

Coercion and harassment at the door
Consumer experiences with energy direct marketers

A report by Consumer Action Law Centre
and the Financial & Consumer Rights Council

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1. Executive Summary

Background

Since the introduction of full retail contestability in the Victorian energy market, Consumer Action Law Centre (**Consumer Action**) and the Financial & Consumer Rights Council (**FCRC**) have received numerous complaints from consumers, financial counsellors and other community support workers about the marketing practices of energy retailers. The Energy and Water Ombudsman Victoria (**EWOV**) also continues to receive high levels of complaints in relation to marketing practices.¹ Complaint levels have largely maintained or increased, despite the existence of consumer protections relating to marketing, both in fair trading and energy regulation. To further understand the nature and types of complaints in relation to energy marketing, and to determine the extent that marketers are not complying with the law, Consumer Action and the FCRC have prepared this case study report detailing a range of consumer experiences with energy direct marketers.

This report has been prepared so as to contribute to two regulatory reviews currently being undertaken in the energy market. First, the Australian Energy Market Commission (the **AEMC**) is undertaking a review of the effectiveness of competition in energy markets in Victoria. The AEMC have expressly asked that stakeholders provide evidence about what is happening in relation to the marketing of energy.² Secondly, the Ministerial Council on Energy's (**MCE**) Retail Policy Working Group (**RPWG**) is considering the new national regulatory framework for energy consumer protections, including those that pertain to marketing. This report and its recommendations will be provided to both the AEMC and the RPWG for consideration in their respective reviews.

Key findings

The findings demonstrate regular breaches of the Victorian Energy Retail Code and Energy Marketing Code of Conduct, identifying problems

¹ Energy and Water Ombudsman (Victoria) (**EWOV**), *Resolution 24 – January to June 2007*, October 2007.

² Australian Energy Market Commission (**AEMC**), *Review of the effectiveness of competition in retail energy and gas markets in Victoria – Issues Paper*, June 2007, p 18.

specifically with marketer conduct. The case studies indicate a range of misconduct in relation to marketing practice including:

- Misleading and deceptive conduct;
- Retailers switching customers without consent;
- Unconscionable conduct;
- Marketing to non-account holders; and
- Harassment.

In addition, there are several cases which demonstrate marketers taking advantage of a lack of understanding on behalf of consumers including:

- Instances of consumers signing multiple contracts; and
- Retailer inducements.

The report confirms anecdotal evidence that marketing misconduct is wide spread, and that marketers are regularly taking advantage of consumers, particularly vulnerable, disadvantaged and culturally and linguistically diverse consumers.

Many energy retailers believe that direct marketing, especially through door-to-door sales, is necessary to interest consumers in what is largely an uninteresting product. Regulators appear to believe that direct marketing is necessary for markets involving 'relatively low involvement products such as energy' and that such marketing is necessary for effective competition.³ However, the regular occurrence of marketing misconduct demonstrates a failure of effective competition. As this report submits, marketing misconduct prevents effective demand side participation that is necessary for effective competition.

Direct marketing, particularly when marketers are employed on a commission sales basis, inherently involves high pressure sales tactics. The inability of consumers to take time to consider an offer, or shop around to compare the offer being made, means that consumers are unable to drive competition by making choices that best suit their needs and, as recognised by the AEMC,

³ AEMC, *Review of the effectiveness of competition in retail electricity and gas markets in Victoria – First Draft Report*, October 2007, p 66.

customers rely heavily on the offer summaries and product information statements that are provided by the marketing retailers themselves.⁴ Effective demand side participation is essential for effective competition and can not be achieved through the marketing techniques currently being employed by energy retailers.

The report also considers the regulatory framework for the marketing of retail energy in Victoria, and considers whether it should be strengthened in the move to new national regulations. A summary of the recommendations follows.

Recommendation 1: That, in its review of the effectiveness of competition in the Victorian energy market, the AEMC acknowledge the specific and inherent problems associated with direct marketing. This includes acknowledging that direct marketing does not easily allow consumers to compare products and choose goods that well suit their needs.

Recommendation 2: That, in the move to a national regulatory framework for retail consumer protections, the framework for regulating energy marketing that exists in Victoria be replicated and strengthened where appropriate.

Recommendation 3: That Governments consider introducing a 'Do Not Knock' register, similar to the 'Do Not Call' register, that would allow consumers to register their address so that marketers would be banned from marketing to that address.

Recommendation 4: That Governments consider a targeted consumer protection campaign, to improve consumers ability to reject offers from door-to-door marketers. This should include encouragement of consumers to post "Do Not Knock" messages on their doors.

Recommendation 5: That energy market regulators consider whether the use of commission sales by energy retailers requires further regulation so as to counter the incentive to unfairly coerce consumers to sign contracts. This could include a ban on commission sales for door-to-door energy marketing.

⁴ As above.

Recommendation 6: That the proposed national framework for retail consumer protections ensures that explicit informed consent is required before a consumer can enter into an energy market contract.

Recommendation 7: That fair trading and energy regulators prioritise energy marketing misconduct in their regulatory and enforcement activities.

Recommendation 8: That any regulatory activity taken in relation to energy marketing practices by a regulator be made public through a media release or public announcement.

Recommendations from financial counselling agencies:

- Telephone sales be followed up with the signing of a written contract;
- That longer cooling off periods be implemented for energy market contracts;
- That payment plans and CentrePay arrangements be transferred automatically to a new retailer when a consumer switches; and
- That salespeople receive training in dealing with elderly and vulnerable consumers.

