area retailer' for new connections.

In Western Australia, for existing connections, the designated retailer would be the equivalent of the 'default supplier' identified under regulation 36 of the Electricity Regulations. For new connections, Synergy would be the designated retailer within the SWIS and Horizon Power would be the designated retailer for other areas of the State.

EPWA considers that the approach taken within the National Energy Retail Law is fair and equitable and suitable for Western Australian circumstances.

Recommendation 21 is unchanged from the draft recommendation and was not the subject of any substantive stakeholder comment. Origin and Alinta Energy considered that this requirement should be applied to small use contestable customers only. In practise, however, the obligation will fall to Synergy for non-contestable customers meaning the obligation on other retailers relates to small use contestable customers only.

Origin also proposed that where a contestable connection point is reclassified by the distribution business as consuming less than the 50MWh per annum threshold, the obligation to supply should revert to the area retailer (i.e. Synergy or Horizon Power) for that connection point and the regulated price and terms and conditions should apply. EPWA notes that such a change would require the development of a more formalised regulatory framework for contestability matters that is outside the scope of the review.

¹³ In 2018-19, Synergy supplied 58.7% of contestable small use customers in the SWIS (Source: Economic Regulation Authority 2018-19 Annual Data Report – Energy Retailers, page 4).

5.5 Limitations on obligation to offer supply of electricity under a standard form contract

Recommendation 22:

Amend regulation 40 of the Electricity Regulations and insert a new requirement into the Gas Regulations to permit a retailer to require a customer to provide acceptable identification as a pre-condition of forming a standard form contract with the retailer.

Regulation 40 of the Electricity Regulations places an obligation on Synergy to offer supply in circumstances where the customer requesting supply fails to provide either a security deposit or identification. Synergy submitted that the arrangement presents a financial risk to its business from customers failing to pay for the supply of electricity and should therefore be amended.

EPWA is of the view that allowing retailers the option to require security deposits as a precondition to making a standard form contract may unnecessarily disadvantage vulnerable customers and considers that an approach similar to that of the National Energy Retail Rules is fair and equitable, and suitable for Western Australian circumstances.

Rule 18(3) of the National Energy Retail Rules requires a retailer, who is obliged to make a standing offer, to seek acceptable identification from the customer as a pre-condition to forming a standard retail contract. However, the payment or partial payment of a security deposit is not a pre-condition to forming a standard retail contract under rule 40(7) of the National Energy Retail Rules.

EPWA also notes that:

- under sub-regulation 40(3) of the Electricity Regulations, the obligation to offer supply does not arise if the customer requesting the supply owes money to the retailer and has not entered into an agreement with the retailer for repayment of the amount owed; and
- the regulatory change proposed would not affect the formation of a deemed standard form contract under regulation 37 of the Electricity Regulations, as a result of a customer commencing to take electricity without entering into a contract with a retailer.

While the substance of Recommendation 22 is unchanged from the draft recommendation, it has been extended to include the same requirement in the Gas Regulations for consistency in response to suggestions from Alinta Energy and the AEC. Alinta Energy and the AEC identified rule 3 of the National Energy Retail Rules as an example of how acceptable identification could be defined.

‘Acceptable identification’ under rule 3 in relation to a:

(a) *residential customer* – includes any one of the following:

- ‘a driver licence (or driver’s licence) issued under the law of a State or Territory, a current passport or another form of photographic identification’; or
- ‘a Pensioner Concession Card or other entitlement card, issued under the law of the Commonwealth or of a State or Territory’; or
- ‘a birth certificate’.

(b) *business customer, that is a:*

- ‘sole trader or partnership—includes one or more of the forms of identification for a residential customer for one or more of the individuals that conduct the business or enterprise concerned’;
- ‘body corporate—means Australian Company Number or Australian Business Number of the body corporate’.

EPWA considers the definition provided in the National Energy Retail Rules of 'acceptable identification' is a useful resource in the drafting of amendments to implement Recommendation 22.

5.6 Electricity retailer contracting with multiple parties

Synergy revisited its earlier proposal in response to the Issues Paper that the Electricity Regulations be updated to allow the ability to enter into joint and several contracts.

EPWA retains the view there are risks to consumers from entering into joint arrangements as each customer in a joint contract would be accepting liability for the electricity consumption of all other parties on the contract.

EPWA's position not to support an amendment to the Electricity Regulations to permit joint contracting remains unaltered.

5.7 Confidential customer information

Recommendation 23:

Amend regulation 22 of the Gas Regulations and regulation 19 of the Electricity Regulations to set out that the customer contract meets the requirements of this regulation if the contract specifies:

- that the retailer's privacy policy sets out the steps that are to be taken by the retailer to ensure that information that it holds about a customer is dealt with in a confidential manner; and
- how the customer can obtain a copy of the retailer's privacy policy free of charge.

Regulation 22 of the Gas Regulations and regulation 19 of the Electricity Regulations may impose unnecessary duplication between a retailer's privacy policy and the customer contract. These regulations require a customer contract to 'specify the steps that are to be taken' by the retailer to ensure that information held by the retailer about the customer is dealt with in a confidential manner.

