



Energy & Water
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Thank you for the opportunity to comment on the “*Industry Standard for the Making of Telemarketing Calls Discussion Paper 2006.*”

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

EWON believes that consumer protection is of paramount consideration in the establishment of a national industry standard for telemarketing. The key principles identified in the discussion paper are important. However, we have limited our response to those areas where we can draw on our experience of complaints made to EWON by customers regarding the telemarketing of energy contracts.

Principles for the development of the standard

Comment is invited on:

- (a) *the above principles and whether any additional principles should be used to guide the development of the standard.*

As identified in the discussion paper there are numerous instruments that govern direct marketing by phone across Australia, including in the energy market. In NSW the *Fair Trading (General) Regulation 2002 cl 88B 1(a), (b)* excludes marketing of electricity and gas contracts to small retail customers from the relevant provisions of the *Fair Trading Act 1987*. In NSW such marketing is regulated by the *Energy Marketing Code of Conduct* approved for the purposes of the *Electricity Supply Act 1995 (NSW)* and the *Gas Supply Act 1996 (NSW)* by the NSW Minister for Energy.

The marketing of energy contracts to NSW consumers has expanded considerably since the introduction of contestability for domestic and small business customers in 2002. While we note the discussion paper’s acknowledgment of the need to ‘assist in arresting the level of dissatisfaction within the community about telemarketing activities’, it has been EWON’s experience that many customers have suggested a preference for telemarketing over door-to-door marketing. This is due to several factors, not least because certain customers – particularly those disadvantaged in terms of language, consumer education, health and income – feel less pressured to

agree to a contract over the phone than at their front door. It is also the case that telemarketing is to a significant degree externally auditable by agencies such as EWON, where voice recording of a telemarketing call is more definitive in terms of investigating compliance than are the recollections of a customer and/ or a door-to-door marketer.

EWON agrees that achieving nationally consistent rules for telemarketing is an important principle, particularly given the probability of national regulation of the electricity retail market within this decade. A lack of consistency in retailers' approaches to telemarketing has led to a noticeable rise in consumer complaints to EWON involving breaches of the NSW *Energy Marketing Code of Conduct*. Many of these complaints have arisen because the telemarketers representing the energy retailers concerned are based in other States and appear to have assumed that the standards that apply in their own State also apply nationally. Nationally consistent standards would likely reduce the number of such complaints, the negative impacts on consumers, and the jurisdictional compliance costs for retailers operating across States.

EWON endorses the principles that ACMA intends to apply in the development of the standard. In addition to these, we would recommend the importance of including reference to the need to inform customers of the avenue/s available to them should they wish to complain about a particular telemarketer's activities. The opportunity for a customer to complain about the activities of a marketer – at first to an internal dispute resolution body and then, if dissatisfied, to an external dispute resolution body – is fundamental to a fair market and the maintenance of consumer rights and confidence. Consequently, we believe this principle should be included among those that will inform the standard.

Specific Calling Times

Comment is invited on:

- (b) *the hours and/or days during which telemarketing calls should be permitted to be made or attempted to be made under the proposed standard.*

In NSW energy retailers are restricted in the hours/ days during which they are entitled to market by phone, as outlined in the *Energy Marketing Code of Conduct*. These include:

6.2.3 *Unless requested by a Customer, a Marketer must not make a telephone call to a Customer:*

- a) *on Christmas Eve after 5:00pm; or*
- b) *on Christmas Day, Boxing Day, Good Friday or Easter Sunday; or*
- c) *outside the following times:*
 - i. *8am to 8:30pm on weekdays; and*
 - ii. *9am to 7pm on Saturdays and 10am to 7pm on Sundays.*

6.2.4 *A Marketer must ensure that if a telephone call is commenced within the hours permitted by section 6.2.3, the call must not continue for more than 15 minutes beyond the permitted times without the Customer's agreement.*

These restrictions allow broader consumer relief from marketing than is provided for under the NSW *Fair Trading Act 1987*. Nevertheless, EWON notes that unlike several other States, NSW and Victoria allow for phone marketing on Sundays, and that this contrasts with the standards outlined in several instruments including the Australian Direct Marketing Association's *Direct Marketing Code of Practice*, the Ministerial Council on Consumer Affairs' *Direct Marketing a Model Code of Practice*, and the regulatory provisions in place under the *Corporations Act 2001* (Cth). While at this point energy retailers appear to rarely market on Sundays (so this has not been an issue in customer complaints to EWON to date), this appears to be an area in which national uniformity would provide common ground for both customers and retailers. Should Sunday marketing be deemed acceptable, the later start – 10am – regulated under the NSW *Energy Marketing Code of Conduct*, would appear sensible.