2. Overview

Background

The AEMC is currently undertaking a review of the effectiveness of competition in the retail electricity and gas markets in Victoria (the **Review**). To assist with the Review, the AEMC has asked stakeholders to contribute information that will assist in understanding:

- The changes to the extent of competition that has been experienced since the introduction of full retail competition;
- The current level of competition; and
- The effectiveness of competition that can be expected in the future.

Consumer Action and the FCRC have identified that consumers experiences with the marketing of energy in Victoria will be a significant issue to be considered by the AEMC.

In its Issues Paper, the AEMC states:

The Commission is interested in understanding the kinds of strategies that are being employed, their objectives and outcomes. In the case of marketing and other strategies, the Commission also seeks information about audiences being targeted by those strategies and their impacts.⁵

Consumer Action and the FCRC are aware of many consumers, particularly low-income and vulnerable consumers, being targeted by energy marketing strategies. In particular, there is continuing evidence relating to misleading marketing strategies and transfers without the requisite consent.

⁵ AEMC, above n 2, p 18.

Consumers

Marketing activities by energy retailers affect all consumers. As stated by both the AEMC and EWOV,⁶ no specific socio-economic group is targeted by marketers. As such, all consumers are exposed to the marketing activities of retailers and all consumers deserve protection from misleading and unconscionable behaviour when they are approached by marketers.

In its first draft report, the AEMC acknowledges that vulnerable and disadvantaged consumers may not be benefiting from competition. The AEMC refers to consumers' 'personal circumstances, such as financial hardship or personal disability' as restricting their ability to participate in the energy market.⁷ Consumer Affairs Victoria (**CAV**) defines vulnerable and disadvantaged consumers as follows:

A vulnerable consumer is a person who is capable of readily or quickly suffering detriment in the process of consumption. A susceptibility to detriment may arise from either the characteristics of the market for a particular product, the product's qualities or the nature of the transaction; or the individual's attributes or circumstances which adversely affect consumer decision-making or the pursuit of redress for any detriment suffered; or a combination of these.⁸

A disadvantaged consumer is a person in persistent circumstances and/or with ongoing attributes which adversely affect consumption thereby causing a continuing susceptibility to detriment in consumption. As a result, a disadvantaged consumer repeatedly suffers consumer detriments or, alternatively expressed, generally obtains below-average satisfaction from consumption.⁹

While not all vulnerable consumers are disadvantaged, the occurrence of vulnerability can be temporary, based upon changes to personal circumstances eg job loss, illness etc.

By specifically drawing on clients of financial counsellors, this report has focused on consumers who may be considered vulnerable or disadvantaged, including:

⁶ AEMC, above n 3, 73; EWOV, *Submission to AEMC Issues Paper*, June 2007, p 8.

⁷ AEMC, above n 3, p 145.

⁸ Consumer Affairs Victoria, *What do we mean by 'vulnerable' and 'disadvantaged' consumers?* March 2004, p 3.

⁹ As above. p. 3

- The elderly;
- People with disabilities;
- People who are unemployed;
- Those with limited or no English skills;
- Sole parents;
- People living alone; and
- Couples with large numbers of dependent children.

Regulation of energy marketing in Victoria

There are a number of regulatory instruments that regulate energy marketing in Victoria. These are detailed further in Part 3 of this report and include:

- the *Trade Practices Act 1974* (Cth) (**Trade Practices Act**);
- the *Fair Trading Act 1999* (Vic) (**Fair Trading Act**);
- the Energy Retail Code;¹⁰ and
- the Code of Conduct for the Marketing of Retail Energy (the **Marketing Code of Conduct**);¹¹ and
- the Energy Product Disclosure Guideline.¹²

Consumer protections in relation to marketing conduct include cooling off periods, marketer behaviour requirements, contractual regulation, and the requirement to obtain 'explicit informed consent' from consumers.

Regulation of marketing in other sectors

Direct marketing in other sectors is subject to quite proscriptive regulation, largely due to previous marketing misconduct in those industries. For example, there is a ban on door-to-door sales of financial products and services¹³ as well as consumer credit.¹⁴

¹⁰ Essential Services Commission (**ESC**), *Energy Retail Code – version 3*, May 2007.

¹¹ ESC, *Code of Conduct for Marketing of Retail Energy*, November 2004.

¹² ESC, *Guideline 19 – Energy Product Disclosure*, 2005

¹³ *Corporations Act 2001* (Cth), ss 992A and 992AA.

¹⁴ *Consumer Credit Code*, s 146.

This proscriptive regulation recognises that, faced with a salesperson on their doorstep, people infrequently make rational, welfare maximising decisions, especially those most vulnerable consumers with limited contractual experience.

While the Marketing Code of Conduct does strictly regulate door-to-door sales by prescribing certain information requirements and cooling-off periods, the financial services and consumer credit approach recognises the immense detriment that can ensue where consumers face pressure to purchase financial products and services where the transaction has been unsolicited. Energy contracts share some important features with consumer credit, namely that they both involve a deferred debt to be repaid, and if not repaid, can mean a default is listed on the consumer's credit information file.

Consumer experiences of marketing misconduct

Consumer Action and FCRC engaged *People First – Total Solutions* to collect case studies of energy consumers' experiences with marketing, both door-to-door and via telephone. Case studies were sourced from financial counsellors, who provide direct casework assistance to consumers experiencing financial hardship. Participants came from rural, regional and urban Victoria.