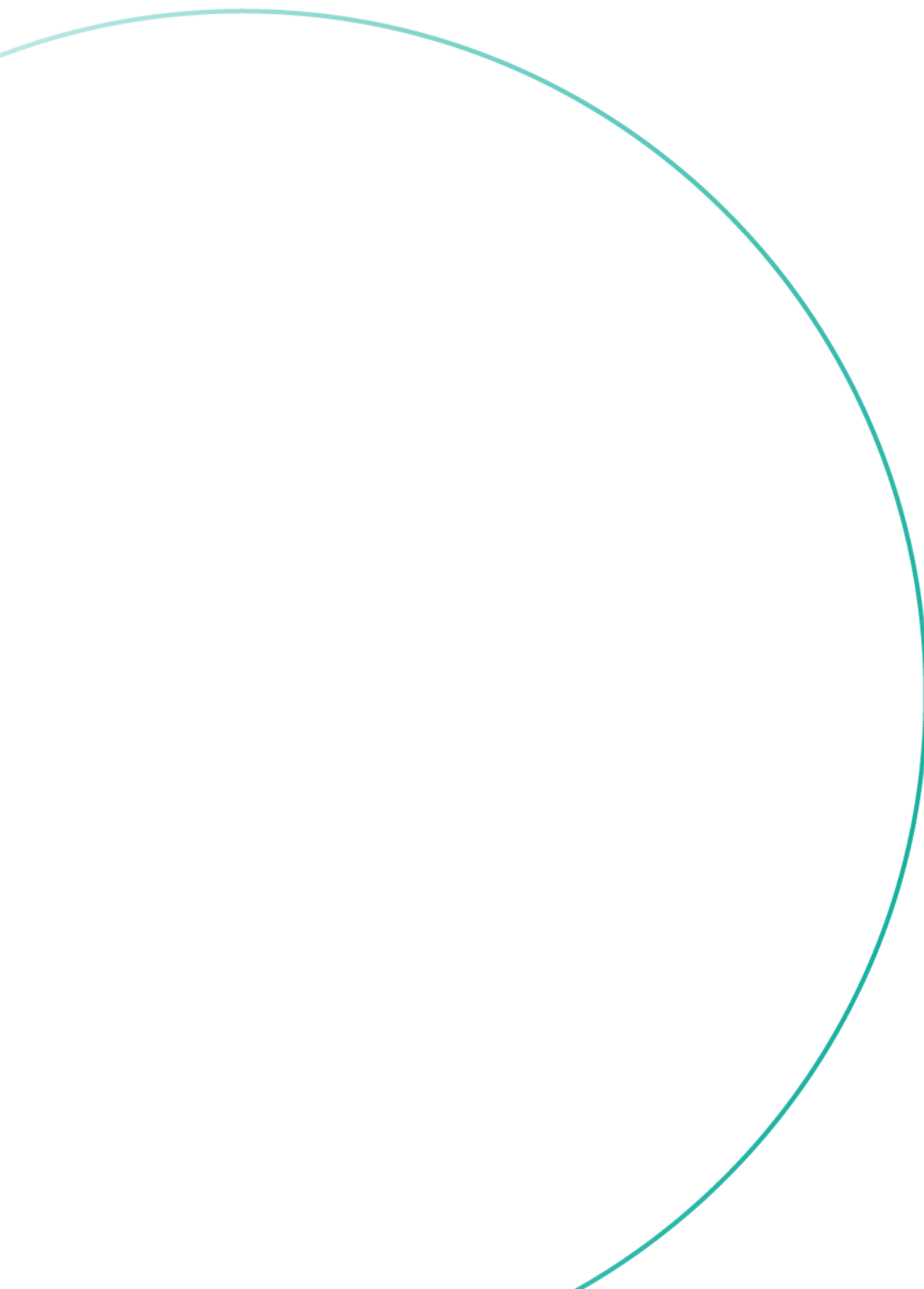
This wording implies that the customer contract must describe the measures the retailer will take to ensure customer information is kept confidential. This may include a description of who will have access to the information, software used to keep the information confidential, and use of passwords. This kind of information is more suitable to a privacy policy than a customer contract.

EPWA considers that the regulations should be clarified to permit the customer contract to refer to the retailer's privacy policy, provided that the customer contract also sets out how the customer may obtain a copy of the retailer's privacy policy on a free of charge basis.

Recommendation 23 is unchanged from the draft recommendation that was not the subject of any stakeholder comment.

Appendices

The tables in these Appendices contain provisions copied from the relevant legislative instruments at the time of writing this document and are not an authoritative statement of those provisions. While due care has been taken in its compilation, no assurance is given as to the accuracy of this information and it is the responsibility of the reader to verify and make his or her own decision on the accuracy and correctness of this information for themselves. Where AGA Code provisions are modified by the Gas Regulations, the modification is incorporated in square brackets. The State of Western Australia, nor any of its employees or agents, shall be responsible or liable for any loss or damage of any kind howsoever arising from the use or reliance of this information.



APPENDIX A: AGA Code disconnection and reconnection provisions referenced in regulation 12(6) and as modified by regulation 12(7) of the Gas Regulations and equivalent provisions in other instruments

