

6 May 2011

WIC Act Codes of Conduct  
NSW Office of Water  
GPO Box 3889  
SYDNEY NSW 2001  
[information@water.nsw.gov.au](mailto:information@water.nsw.gov.au)  
Subject line – WIC Act Codes of Conduct

Thank you for the opportunity to comment on the Draft Marketing Code of Conduct and the Draft Transfer Code of Conduct under the *Water Industry Competition (General) Regulation 2008*.

The Energy & Water Ombudsman NSW investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers (see Attachment 1).

EWON believes that the approach in the draft documents is generally comprehensive and provides a framework which will be robust in the context of a more competitive water industry.

When water providers (retail and network) first became members of EWON we identified many synergies in the delivery of essential energy and water services to customers. Our comments in this brief submission are based on this experience and our developed view that codes of conducts and other consumer protection measures should be as similar as possible in similar circumstances of utility service delivery.

EWON has extensive experience in dealing with customer complaints about marketing since retail competition was introduced in the energy market in June 2002. Many of our comments are therefore based on our familiarity with the Marketing Code of Conduct for the energy market (the Energy MCC<sup>1</sup>).

For ease of reference we have adopted the same numbering as the Draft Codes.

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<sup>1</sup> [Marketing Code of Conduct January 2011](#)

## *Draft Marketing Code of Conduct*

### **3 Definitions**

*The draft code definition of marketing is not as definitive as the definition provided in the Energy MCC. This latter definition includes the words:*

*includes, but is not limited to, advertising, sales, promotion, market research, public relations and negotiations by any means, whether solicited or unsolicited,*

This wider definition ensures that the various methods used by marketers are fully covered by the code. We suggest that a similar broad definition would be helpful for water industry competition.

### **8 Customer Consent**

The new *National Energy Retail Law* includes the concept of ‘*explicit informed consent*’ rather than ‘*express consent*’. EWON believes that the use of this terminology is current best practice and we would welcome a similar usage in this code of conduct.

Section 39 of the *National Energy Retail Law* provides the following requirements for ‘explicit informed consent’:

- the retailer, or a person acting on behalf of the retailer, has clearly, fully and adequately disclosed all matters relevant to the consent of the customer, including each specific purpose or use of the consent
- the customer gives the consent to the transaction
- consent to be given by the small customer, either in writing signed by the customer; verbally, so long as the verbal consent is evidenced in such a way that it can be verified and made the subject of a record; or by electronic communication generated by the customer.

This issue of consent is of particular importance in the water market, because unlike the energy industry, the occupant of a particular property is not necessarily the customer for the purpose of water or sewerage services. A tenant, while being the occupant and user of the service, is not the customer. Under current billing arrangements in NSW the ‘customer’ is the owner of the property. It is therefore

critical that in all matters of marketing and transfer it is the customer who agrees to a contract and transfer with explicit informed consent.

## **9 General Standard of conduct for marketers**

Clause 6.1.5 of the Energy MCC provides that:

*Customers must be able to contact a Marketer on the Marketer's Contact Number during the normal business hours of the Marketer.*

This requirement ensures that a customer has an opportunity to cancel immediately after contact with a marketer. We suggest that such a clause be included in the relevant section of the proposed draft code for the benefit of consumers

## **Obligations to Ombudsman**

Clause 5.3 of the Energy MCC specifies the marketer's obligations to the Ombudsman.

### ***5.3 Obligations to the Ombudsman***

*5.3.1 A Marketer must, on request or if directed to do so by the Ombudsman in relation to a complaint by a Customer:*

- (a) provide to the Ombudsman, any information, including information the Marketer is required to keep under the Code, relating to the complaint;*
- (b) pay any relevant Ombudsman fees and other amounts in accordance with a decision made by the Ombudsman in relation to the complaint; and*
- (c) agree to be bound by any relevant decision of the Ombudsman in relation to the complaint.*

EWON believes that this explicit statement of obligation in the context of marketing is of value and that a similar clause should be included in the final version of the code under the WIC Act.

## ***Draft Transfer Code of Conduct***

### **7 Customer Consent**

Here again EWON would support the use of the concept of explicit informed consent, which we believe is current best practice in regulatory consumer protection.

If you would like to discuss this matter further, please contact me or Chris Dodds, Senior Policy Officer on 82185250.



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Ombudsman NSW

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Yours sincerely

A handwritten signature in black ink that reads "Clare Petre".

Clare Petre  
Energy & Water Ombudsman NSW

## **Attachment 1**

### **EWON Water Members at May 2011**

- **Essential Water** (operated by Essential Energy)
- **Gosford City Council**
- **Hunter Water**
- **Shoalhaven Water**
- **State Water**
- **Sydney Water**
- **Wyong Shire Council**
- **Veolia Water Solutions & Technologies**