The interviews recorded 28 consumer experiences, a small sample in relation to the overall level of energy marketing in Victoria, and specifically limited to those consumers who have sought assistance from a financial counsellor. The results, therefore, are not indicative of experiences in the entire consumer market, however are indicative of the high level of occurrence of a significant number of consumers experiencing energy retailer marketing misconduct, reinforced by the ease with which we obtained the case studies.

To provide further context to the sample of case studies, it is worth considering recent analysis which suggests that levels of consumer dissatisfaction and market misconduct far outstrip levels of complaints. A recent report on consumer detriment by Consumer Affairs Victoria found that only 4 per cent of revealed consumer detriment is reported to Consumer Affairs Victoria, the primary body for recording consumer complaints in

Victoria.¹⁵ Smaller percentages are referred to other parties such as ombudsman, and 26 per cent do not make any complaint at all.

From the 28 consumer experiences identified in this report, only eight resulted in complaints to EWOV. These findings support the conclusion that seemingly low levels of consumer complaints relating to the marketing of energy in Victoria masks widespread levels of misconduct.

Summaries of the case studies are found in Part 4 of this report, while the complete case studies are detailed in the Appendix. Each case study outlines the circumstances of marketing misconduct and identifies whether the marketing involved breaches of the Energy Retail Code and the Marketing Code of Conduct. For the protection of privacy of the consumers involved, all names have been altered, however, individual energy retailers are named throughout.

Consumer complaints to EWOV

In addition to the independent research conducted by *People First – Total Solutions*, we have assessed the consumer complaints referred to EWOV, specific to retail marketing.

EWOV's most recent analysis of consumer complaints highlights retail competition as a significant issue, representing 23 per cent of the total complaints referred to EWOV (including gas, electricity and water).¹⁶ EWOV's regular bulletin, *Resolution*, illustrates the most common issues referred through the ombudsman service, and the retailers most commonly reported. The information in *Resolution* details complaints referred to EWOV, and do not represent the experiences of consumers across the entire market. However, EWOV has identified a 'loose correlation' of the retail competition cases it has in relation to the total number of transfers occurring in the market.¹⁷ Further detail is found in Part 5.

¹⁵ Consumer Affairs Victoria, *Consumer detriment in Victoria: a survey of its nature, costs and implications*, October 2006 p.9.

¹⁶ EWOV, *Resolution 24 (January – June 2007)*, September 2007 p.6

¹⁷ EWOV, *Submission and specific information requested of EWOV by the Australian Energy Market Commission (AEMC) in relation to the AEMC's review of the effectiveness of competition in gas and electricity retail markets in Victoria* 29 June 2007 p.3

3. Regulation of energy marketing in Victoria

Introduction

Energy is an essential service and all households consume energy. However, since October 2002, the entire retail energy market in Victoria has been open to competition.¹⁸ This means that consumers can choose their energy retailer. There are currently 13 electricity businesses and 6 gas businesses that retail energy to domestic customers in Victoria.¹⁹

In the competitive market, energy retailers must pursue customer growth and profits to remain viable. As such, energy retailers, particularly new market entrants, are forced to actively market their products. Highlighted by the AEMC, many retailers believe that the only effective way of engaging consumers is through direct marketing.²⁰

Most marketing of energy in Victoria is through direct marketing, primarily through door-to-door sales, but also through telephone sales. As demonstrated by the case studies outlined in this report, these sales channels, being unsolicited, often involve high pressure sales techniques. In recognition of this, there are a number of laws and guidelines that regulate marketing in the competitive energy market in Victoria. These include:

- the Trade Practices Act;
- the Fair Trading Act;
- the Energy Retail Code;
- the Marketing Code of Conduct; and
- the Energy Product Disclosure Guideline.

¹⁸ Electricity was opened to competition prior to gas, in January 2001.

¹⁹ AEMC, above n 3, p 37.

²⁰ AEMC, above n 3, p 69..

Trade Practices Act and Fair Trading Act

Consumer protections that exist in the Trade Practices Act and the Fair Trading Act that relate specifically to retail energy marketing include:

- protections against unfair practices;
- product safety and information;
- conditions and warranties in consumer transactions;
- protections in respect of off-business premises sales; and
- protections against unfair contract terms.

While this list does not represent every consumer protection that exists in these Acts, it provides a good overview of general consumer protections that apply to the provision of the sale of energy (and, of course, other goods and services).

Prohibitions against unfair practices in the Trade Practices Act and the Fair Trading Act that particularly relate to retail energy marketing are:

- the prohibition against misleading and deceptive conduct;²¹
- the prohibition against unconscionable conduct;²²
- prohibitions against false representations;²³
- the prohibition against harassment and coercion;²⁴ and
- prohibitions against unsolicited goods or services, pyramid selling and the like.²⁵

If a trader breaches any of these prohibitions in relation to a transaction, a consumer can generally rescind (cancel) the contract, so that they are placed in the position they were in before they entered into the contract.

Off-business premises sales are also regulated through the Fair Trading Act, rather than the Trade Practices Act. The Fair Trading Act includes specific

²¹ Trade Practices Act, s 52; Fair Trading Act, s 9.

²² Trade Practices Act, ss 51AAB-51AC; Fair Trading Act, s 7-8A.

²³ Trade Practices Act, ss 52-53A; Fair Trading Act, s 12-3.

²⁴ Trade Practices Act, s 60; Fair Trading Act, s 21.