AGA Code provision	Comparable provisions in other instruments
<p>Clause 5.1.1 – Disconnection for unpaid bills</p> <p>5.1.1.1</p> <p>Subject to this Section a supplier may disconnect supply to a customer’s supply address, or may notify the distributor that it no longer supplies gas to a customer at a supply address, if a customer has not:</p> <ol style="list-style-type: none"> a. paid; or b. agreed to an offer of an instalment plan or other payment option to pay; or c. adhered to the customer’s obligations to make payments in accordance with an agreed payment plan relating to, <p>the service to property charge, natural gas usage charge or other charge of the kind allowable under this Code (other than a charge in respect of the sale or installation of appliances) incurred at the current or any previous supply address.</p> <p>Where a supplier notifies the distributor that it no longer supplies gas to a customer at a supply address in accordance with this clause, the distributor may disconnect the supply address without further notice to the supplier’s customer.</p> <p>5.1.1.2</p> <p>Where a residential customer, because of a lack of sufficient income or other means on the part of that customer, is unable to pay a supplier’s service to property charge or natural gas usage charge or other charge of the kind allowable under this Code, the supplier shall not disconnect the supply to the customer’s supply address or notify the distributor that it no longer supplies gas to a customer at a supply address until:</p> <ol style="list-style-type: none"> a. the supplier has: <ol style="list-style-type: none"> i. offered the customer alternative payment options of the kind referred to in this Code; ii. given the customer information on government funded concessions as outlined in this Code; iii. used its best endeavours to contact the customer personally, or by lettergram, facsimile or mail, or by telephone; and iv. given the customer, by way of a written disconnection warning, 5 business days 	<p>Compendium</p> <p>7.1</p> <ol style="list-style-type: none"> 1. Prior to arranging for disconnection of a customer’s supply address for failure to pay a bill, a retailer must – <ol style="list-style-type: none"> a. give the customer a reminder notice, not less than 14 business days from the date of dispatch of the bill, including – <ol style="list-style-type: none"> i. the retailer’s telephone number for billing and payment enquiries; ii. advice on how the retailer may assist in the event the customer is experiencing payment difficulties or financial hardship; and iii. requiring payment to be made on or before the day not less than 20 business days after the day on which the bill was issued; b. use its best endeavours to contact the customer to advise of the proposed disconnection; and c. give the customer a disconnection warning, not less than 22 business days from the date of dispatch of the bill, advising the customer – <ol style="list-style-type: none"> i. that the retailer may disconnect the customer not less than 10 business days after the day on which the disconnection warning is given; and ii. of the existence and operation of complaint handling processes including the existence and operation of the gas ombudsman and the Freecall telephone number of the gas ombudsman. 2. For the purposes of subclause (1), a customer has failed to pay a retailer’s bill if the customer has not – <ol style="list-style-type: none"> a. paid the retailer’s bill by the due date; b. agreed with the retailer to an offer of an instalment plan or other payment arrangement to pay the retailer’s bill; or c. adhered to the customer’s obligations to make payments in accordance with an agreed instalment plan or other payment

AGA Code provision	Comparable provisions in other instruments
<p>notice of its intention to disconnect or cease supplying gas to the customer (the 5 days shall be counted from the date of receipt of the disconnection warning),</p> <p>and</p> <p>b. the customer has;</p> <p>i. refused or failed to accept the offer within the time specified by the supplier; or</p> <p>ii. accepted the offer, but has refused or failed to take any reasonable action towards settling the debt within the time specified by the supplier.</p>	<p>arrangement relating to the payment of the retailer's bill.</p> <p>7.2</p> <p>1. Notwithstanding clause 7.1, a retailer must not arrange for the disconnection of a customer's supply address for failure to pay a bill –</p> <p>a. within 1 business day after the expiry of the period referred to in the disconnection warning;</p> <p>b. if the retailer has made the residential customer an offer in accordance with clause 6.4(1) and the residential customer has –</p> <p>i. accepted the offer before the expiry of the period specified by the retailer in the disconnection warning; and</p> <p>ii. has used reasonable endeavours to settle the debt before the expiry of the time frame specified by the retailer in the disconnection warning;</p> <p>c. if the amount outstanding is less than an amount approved and published by the Authority in accordance with subclause (2) and the customer has agreed with the retailer to repay the amount outstanding;</p> <p>d. if the customer has made an application for a concession administered by a retailer and a decision on the application has not yet been made;</p> <p>e. if the customer has failed to pay an amount which does not relate to the supply of gas;</p> <p>f. if the supply address does not relate to the bill, unless the amount outstanding relates to a supply address previously occupied by the customer; or</p> <p>g. where a residential customer has been assessed by a retailer under clause 6.1(1) as experiencing payment difficulties or financial hardship, without the retailer having provided the customer with information on the types of concessions available to the customer.</p> <p>2. For the purposes of subclause (1)(c), the Authority may approve and publish, in relation to failure to pay a bill, an amount outstanding below which a retailer must not arrange for the disconnection of a customer's supply address.</p>
<p>5.1.1.3</p> <p>A supplier shall not disconnect the supply to a business customer's supply address or notify the distributor that it no longer supplies gas to a customer at a supply address unless:</p> <p>a. the supplier has:</p> <p>i. used its best endeavours to contact the customer personally, or by lettergram, facsimile or mail, or by telephone;</p> <p>ii. offered the customer an extension of time to pay beyond the original pay-by date on terms and conditions (which may include interest at a rate approved by the Authority); and</p> <p>iii. given the customer, by way of a written disconnection warning, 5 business days notice of its intention to disconnect or cease supplying gas to the customer (the 5 days shall be counted from the date of receipt of the disconnection warning);</p> <p>and</p> <p>b. the customer has:</p> <p>i. refused or failed to accept the offer within a time (not less than 5 business days) specified by the supplier; or</p> <p>ii. accepted the offer, but has refused or failed to take any reasonable action towards settling the debt within a time (not less than 5 business days) specified by the supplier.</p>	<p>6.11</p> <p>A retailer must consider any reasonable request for alternative payment arrangements from a business customer who is experiencing payment difficulties.</p>