If the goal of reducing the level of dissatisfaction within the community about telemarketing activities is to be achieved in the proposed standard, then there may be value in considering the addition of a time limit in minutes beyond which a marketing call can exceed the final time allowable to call. As noted above, the NSW *Energy Marketing Code of Conduct* at 6.2.4, for instance, provides that a call cannot continue more than 15 minutes beyond the final hour during which telemarketing is permitted; thus if the call itself cannot be made after 8.30pm, then any such call should also not continue beyond 8.45pm.

Information Provision

Comment is invited on:

- (c) *information that a telemarketing call should contain about the telemarketer or about the person who caused the call to be made.*

Although the information that telemarketers are required to provide to consumers differs in detail across jurisdictions, there appears to be uniformity in requiring appropriate disclosure of the nature and purpose of the call. A number of complaints to EWON have involved consumers feeling confused or angry at the ambiguity of the identifying information provided by telemarketers. We have commonly been informed that marketers have represented themselves as being 'energy consultants' or being sent 'by the government' (though this has tended to be more prevalent in door-to-door marketing). Agreement on the content of the information to be provided to consumers would likely reduce such complaints as well as the compliance burdens on retailers operating in multiple State jurisdictions.

An element of the NSW *Energy Marketing Code of Conduct* that appears valuable to consumers is the requirement that once the purpose of the call has been communicated, a request for permission to continue must be obtained by the telemarketer. This informed consent to continue marketing helps to ensure the customer has understood the purpose of the call and allows the call, if recorded, to be more readily auditable – for the benefit of both parties.

EWON agrees that it is critical for consumer protection and the integrity of telemarketing that customers understand from the outset who they are speaking to and what is being offered. Equally crucial is the need to provide the consumer with a means of making a complaint about the conduct of the marketer. Many of the products that are currently being offered to consumers via telemarketing are essential

services. Consequently, the inability to make a complaint about the activities of a marketer can lead to significant detriment to consumers. This is particularly true for electricity and gas contracts, as the inability to have a complaint heard and addressed can lead to such unwelcome impacts as increased costs, disconnection of supply, and credit listing. Our experience suggests that many people most affected by an inability to make a complaint may also be the least able to do so, often due to language, age, health and/ or financial hardship.

EWON strongly recommends that the telemarketing standard include an obligation on the marketer to provide appropriate contact details (at least to include name and phone number) for the internal dispute resolution department of the entity the marketer represents. The consumer should be provided such details upon request or where, in the reasonable view of the marketer, the consumer has formed the desire to lodge a complaint. If the consumer indicates a desire to make a complaint with a body external to the retail entity, the marketer should be required to provide appropriate contact details (at least to include name and phone number) for any external dispute resolution mechanisms that exist for the industry type and in the jurisdiction concerned.

Termination of Calls

Comment is invited on:

- (d) *the circumstances where a telemarketer should be required to terminate a call.*

It is clear from the range of telemarketing instruments that a call should be terminated without question upon request of the consumer. EWON further endorses the approach adopted by the Australian Direct Marketing Association's *Direct Marketing Code of Practice* and the Ministerial Council on Consumer Affairs' *Direct Marketing a Model Code of Practice* which require a telemarketer to ensure that the consumer's phone line is released within five seconds of the consumer hanging up or otherwise indicating that he or she requires the telemarketer to release the line.

Calling Line Identification

Comment is invited on:

- (e) *implementation of the legislative requirement that telemarketers must ensure that calling line identification is enabled in respect of the making of a telemarketing call*

EWON endorses the requirement of the *Telecommunications Act 1997* (Cth) that telemarketers ensure that calling line identification be enabled when contacting consumers. This requirement accords with the general principle that the process of telemarketing be as transparent as possible, for the benefit of both marketer and consumer. Such information broadens the choices available to the consumer (eg. to identify if the number is known before answering) and ensures that the consumer is empowered to return the call at a later time should they wish to do so (per the Australian Direct Marketing Association's *Direct Marketing Code of Practice*).

Other Matters

Though not strictly accommodated under the areas inviting comment, EWON considers that there is value in ensuring all telemarketing activity is supported by

appropriate and auditable record keeping. The NSW *Energy Marketing Code of Conduct* at 6.2.5 and 6.2.6¹ makes specific provision that telemarketers be required to maintain records of the calls they make, and this seems both sensible and appropriate so long as privacy considerations are met. Such record keeping is a fundamental element of consumer protection and often forms the basis for the internal and/ or external investigation of complaints and the assurance of satisfactory outcomes for both consumer and retailer.

If you would like to discuss this response further, please contact me on 8218 5250, or Chris Dodds, Policy Officer, on 8218 5262.

Yours sincerely



Clare Petre
Energy & Water Ombudsman NSW

¹ 6.2.5 A Marketer must maintain the following records in relation to all telephone calls involving Marketing to Customers:

- a) the names and telephone numbers of the Customers;
- b) the name of the person that made and/or dealt with each call on behalf of the Marketer; and
- c) the times and dates of telephone calls

6.2.6 The records required to be kept under section 6.2.5 must be kept for at least one year after the date of the last telephone call for the purpose of Marketing.