²⁵ Trade Practices Act, ss 63A-65 and Div 1AAA of Pt V; Fair Trading Act, ss 22-26.

regulation of three types of off-business premises sales relevant to the sale of energy:

- contact sales agreements (door-to-door sales);²⁶
- telephone marketing agreements;²⁷ and
- non-contact sales agreements (distance selling, such as at shopping centres or internet sales).²⁸

These provisions impose obligations as to the provision of cooling-off periods, the limitation of marketing hours and the supply of documentation. For example, a 10 day cooling off period applies to contact sales agreements and telephone marketing agreements.²⁹ This period is extended where consumers are not provided with complete contractual documentation, including a notice advising of a consumer's right to cancel a contract and a notice which may be used to cancel the contract.

Contact sale agreements must be in writing, set out all terms and conditions of the contract, and be signed by the consumer.³⁰ Telephone marketing agreements require the purchaser to provide explicit informed consent (contact sale agreements do not).³¹ This consent can be provided in writing or orally, but if given orally it must be tape recorded. Additionally, to obtain explicit informed consent, the seller must 'clearly, fully and adequately disclose all matters relevant to the consent of the purchaser' prior to the consent being given.

Victoria is the only jurisdiction to legislate with respect to unfair terms in consumer contracts. The relevant provisions are contained in Part 2B of the Fair Trading Act. The Victorian provisions make void:

- terms in consumer contracts that are found to be unfair; and
- terms in standard form consumer contracts that are prescribed to be unfair.

²⁶ Fair Trading Act, Div 2 of Part 4.

²⁷ Fair Trading Act, Div 2A of Part 4

²⁸ Fair Trading Act, Div 3 of Part 4.

²⁹ Fair Trading Act, s 63 and s 67H.

³⁰ Fair Trading Act, s 61.

³¹ Fair Trading Act, s 67D.

A term in a consumer contract will be considered unfair if, contrary to the requirements of good faith and in all the circumstances, it causes a significant imbalance to the parties' rights and obligations arising under the contract to the detriment of the consumer.³² If a term is unfair, it will be void.

It is important to note that, beyond the above requirements, the Fair Trading Act does not regulate the conduct of door-to-door and telephone marketers, for example by requiring training or auditing of compliance with obligations.

Energy Retail Code

The Energy Retail Code provides that to enter a new market contract, consumers must provide 'explicit informed consent'.³³ This applies to all energy market contracts, not just those procured by telephone sales. This requirement recognises that dealing with written contracts, particularly for many vulnerable and disadvantaged consumers, is not an everyday occurrence. Indeed, as consumers have not in the past had to sign energy contracts (ie, they have had "deemed contracts" which provide all consumers with the same rights and obligations), this requirement attempts to ensure that consumers have a genuine understanding of the contract they have entered into.

The ESC has created *Guideline No 10 – Confidentiality and Informed Consent*, which details what is meant by explicit informed consent. Essentially, the requirement is that the consent be:

- explicit – that is, it must be "opt-in" consent³⁴ and it must be verifiable and auditable (in writing signed by the customer or recorded by electronic communication)³⁵;
- informed – that is, the retailer must have fully and adequately disclosed all matters relevant to the consent, in plain English;³⁶ and
- competent – that is, the person giving consent must have competence and legal capacity to do so.³⁷

³² Fair Trading Act, s 32W.

³³ Energy Retail Code, clause 19.

³⁴ ESC, *Guideline No 10 – Confidentiality and Informed Consent*, cl 5.1

³⁵ ESC, *Guideline No 10 – Confidentiality and Informed Consent*, cl 5.2

³⁶ ESC, *Guideline No 10 – Confidentiality and Informed Consent*, cl 5.3

The relevant pre-disclosure information requirement (that is all matters relevant to consent as per dot point two above) is further outlined in the Marketing Code of Conduct, which is discussed further below.

As outlined above, not every consumer contract requires explicit informed consent. Under general consumer protection legislation in Victoria, only telephone marketing agreements require there to be explicit informed consent. Furthermore, there is no specific requirement for explicit informed consent in the FTA to be 'opt-in' consent. The specific requirement of explicit informed consent in energy contracts recognises that energy is a 'special' product, and consumers require specific protection in engaging with the market.

Other provisions in the Energy Retail Code essentially regulate terms of both standing and market offer contracts. The Energy Retail Code does allow flexibility for retailers and consumers to vary terms by agreement. For example, there are a number of terms and conditions in the Energy Retail Code that the parties can agree not to apply, where the consumer has provided explicit informed consent.

Importantly, the Energy Retail Code provides specific protection for low-income and vulnerable consumers. Recognising that the provision of energy is an essential service, in its draft decision on the Energy Retail Code, the ESC stated that the Code is:

structured with a view to mitigating adverse impacts ... on low-income and vulnerable consumers.³⁸

Clauses 11, 12 and 13 are the primary clauses of the ERC that provide for retailer obligations in relation to payment difficulties, instalment plans and disconnection. These clauses provide the basis for an effective and respectful framework for energy retailers to deal with energy consumers experiencing financial hardship.

- Clause 11 requires retailers to offer customers experiencing payment difficulties a payment plan that is in accordance with their capacity to pay, provide details of concessions, offer energy efficiency information and advice about the availability of an independent financial counsellor.

³⁷ ESC, *Guideline No 10 – Confidentiality and Informed Consent*, cl 5.4.

³⁸ ESC, *Draft Decision – A review of Electricity and Gas Retail Codes* (January 2004) p 4.