AGA Code provision	Comparable provisions in other instruments
<p>5.1.2 – Disconnection for denying access to the meter</p> <p>5.1.2.1</p> <p>Where a customer fails to provide access to the supply address as contemplated by this Code or a supplier is denied access to the customer's supply address for the purposes of reading the meter for the purposes of issuing 3 consecutive bills in the customer's billing cycle, the supplier may disconnect supply to the customer's supply address or may notify the distributor that it no longer supplies gas to a customer at a supply address.</p> <p>5.1.2.2</p> <p>A supplier shall not exercise its rights to disconnect or notify the distributor that it no longer supplies gas to a customer at a supply address, unless the supplier has:</p> <ol style="list-style-type: none"> given to the customer an opportunity to offer reasonable alternative access arrangements; on each of the occasions it was denied access, given to the customer written notice requesting access to the meter at the supply address; used its best endeavours to contact the customer personally, or by lettergram, facsimile or mail, or by telephone; and given the customer, by way of a written disconnection warning, 5 business days notice of its intention to disconnect the customer (the 5 days shall be counted from the date of receipt of the disconnection warning). 	<p>Compendium</p> <p>7.4</p> <ol style="list-style-type: none"> A retailer must not arrange for the disconnection of a customer's supply address for denying access to the meter, unless – <ol style="list-style-type: none"> the customer has denied access for the purpose of reading the meter for the purposes of issuing 3 consecutive bills; the retailer has, prior to giving the customer a disconnection warning under subclause (e), each time it was denied access given the customer in writing 5 business days' notice – <ol style="list-style-type: none"> advising the customer of the next date or timeframe of a scheduled meter reading at the supply address; requesting access to the meter at the supply address for the purpose of the scheduled meter reading; and advising the customer of the retailer's ability to arrange for disconnection if the customer fails to provide access to the meter; the retailer has given the customer an opportunity to provide reasonable alternative access arrangements; the retailer has used its best endeavours to contact the customer to advise of the proposed disconnection; and the retailer has given the customer a disconnection warning with at least 5 business days' notice of its intention to arrange for disconnection. A retailer may arrange for a distributor to carry out 1 or more of the requirements referred in subclause (1) on behalf of the retailer.
<p>5.1.3 – Disconnection for emergencies</p> <p>5.1.3.1</p> <p>Notwithstanding any other clause in this Section, a supplier or distributor may disconnect or interrupt supply to a customer's supply address in the case of an emergency.</p> <p>5.1.3.2</p> <p>Where a supplier or distributor exercises its disconnection right under clause 5.1.3.1, either the supplier or distributor (but not both) shall:</p> <ol style="list-style-type: none"> provide, by way of its 24 hour emergency line, information on the nature of the 	<p>Compendium</p> <p>7.5</p> <p>If a distributor disconnects or interrupts a customer's supply address for emergency reasons, the distributor must –</p> <ol style="list-style-type: none"> provide, by way of a 24 hour emergency line at the cost of a local call (excluding mobile telephones), information on the nature of the emergency and an estimate of the time when supply will be restored; and

AGA Code provision	Comparable provisions in other instruments
<p>emergency and an estimate of the time when supply will be restored; and</p> <p>b. use its best endeavours to reconnect or secure reconnection at the customer's supply address as soon as possible.</p>	<p>b. use its best endeavours to restore supply to the customer's supply address as soon as possible.</p>
<p>5.1.4 – Disconnection for health and safety reasons</p> <p>5.1.4.1</p> <p>Notwithstanding any other clause in this section, a supplier or distributor may disconnect or interrupt supply to a customer's supply address for reasons of health and safety.</p> <p>5.1.4.2</p> <p>Except in the case of an emergency, or where there is a need to reduce the risk of fire or where relevant regulatory requirements require it, a supplier or distributor shall not disconnect a customer's supply address for a health or safety reason unless the supplier or distributor has;</p> <ol style="list-style-type: none"> given the customer written notice of the reason; where the customer is able to do so, allowed the customer 5 business days to remove the reason; and at the expiration of those 5 business days given the customer, by way of a written disconnection warning, another 5 business days' notice of its intention to disconnect the customer (the 5 days shall be counted from the date of receipt of the notice) or in the case of a supplier, notify the distributor that it no longer supplies gas to a customer at a supply address on the basis of health and safety reasons. 	<p>Compendium</p> <p>7.5</p> <p>If a distributor disconnects or interrupts a customer's supply address for emergency reasons, the distributor must –</p> <ol style="list-style-type: none"> provide, by way of a 24 hour emergency line at the cost of a local call (excluding mobile telephones), information on the nature of the emergency and an estimate of the time when supply will be restored; and use its best endeavours to restore supply to the customer's supply address as soon as possible.
<p>5.1.5 – Disconnection for planned maintenance</p> <p>5.1.5.1</p> <p>A supplier or distributor may disconnect or interrupt supply to a customer's supply address for the purposes of planned maintenance on, or augmentation to, the distribution system.</p> <p>5.1.5.2</p> <p>A supplier or distributor shall not exercise its right to disconnect for the purposes of planned maintenance on, or augmentation to, the distribution system unless the supplier or distributor has used its best endeavours to give the customer notice of its intention to disconnect. The notice period shall be at least 4 days or such other period as specified by regulatory requirements.</p>	<p><i>Energy Operators (Powers) Act 1979</i></p> <p>s.46</p> <ol style="list-style-type: none"> Where an energy operator intends to exercise any of the power conferred by this section or section 49, notice in writing of that intention shall, where practicable, be given by the energy operator to the owner or occupier of the land, premises or thing to be affected not less than 5 days before the power is to be exercised, save where this Act otherwise provides. An energy operator responsible for the operation of existing distribution works may without prior notice enter on any street under the control of a local or other statutory authority and there exercise such of the