- Clause 12 sets out further requirements with respect to instalment plans.
- Clause 13 provides that a retailer can only disconnect a customer for failure to make payments if it has sent a reminder notice and disconnection warning, and the failure does not relate to a first instalment plan.³⁹

The Energy Retail Code also provides that retailers must handle complaints in accordance with the Australian Standard on Complaints Handling.⁴⁰ Additionally, retailers must include the phone number of EWOV on any disconnection warning.⁴¹ While membership to EWOV is currently a licence condition, the obligation for retailers to deal with complaints effectively and provide information about EWOV is not included in general consumer protections. This notification requirement has proved extremely effective in bringing EWOV to consumers' attention at a time they are most likely to need it.

Marketing Code of Conduct

The Marketing Code of Conduct was implemented in May 2002 with the introduction of full retail contestability into the Victorian electricity market. It has a key role in the protection of consumers specific to retail energy marketing, by reinforcing key provisions of the Fair Trading Act and the Trade Practice Act, in particular, those provisions covering misleading and deceptive behaviour and unconscionable conduct.

As outlined above, Victorian fair trading legislation provides that for telephone marketing agreements, the consumer must provide explicit informed consent which requires them to be informed of 'all matters relevant to the consent of the purchaser'. For the purposes of explicit informed consent required to enter into an energy market contract, the Marketing Code of Conduct clearly identifies what those matters are.

³⁹ Note that this is a summary only and that there are other obligations on both retailers and consumers imposed by these clauses.

⁴⁰ Energy Retail Code, clause 28.

⁴¹ As above.

The relevant clause of the Marketing Code of Conduct is clause 6.3. It states that the following information must be provided to a consumer before they can be said to have provided explicit informed consent:

- the type, frequency of bills and payment methods the consumer will receive;
- the details of all applicable prices, charges, tariffs and service levels that will apply to the consumer (including GST);
- the full name, address and telephone number of the retailer;
- any rights the consumer has to cancel the contract and the charges, if any, that would apply on cancellation;
- that the consumer may be contacted as part of an audit procedure, to confirm their understanding of and consent to the contract;
- all relevant information about any difference between the contract terms and conditions and the basic terms and conditions under the Energy Retail Code;
- in the case of door-to-door sales, the full terms of the contract including the period of the contract;
- whether the marketing representative will receive a commission for procuring the sale of the contract.

The consumer must be given a reasonable opportunity to consider the above information before entering into the contract. That is, the above information must be provided before a consumer can be said to have provided 'explicit informed consent'.

Additionally, the Marketing Code states that a retailer must send the following information to a consumer within 2 business days of entering into a contract with the consumer:

- the full terms, conditions and applicable costs of the contract including the period of the contract, unless this information has previously been supplied to the consumer;
- advice to the consumer that they have a right to cancel the contract, and a retailer contact point which the consumer may require for further information, or to cancel the contract;

- Government energy assistance schemes which may be available to the consumer;
- how to make a complaint to, or enquiry of, the retailer and details of any relevant ombudsman schemes; and
- the existence and general scope of this Code and how to access Code compliance procedures.⁴²

The Marketing Code of Conduct also supplements general fair trading law by addressing such matters as contact hours, and goes further than fair trading requirements by prescribing training and auditing.

Importantly, by being a regulatory instrument that is developed by the ESC, the ESC is able to monitor the marketing of energy contracts and not leave that task to Consumer Affairs Victoria alone. The specialist knowledge of the regulator of the energy sector enables it to more easily identify problematic conduct in the market, in collaboration with Consumer Affairs Victoria.

Energy Product Disclosure Guideline

The provision of information to consumers is fundamental to the operation of efficient and competitive markets. It is widely acknowledged that information asymmetry results in market failure, to the detriment of consumers. For this reason, the ESC has created *Guideline 19 Energy Product Disclosure* (the **Product Disclosure Guideline**). The Product Disclosure Guideline implements obligations created by section 36A of the *Electricity Industry Act 2000* (Vic) and section 43A of the *Gas Industry Act 2001* (Vic). Those provisions create a statutory obligation to publish tariffs and terms and conditions of sale on the internet. The Product Disclosure Guideline specifies the minimum requirements in relation to:

- (a) the process to be established by a specified retailer to enable customers to access relevant published information;⁴³ and
- (b) the details and format for the publication of energy product information statements.⁴⁴

⁴² Marketing Code of Conduct, clause 6.3.

⁴³ Product Disclosure Guideline, cl 2.1.

⁴⁴ Product Disclosure Guideline, cl 2.4 and 2.5.

The Product Disclosure Guideline also creates similar obligations for certain written information (including all fees and charges and the term of the contract) to be provided by retailers to small retail customers in an ‘offer summary’.⁴⁵ The obligation to provide product information in a standard format allows consumers to easily compare market offers, thereby ensuring that consumers can participate more easily in the competitive market.

Proposed National Regulation of Marketing

With the proposed move to national regulation of the energy market, it is important that the existing laws and guidelines that operate in states and territories are integrated appropriately to ensure that all Australian consumers are protected from misleading, high-pressure, or harassing sales tactics.

Currently, the Ministerial Council on Energy’s (**MCE**) Retail Policy Work Group (**RPWG**) is developing new national regulation of non-economic retail and distribution of energy. It is expected that jurisdictional regulations will cease operation in mid 2009, with national regulation to apply from that date. The RPWG’s work includes establishing national regulation for the marketing of energy.

In 2007, the RPWG engaged lawyers Allens Arthur Robinson (**AAR**) to develop recommendations for the new national framework. In its composite consultation paper released in June 2007, AAR made the recommendations in Table 1 relating to marketing regulation. A number of consumer and other community organisations joined together to provide comment on these recommendations, which are detailed in the final column of the table.