AGA Code provision	Comparable provisions in other instruments
<p>5.1.5.3</p> <p>A supplier or distributor shall use its best endeavours to minimise interruptions to supply occasioned by planned maintenance or augmentation and restore supply as soon as practicable.</p>	<p>powers conferred by section 49 as are of a minor or routine nature and are related only to the maintenance or extension of those works, but where any exercise of the powers conferred by that section is likely to affect the use or surface of any such street or the position or use of any pipe, sewer, drain or tunnel then notice in writing of the intention to carry out the works specified therein shall be given by the energy operator to the authority concerned unless subsection (13) or section 48 applies.</p>
<p>5.1.6 – Disconnection for unauthorised utilisation</p> <p>Notwithstanding any other clause in this Section, a supplier or distributor may disconnect supply to a customer’s supply address immediately where the customer has obtained the supply of natural gas at the supply address otherwise that in accordance with this Code or in breach of any regulatory requirement.</p>	<p>Compendium</p> <p>7.6 (3)</p> <p>A retailer or a distributor may arrange for disconnection or interruption of a customer’s supply address if—</p> <ol style="list-style-type: none"> the disconnection was requested by the customer; the disconnection or interruption was carried out for emergency reasons; the interruption was the result of a planned interruption; or the disconnection or interruption was to prevent unauthorised utilisation.
<p>5.1.7 – Disconnection for refusal to pay refundable advances</p> <p>5.1.7.1</p> <p>A supplier may disconnect supply to a customer’s supply address or notify the distributor that it no longer supplies gas to a customer at a supply address, where the customer refuses to pay a refundable advance or provide a bank guarantee which a supplier requires in accordance with this Code.</p> <p>5.1.7.2</p> <p>A supplier shall not exercise its right to disconnect or notify the distributor that it no longer supplies gas to a customer at a supply address, for failure to pay a refundable advance or provide a bank guarantee unless the supplier has given the customer not less than 5 business days written notice of its intention to disconnect or give notice to the distributor (the days shall be counted from the date of receipt of the notice).</p>	<p>-</p>
<p>5.1.8 – When a supplier shall not disconnect</p> <p>5.1.8.1</p> <p>A supplier shall not disconnect supply to a customer’s supply address or notify the distributor</p>	<p>Compendium</p> <p>7.2</p>

AGA Code provision

that it no longer supplies gas to a customer at a supply address:

- a. for non-payment of a bill where the amount outstanding is less than an average bill over the past 12 months and the customer has, in accordance with this Code, agreed with the supplier to repay this amount;
- b. where the customer has made a complaint, directly related to the reason for the proposed disconnection, to the [gas industry ombudsman] and the complaint remains unresolved;
- c. where a customer has made an application for a government concession or grant and the application has not been decided;
- d. where the customer has failed to pay an amount on a bill which does not relate to the service to property charge, the natural gas usage charge or other charge of the contemplated by this Code;
- e. after 3 pm on a weekday; or
- f. on a Friday, on a weekend, on a public holiday or on the day before a public holiday except in the case of a planned interruption.

Comparable provisions in other instruments

1. Notwithstanding clause 7.1, a retailer must not arrange for the disconnection of a customer's supply address for failure to pay a bill –
 - a. within 1 business day after the expiry of the period referred to in the disconnection warning;
 - b. if the retailer has made the residential customer an offer in accordance with clause 6.4(1) and the residential customer has –
 - i. accepted the offer before the expiry of the period specified by the retailer in the disconnection warning; and
 - ii. has used reasonable endeavours to settle the debt before the expiry of the time frame specified by the retailer in the disconnection warning;
 - c. if the amount outstanding is less than an amount approved and published by the Authority in accordance with subclause (2) and the customer has agreed with the retailer to repay the amount outstanding;
 - d. if the customer has made an application for a concession administered by the retailer and a decision on the application has not yet been made;
 - e. if the customer has failed to pay an amount which does not relate to the supply of gas;
 - f. if the supply address does not relate to the bill, unless the amount outstanding relates to a supply address previously occupied by the customer; or
 - g. where a residential customer has been assessed by a retailer under clause 6.1(1) as experiencing payment difficulties or financial hardship, without the retailer having provided the customer with information on the types of concessions available to the customer.
2. For the purposes of subclause (1)(c), the Authority may approve and publish, in relation to failure to pay a bill, an amount outstanding below which a retailer must not arrange for the disconnection of a customer's supply address.

7.6

1. Subject to subclause (3), a retailer must not arrange for disconnection of a customer's supply address if:

AGA Code provision	Comparable provisions in other instruments
	<ul style="list-style-type: none"> a. a complaint has been made to the retailer directly related to the reason for the proposed disconnection; or b. the retailer is notified by the distributor, gas ombudsman or an external dispute resolution body that there is a complaint, directly related to the reason for the proposed disconnection, that has been made to the distributor, gas ombudsman or external dispute resolution body, c. and the complaint is not resolved by the retailer or distributor or determined by the gas ombudsman or external dispute resolution body. <p>2. Subject to subclause (3), a distributor must not disconnect a customer's supply address –</p> <ul style="list-style-type: none"> a. if: <ul style="list-style-type: none"> i. a complaint has been made to the distributor directly related to the reason for the proposed disconnection; or ii. the distributor is notified by a retailer, the gas ombudsman or an external dispute resolution body that there is a complaint, directly related to the reason for the proposed disconnection, that has been made to the retailer, gas ombudsman or external dispute resolution body, <p>and the complaint is not resolved by the retailer or distributor or determined by the gas ombudsman or external dispute resolution body; or</p> b. during any time: <ul style="list-style-type: none"> i. after 3.00 pm Monday to Thursday; or ii. on a Friday, Saturday, Sunday, public holiday or on the day before a public holiday. <p>3. A retailer or a distributor may arrange for disconnection or interruption of a customer's supply address if—</p> <ul style="list-style-type: none"> a. the disconnection was requested by the customer; b. the disconnection or interruption was carried out for emergency reasons; c. the interruption was the result of a planned interruption; or d. the disconnection or interruption was to prevent unauthorised utilisation.

5.2.2 – Time and response for reconnection

5.2.2.1

Where a supplier is under an obligation to reconnect a customer and the customer makes a request for reconnection before 3pm on a business day, the supplier shall use its best endeavours to make the reconnection or cause the distributor to make the reconnection on the day of the request.

5.2.2.2

Where a supplier is under an obligation to reconnect a customer and the customer makes a request for reconnection after 3pm on a business day, the supplier shall make the reconnection or cause the distributor to make the reconnection as soon as possible on the next business day.

Compendium

8.1

1. If a retailer has arranged for disconnection of a customer's supply address due to –
 - a. failure to pay a bill, and the customer has paid or agreed to accept an offer of an instalment plan, or other payment arrangement;
 - b. the customer denying access to the meter, and the customer has subsequently provided access to the meter; or
 - c. illegal use of gas, and the customer has remedied that breach, and has paid, or made an arrangement to pay, for the gas so obtained,

the retailer must arrange for reconnection of the customer's supply address, subject to –

 - d. the customer making a request for reconnection; and
 - e. the customer –
 - i. paying the retailer's reasonable charge for reconnection, if any; or
 - ii. accepting an offer of an instalment plan for the retailer's reasonable charges for reconnection, if any.
2. For the purposes of subclause (1), a retailer must forward the request for reconnection to the relevant distributor –
 - a. that same business day, if the request is received before 3pm on a business day; or
 - b. no later than 3pm on the next business day, if the request is received –
 - i. after 3pm on a business day, or
 - ii. on a Saturday, Sunday or public holiday.
4. If a retailer does not forward the request for reconnection to the relevant distributor within the timeframes in subclause (2), the retailer will not be in breach of this clause 8.1 if the retailer causes the customer's supply address to be reconnected by the distributor within the timeframes in clause 8.2(2) as if the distributor has received the request for reconnection from the retailer in accordance with subclause (2).

8.2

1. If a distributor has disconnected a customer's supply address on request by the customer's retailer, and the retailer has subsequently requested the distributor to reconnect the customer's supply address, then, subject to the retailer complying with any retail market

AGA Code provision

Comparable provisions in other instruments

- procedures applicable to that retailer, the distributor must reconnect the customer's supply address.
2. Subject to subclause (3) and for the purposes of subclause (1), a distributor must reconnect a customer's supply address within 2 business days of receipt of the request.
 3. Subclause (2) does not apply –
 - a. where a retailer has notified a distributor of a later date for reconnection, in which case, subject to this subclause, the distributor must reconnect a customer's supply address within 2 business days of that later date;
 - b. in the event of an emergency, in which case a distributor must reconnect a customer's supply address within 2 business days of the emergency ceasing to exist;
 - c. if a distributor's access to the supply address has been restricted, in which case the distributor must reconnect a customer's supply address within 2 business days of becoming aware that access to the customer's supply address is unrestricted;
 - d. if it is unsafe to reconnect the supply address, in which case a distributor must reconnect a customer's supply address within 2 business days of becoming aware that the safety issue has been resolved; or
 - e. if the reconnection requires excavation, in which case a distributor must reconnect a customer's supply address within 10 business days of receipt of the request to reconnect.
 4. If any of the circumstances described in subclauses (3)(b) to (e) apply, a distributor must notify a retailer of the relevant circumstance that applies within 2 business days of receipt of the reconnection request made under subclause (1).
 5. Notwithstanding subclause (1), if a distributor becomes aware that there has been unauthorised utilisation of gas at a customer's supply address, the distributor –
 - a. must notify a retailer of the unauthorised utilisation as soon as practicable; and
 - b. is not obliged to reconnect the customer's supply address until the issue is resolved.

APPENDIX B: Comparison of security deposit provisions in the National Energy Retail Rules with security deposit provisions in Western Australian regulatory instruments