Table 1 – Recommendations for national marketing regulation

Subject	Recommendation	Comments
Pre-contractual disclosures - timing/form	A retailer must provide a small customer with certain prescribed information as follows: (a) prior to formation of a market contract: where the prescribed	We broadly support this recommendation – retailers should be required to provide prescribed information prior to formation of a market contract. However, after formation of market contract,

⁴⁵ Product Disclosure Guideline, cl 3.

Subject	Recommendation	Comments
	<p>matters may be disclosed in writing, electronically or verbally; and</p> <p>(b) as soon as practicable after formation of a market contract: pursuant to a single written disclosure statement (unless such disclosure statement has already been provided).</p>	<p>consumers should be provided with full terms and conditions of contract, together with a customer charter (summary of rights and obligations, including information about dispute resolution) as well as information about exercising cooling-off rights.</p> <p>If the contract is formed in a face-to-face situation, as soon as practicable should be at that time, not days after.</p>
<p>Pre-contractual disclosures - required disclosures</p>	<p>The information which a retailer must provide in the manner described above is information in relation to:</p> <p>(a) prices, charges, penalties, billing and payment arrangements: all applicable prices, charges, <u>early termination payments</u> and penalties, security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;</p> <p>(b) contract duration: the <u>commencement date and</u> duration of the contract, the availability of extensions and whether the contract can be transferred to other premises if the customer moves out during the term of the contract;</p> <p>(c) cooling-off period: details of rights to rescind the contract, including how to exercise these rights;</p> <p>(d) electronic transactions: if any marketing requirement is to be complied with by an electronic transaction, how the transaction is to operate and, as appropriate, that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction; and</p> <p>(e) standard supply contracts: the availability of standing offer supply contracts and the relevant regulator's contact details.</p>	<p>We strongly support these pre-contractual disclosures, but the following should be made clear:</p> <ul style="list-style-type: none"> • billing information should include frequency of bills; • payment arrangements include all available payment methods; • that all energy market contracts have a cooling-off period; • in the provision of information about the standard supply contract, details of any difference between the market contract's terms and conditions and the basic terms and conditions under a standing offer. <p>Further, where a product sells renewable power of any description, details should be given about the accredited GreenPower scheme and whether the energy sold complies with that scheme.</p>
<p>Cooling-off period</p>	<p>Unless such information has previously been supplied to the small customer, a retailer must send documentation to the small customer providing details of the customer's right to rescind the market contract, including information about how to exercise this right, at least 10 business</p>	<p>We strongly support this requirement.</p>

Subject	Recommendation	Comments
	days prior to the expiry of the cooling-off period.	
Dispute resolution and complaints	A retailer must advise a small customer of their right to complain to the retailer in respect of any marketing activity conducted on behalf of the retailer and, if such complaint is not satisfactorily resolved by the retailer, of the customer's right to complain to the relevant industry ombudsman.	We support this requirement, but note that this information should be provided both before and after the consumer has entered into the contract.
General conduct standards	<p>Marketers must, and retailers must ensure that marketers, comply with all applicable Commonwealth and State and Territory laws in relation to:</p> <p>(a) <u>misleading, deceptive or unconscionable conduct</u>;</p> <p>(b) <u>undue pressure, harassment or coercion</u>; and</p> <p>(c) <u>the quality, form and content of marketing information</u>.</p> <p>Marketers should have, and retailers should ensure that marketers have, adequate product knowledge. Adequate product knowledge covers knowledge of matters such as tariffs, billing procedures and the availability of rebates and concessions.</p>	<p>We strongly support this requirement.</p> <p>In relation to product knowledge, it should be clear that this includes knowledge about accredited GreenPower</p>
Duties of marketers	<p>At all times in connection with any marketing activity, a marketer must identify his or herself to a small customer. Identification involves the marketer using best endeavours to provide the small customer with:</p> <p>(a) the marketer's first name;</p> <p>(b) any relevant identification number;</p> <p>(c) the name of the retailer on whose behalf the marketing contact is being made <u>and contact details for the retailer</u>;</p> <p>(d) sufficient contact details to enable the customer to contact the marketer; and</p> <p>(e) advice as to the purpose of the marketing contact.</p> <p>Where marketing is conducted in person, a marketer must wear an identification badge showing the marketer's photograph, first name and the name of</p>	<p>It should be clear that this information should be provided prior to the presentation of the pre-contractual disclosure requirements, and not after the consumer has entered the contract.</p> <p>Additionally, a marketer must disclose:</p> <ul style="list-style-type: none"> • whether they will receive a commission or fee for obtaining a sale; • that the consumer may be contacted as part of an audit procedure, to confirm their understanding of and consent to the contract.