Summary of relevant National Energy Retail Rules	Summary of Western Australian requirements
<p>Rule 25(1)(q)</p> <p>Requires that the amount of any security deposit provided is part of the minimum information is to be included on a retail bill.</p>	<p>Clause 4.5 of the Electricity Code of Conduct specifies the information that must be contained on customer bills.</p> <ul style="list-style-type: none"> 4.5(1)(i) requires the amount of ‘any other fees or charges and details of the service provided’ to be included on the bill <p>Clause 4.5 of the Gas Compendium specifies the information that must be contained on customer bills.</p> <ul style="list-style-type: none"> 4.5(1)(g) requires the amount of ‘any other fees or charges and details of the service provided’ to be included on the bill
<hr/> <p>Rule 39¹⁴</p> <p>Before requiring a security deposit, a retailer must seek the customer’s permission to obtain a credit check and other information relating to the credit history of the customer. The retailer must take into consideration any information on the customer’s credit history to assess the ability of the available customer to meet its financial obligations under a customer contract.</p>	
<hr/> <p>Rules 40(1)¹⁵ and (4A)</p> <p>A retailer may require that a customer provide a security deposit:</p> <ul style="list-style-type: none"> In the case of residential customers – only when the customer requests a customer contract, and not during the term of the customer contract (with an exception for when a security deposit is returned to the customer in relation to a voided transfer to another retailer). For business customers – when the customer requests a customer contract or during the term of the customer contract. 	
<hr/> <p>Rule 40(2)¹⁶</p> <p>A retailer cannot require a customer to provide a security deposit unless the customer:</p> <ul style="list-style-type: none"> owes money to that retailer for the sale and supply of energy at any premises, unless the bill for the amount owed is disputed; 	

¹⁴ This rule applies to standard retail contracts and market retail contracts but only to the extent market retail contracts provide for payment of a security deposit.

¹⁵ This rule applies to standard retail contracts and market retail contracts but only to the extent a market retail contract provides for a security deposit.

¹⁶ Ibid.

Summary of relevant National Energy Retail Rules

Summary of Western Australian requirements

- has fraudulently acquired or intentionally consumed energy other than in accordance with energy laws within the past 2 years;
- has refused or failed to provide acceptable identification;
- is reasonably considered by the retailer to have an unsatisfactory credit history;
- has refused or failed to provide the retailer with permission to obtain a credit check or other credit history information;
- is considered by the retailer to have no history or an unsatisfactory record of paying energy accounts. This applies to business customers only.

Rule 40(3)¹⁷

A retailer cannot require a residential customer to provide a security deposit if the customer is, or was, a hardship customer.

Rule 40(4)¹⁸

A retailer cannot require a residential customer to provide a security deposit unless the retailer has offered the customer an option of a payment plan and the customer has either declined the offer or failed to pay an instalment having accepted the offer.

Rule 40(5)¹⁹

If a retailer requires a security deposit on the basis of an unsatisfactory credit history, the retailer must inform the customer of that decision, the reasons for the decision and the customer's rights to dispute the decision.

Rules 40(6) and (7)²⁰

A retailer must not refuse to sell energy on the ground of non-payment or partial payment of a security deposit but may arrange de-energisation of the premises or refuse to re-energise premises. Payment or partial payment of a security deposit is not a precondition to the formation of a standard retail contract.

41(1) and (2)²¹

A customer who is required to pay a security deposit must do so on request of the retailer, and the retailer may refuse to arrange re-energisation of a customer's premises if a customer has been de-energised for not

¹⁷ Ibid.

¹⁸ This rule applies to standard retail contracts and market retail contracts but only to the extent market retail contracts provide for payment of a security deposit.

¹⁹ Ibid.

²⁰ Ibid.

²¹ This rule applies to standard retail contracts but does not apply to market retail contracts.

Summary of relevant National Energy Retail Rules	Summary of Western Australian requirements
<p>paying a security deposit and the security deposit remains unpaid.</p>	
<p>Rule 41(3)²²</p> <p>A retailer must keep security deposits in a separate account and separately identify in its company accounts the value of security deposits that it holds for customers.</p>	<p>This rule is broadly equivalent to:</p> <ul style="list-style-type: none"> • Regulation 13(3) of the Gas Regulations • Regulation 12(1) of the Electricity Regulations
<p>Rule 42²³</p> <p>A retailer must ensure that the amount of a security deposit is not greater than 37.5 percent of the customer's estimated bills over a 12 month period, based on the customer's billing history or the average use by a comparable customer over a comparable period.</p>	<p>Synergy and Horizon Power are required to comply with the <i>Energy Operators (Powers) Act 1979</i>.</p> <p>Section 62(11) of the <i>Energy Operators (Powers) Act 1979 Act</i> provides for the calculation of security and the maximum amount that can be required.</p> <p>This requirement is extended to other electricity retailers under regulation 30(2) of the Electricity Regulations.</p>
<p>Rule 43²⁴</p> <p>If a retailer has received a security deposit, the retailer must pay interest to the customer on the deposit at the bank bill rate. Interest is to accrue daily and be capitalised (if not paid) every 90 days.</p>	<p>This rule is broadly equivalent to:</p> <ul style="list-style-type: none"> • Regulation 13(4)-(5) of the Gas Regulations • Regulation 12(2)-(4) of the Electricity Regulations
<p>Rule 44(1)²⁵</p> <p>A retailer may only apply a security deposit to offset amounts owed if:</p> <ul style="list-style-type: none"> • the customer fails to pay a bill, the failure results in the retailer de-energising the customer's premises and there is no contractual right to re-energisation; or • for a final bill, the customer vacates the premises, requests de-energisation of the premises or transfers to another retailer. 	<p>This rule is broadly equivalent to the AGA Code provision 4.4.6.1.</p> <p>Section 62(14) of the <i>Energy Operators (Powers) Act 1979</i> provides for the application of security 'if default occurs for any reason'.</p> <p>This provision is extended to other electricity retailers under regulation 30(2) of the Electricity Regulations.</p>
<p>Rule 44(2)²⁶</p> <p>If a final bill includes amounts payable for goods and services other than the sale of energy, the retailer must apply the security deposit first against charges for the sale of energy, unless the customer directs or agrees otherwise.</p>	

²² This rule applies to both standard and market retail contracts.