Subject	Recommendation	Comments
	the retailer on whose behalf the marketing contact is being made.	
Training	Retailers must ensure that marketers are appropriately trained in relation to compliance with marketing obligations.	We support this recommendation, but submit that retailers must be obliged to provide regular refresher courses to marketers about the laws and regulations pertaining to marketing.
Record keeping	Retailers must keep records of all marketing related activities, including details of marketing visits which have been conducted, and telephone marketing calls which have been placed. Retailers must also retain records of any explicit informed consent obtained by a marketer for two years after such consent is obtained.	We strongly support this recommendation.
Compliance audits	A retailer may be required by the AER to conduct a compliance audit in respect of the compliance by marketers with their marketing obligations.	We support this recommendation, but consider that the AER should be obliged to conduct regular compliance audits.
Contact times	Not included.	We support this recommendation.
Contact records	Not included.	<p>We do not support this recommendation.</p> <p>We note that AAR suggests regulation of contact lists should not be required as such regulation doesn't have regard to the distinguishing features of the energy market. We disagree, and note that the competitive energy market relies upon direct sales, and as such, would suggest that direct sales is a distinguishing feature of the energy market. AAR's framework for assessing marketing regulation, therefore, would allow for the regulation of contact records.</p> <p>Considering the significant consumer detriment caused by consumers being hassled when at home, we believe consideration should be given to a Do Not Contact register for energy retailers that would operate in a similar fashion to the recently established Do Not Call register.</p>

The recommendations proposed by AAR are yet to be endorsed by the RPWG or the MCE.

4. Consumer experiences with energy marketing

Sample and methodology

A total of 28 case studies have been collated for the purpose of this report. The case studies highlight a range of issues arising from the current marketing practices of energy retailers.

As outlined in Part 2, the sample has been limited to consumers who have sought assistance from financial counsellors. This was done so as to easily identify consumers who had experienced difficulty with energy marketing, such that they sought assistance from a financial counsellor. The results, therefore, are not indicative of experiences in the entire consumer market. However, the ease with which we obtained the case studies provides strong evidence of a significant number of consumers experiencing energy retailer marketing misconduct.

To provide further context to the small sample of case studies, it is worth reflecting upon the previously discussed analysis which suggests that levels of consumer dissatisfaction and market misconduct far outstrips levels of complaints. A recent report on consumer detriment by Consumer Affairs Victoria, found that only 4 per cent of revealed consumer detriment is reported to Consumer Affairs Victoria, the primary body for recording consumer complaints in Victoria.⁴⁶ Smaller percentages are referred to other parties such as ombudsman, and 26 per cent do not make any complaint at all. Such analysis is at odds with the findings of the AEMC in its First Draft Report for the Review, which relies upon levels of complaints to EWOV to suggest minimal customer dissatisfaction and effective demand side participation in Victoria's energy market.⁴⁷

⁴⁶ Consumer Affairs Victoria, *Consumer detriment in Victoria: a survey of its nature, costs and implications*, October 2006.

⁴⁷ AEMC, *Review of the effectiveness of competition in retail electricity and gas markets in Victoria – First Draft Report*, October 2007, pp 82.

Summary of case studies

Below are summaries of the case studies collated by *People First – Total Solutions*. The summaries list the nature of the complaints, the area/location of the complaints, the companies involved, the method of sales (door-to-door or telephone) and whether any particular breach of marketing consumer protections occurred.

Full case studies are provided in the Appendix including details of each specific breach.

Case study 1

Issue: Salesperson claimed that Red Energy was now supplying electricity for the area

Location: Rural

Supplier: Red Energy

Method of approach: Door

Misconduct: Unconscionable, misleading and deceptive conduct

Case study 2

Issue: Salesperson claimed that the sale of a retirement village required residents to change energy retailers

Location: Rural

Supplier: Red Energy

Method of approach: Door

Misconduct: Unconscionable, misleading and deceptive conduct

Case study 3

Issue: Salesperson falsely claimed to be from existing company offering better deal

Location: Rural

Supplier: Energy Australia

Method of approach: Door

Misconduct: Unconscionable, misleading and deceptive conduct

Case study 4

Issue: Salesperson advised all units in complex were changing

Location: Urban

Supplier: AGL

Method of approach: Door

Misconduct: Unconscionable, misleading and deceptive conduct

Case study 5

Issue: Salesperson told customer their direct debit arrangement would switch if she changed retailer

Location: Rural

Supplier: AGL

Method of approach: Door

Misconduct: Misleading and deceptive conduct

Case study 6

Issue: Salesperson switched customer without consent or signed contract

Location: Urban

Supplier: Origin Energy

Method of approach: Door

Misconduct: Failure to obtain explicit informed consent, unconscionable conduct and misleading and deceptive conduct

Case study 7

Issue: Salesperson forged contract information after customer refused to switch

Location: Urban

Supplier: Power Direct

Method of approach: Door

Misconduct: Unconscionable conduct, misleading and deceptive conduct and fraudulent conduct

Case study 8

Issue: Salesperson switched hardship customer without consent

Location: Urban

Supplier: AGL

Method of approach: Door

Misconduct: Failure to obtain explicit informed consent, unconscionable conduct and misleading and deceptive conduct

Case study 9

Issue: Salesperson offered incentives to non account holder

Location: Urban

Supplier: TRUenergy

Method of approach: Door

Misconduct: Failure to obtain explicit informed consent, unconscionable conduct and misleading and deceptive conduct

Case study 10

Issue: Salesperson offered non-account holder incentives to sign contract

Location: Urban

Supplier: Victoria Electricity

Method of approach: Door

Misconduct: Failure to obtain explicit informed consent

Case study 11

Issue: Salesperson signed up non-account holder

Location: Urban

Supplier: Power Direct

Method of approach: Door

Misconduct: Failure to obtain explicit informed consent, unconscionable conduct and misleading and deceptive conduct

Case study 12

Issue: Salesperson enticed customer with incentives

Location: Urban

Supplier: Origin Energy

Method of approach: Door

Misconduct: None

Case study 13

Issue: Salesperson intimidated CALD customers and offered incentives to change retailers

Location: Rural

Supplier: AGL

Method of approach: Door

Misconduct: None

Case study 14

Issue: Sales staff offered incentives to a number of consumers to switch, with offers expiring immediately