²³ This rule applies to standard retail contracts but does not apply to market retail contracts.

²⁴ This rule applies to standard retail contracts and market retail contracts but only to the extent market retail contracts provide for payment of a security deposit.

²⁵ This rule applies to standard retail contracts but does not apply to market retail contracts.

²⁶ Ibid.

Summary of relevant National Energy Retail Rules	Summary of Western Australian requirements
<p>Rule 44(3)²⁷</p> <p>A retailer must account to the customer regarding the application of a security deposit amount within 10 business days after the application of the security.</p>	<p>AGA Code provision 4.4.6.2</p> <p>Where a supplier uses a refundable advance, it is to provide to the customer an account of its use and pay the balance if any to the customer within 10 business days.</p>
<p>Rule 44(4)²⁸</p> <p>A reference to a security deposit under rule 44 includes a reference to any accrued interest on the security deposit.</p>	
<p>Rule 45(1)²⁹</p> <ul style="list-style-type: none"> • A retailer must repay a security deposit (and accrued interest) in accordance with a customer's reasonable instructions within 10 business days after the customer: • completes one year's payment (for a residential customer) or two years' payment (for a business customer) by the pay-by dates on the retailer's bills; or • vacates the premises, requests de-energisation of the premises or transfers to another retailer. 	<p>This rule is broadly equivalent to the AGA Code provision 4.4.6.2</p> <p>Where a supplier uses a refundable advance, it is to provide to the customer an account of its use and pay the balance if any to the customer within 10 business days.</p>
<p>Rule 45(2)³⁰</p> <p>If a customer has not given reasonable instructions for the repayment of a security deposit, a retailer must credit the amount of the security deposit and accrued interest on the customer's next bill (if the customer has completed the necessary period of payment on time) or to the customer's final bill (if the customer is vacating, requests de-energisation or transfers to another retailer).</p>	
<p>Rule 112³¹</p> <p>A retailer may arrange to de-energise a customer's premises if the customer has failed to pay a security deposit, and the retailer gives the customer notice of its intention to de-energise after a notice period of at least five business days, and the retailer gives the customer a disconnection warning notice after the expiry of the period referred to in its notice of intention to de-energise.</p>	<p>This rule is broadly equivalent to the AGA Code provision 5.1.7</p>

²⁷ Ibid.

²⁸ This rule applies to standard retail contracts but does not apply to market retail contracts.

²⁹ Ibid.

³⁰ Ibid.

³¹ This rule applies to standard retail contracts and market retail contract but only to the extent the market retail contract provides for payment of a security deposit

APPENDIX C: AGA Code Dispute resolution provisions referenced in regulation 21(1) and as modified by regulation 21(2) of the Gas Regulations and equivalent provisions in other instruments

AGA Code provision	Equivalent provisions in other instruments
<p>2.5.1 – Obligations on a supplier</p> <p>A supplier shall:</p> <ol style="list-style-type: none"> a. manage a complaint made to it by a customer in accordance with the Australian Standard on Complaints Handling (AS 4269) 1995; b. publish information which will assist its customers in utilising its complaints handling process; and c. when requested by a customer, provide the customer with information about <ol style="list-style-type: none"> i. the supplier’s complaints handling process; and ii. the [gas industry ombudsman scheme of which the retail supplier is a member]. <p>2.5.2 – Rights of a customer</p> <p>A customer may:</p> <ol style="list-style-type: none"> a. make a complaint to a supplier about the supplier’s acts or omissions; b. where the customer is not satisfied with the supplier’s response to the complaint, raise the complaint to a higher level within the supplier’s management structure; and c. where, after raising the complaints to a higher level, the customer is not satisfied with the supplier’s response, refer the complaint to [the gas industry ombudsman], as appropriate. 	<p>Compendium</p> <p>12.1</p> <ol style="list-style-type: none"> 1. A retailer and distributor must develop, maintain and implement an internal process for handling complaints and resolving disputes. 2. The complaints handling process under subclause (1) must – <ol style="list-style-type: none"> a. comply with Australian Standard AS/NZS 10002:2014; b. address at least – <ol style="list-style-type: none"> i. how complaints must be lodged by customers; ii. how complaints will be handled by a retailer or distributor including – <ol style="list-style-type: none"> A. a right of a customer to have its complaint considered by a senior employee within each organisation of the retailer or distributor if the customer is not satisfied with the manner in which the complaint is being handled; B. the information that will be provided to a customer; iii. response times for complaints; and iv. method of response; and c. detail how a retailer will handle complaints about the retailer, gas marketing agents or marketing; and d. be available at no cost to customers. 3. For the purposes of subclause (2)(b)(ii)(B), a retailer or distributor must at least – <ol style="list-style-type: none"> a. when responding to a complaint, advise the customer that the customer has the right to have the complaint considered by a senior employee within the retailer or distributor (in accordance with its complaints handling process); and b. when a complaint has not been resolved internally in a manner acceptable to a customer, advise the customer – <ol style="list-style-type: none"> i. of the reasons for the outcome (on request, the retailer or distributor must supply such reasons in writing); and ii. that the customer has the right to raise the complaint with the gas ombudsman or

AGA Code provision**Equivalent provisions in other instruments**

another relevant external dispute resolution body and provide the Freecall telephone number of the gas ombudsman.

4. For the purpose of subclause (2)(b)(iii), a retailer or distributor must, on receipt of a written complaint by a customer –
 - a. acknowledge the complaint within 10 business days; and
 - b. respond to the complaint by addressing the matters in the complaint within 20 business days.
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