Location: Rural

Supplier: Red Energy and AGL

Method of approach: Door

Misconduct: Unconscionable conduct, misleading and deceptive conduct

Case study 15

Issue: Salesperson promised a 5% discount, which was not supplied, and that the concession would be maintained. This did not occur

Location: Rural

Supplier: Momentum

Method of approach: Door

Misconduct: Unconscionable conduct, misleading and deceptive conduct

Case study 16

Issue: Customer promised a 7% discount but not advised that the discount is not supplied if the customer takes payment plan

Location: Rural

Supplier: Victoria Electricity

Method of approach: Telephone

Misconduct: Misleading and deceptive conduct

Case study 17

Issue: Vulnerable customer who says 'yes' to salespeople

Location: Urban

Supplier: Multiple signing

Method of approach: Door and Telephone

Misconduct: None

Case study 18

Issue: Customer seeking better deal switched retailers twice

Location: Rural

Supplier: AGL and Country Energy

Method of approach: Door

Misconduct: None

Case study 19

Issue: Consumer from non-English speaking background switched without understanding

Location: Urban

Supplier: Multiple signing

Method of approach: Door

Misconduct: Failure to obtain explicit informed consent

Case study 20

Issue: Customer with low literacy and numeracy skills confused by salesperson

Location: Urban

Supplier: Multiple signing

Method of approach: Door

Misconduct: Failure to obtain explicit informed consent, unconscionable conduct and misleading and deceptive conduct

Case study 21

Issue: Elderly consumer from non-English speaking background confused by salespeople visiting

Location: Urban

Supplier: Multiple signing

Method of approach: Door

Misconduct: None

Case study 22

Issue: Nightshift worker telemarketed to during sleep

Location: Urban

Supplier: TRU Energy

Method of approach: Telephone

Misconduct: None

Case study 23

Issue: Elderly person confused by salespeople visiting

Location: Urban

Supplier: TRU Energy, Origin Energy, Victoria Electricity, Energon

Method of approach: Door

Misconduct: None

Case study 24

Issue: Consumer with limited English signed contract to get rid of salesperson

Location: Urban

Supplier: AGL

Method of approach: Door

Misconduct: Failure to obtain explicit informed consent

Case study 25

Issue: Customer with obvious mental health issues signed new contract

Location: Urban

Supplier: Red Energy

Method of approach: Door

Misconduct: Failure to obtain explicit informed consent

Case study 26

Issue: Customer had no understanding they were changing companies

Location: Urban

Supplier: AGL

Method of approach: Telephone

Misconduct: Inconclusive

Case study 27

Issue: Customer had no knowledge of switching retailers following a visit from a salesperson

Location: Urban

Supplier: AGL

Method of approach: Door

Misconduct: Possible unconscionable conduct

Case study 28

Issue: Customer harassed

Location: Urban

Supplier: Red Energy

Method of approach: Door

Misconduct: Harassment

Detailed below are two examples from the 28 case studies:

Case Study No.7

Mr W was a customer with Origin who supplied both his gas and electricity. Mr W is on a benefit so is eligible for the concession rate.

A door-to-door sales person from Power Direct visited the customer offering him electricity service. Mr W did not complete a contract, however shortly after, Mr W received a utility bill from Power Direct addressed to a "Mr L" at his address. Mr W attempted to resolve the situation with the company and then visited a financial counselling service.

Power Direct refused to discuss the matter with Mr W or his financial counsellor as the Power Direct accounts department stated that they were "unauthorised" persons. Power Direct required the account holder to identify themselves to discuss the account. This was impossible as the name and identity of the account holder were fictitious. In addition, Power Direct refused to allow the client or their financial counsellor to view a copy of the contract because they were "unauthorised", so the matter proceeded to the EWOV.

Issue:

- Customer refused offer but was switched anyway
- Salesperson had forged contract information

Outcome:

- EWOV was contacted and acted to resolve the situation
- Discussions continued between energy retailers, EWOV, Financial Counsellor and Mr W for some months
- Power Direct acknowledged that contract and signature were false
- Power Direct waived all fees and charges
- Customer reinstated with previous retailer Origin
- Salesperson had already left Power Direct

Case Study No. 1

Mr J had moved three times in 2004 and 2005. Each time Mr J moved, he contacted his supplier TRU Energy and advised them of his change of address. On each occasion his supply of electricity continued and he continued to utilise Easy Pay payment card.

In November 2005, Mr J was visited at home by a representative of Red Energy who informed Mr J that this company had taken over electricity supply in his area. The representative completed a form to supply electricity which Mr J signed as he believed he had no choice. Then the representative promised Mr J a payment card. This did not arrive so Mr J made no payments.

Mr J then received a final bill from TRU Energy, which included a \$90 exit fee. Mr J had no idea TRU Energy had placed him on a contract when he moved to his current property and could not recall any discussion about a contract. He believed that he had simply changed his address. TRU Energy confirmed they had placed Mr J on a contract when he moved to his current property. They also confirmed that his electricity supplier was now Red Energy.

Unhappy with TRU Energy for placing him on contract without his consent and with Red Energy for misleading him into signing with them, Mr J sought the assistance of the Energy and Water Ombudsman (EWOV).

Issue:

- Salesperson from new retailer claimed that their company had taken over electricity supply for the area
- Customer didn't believe they had given permission to be placed on contact with existing retailer

Outcome:

- Transfer back to TRU Energy (existing retailer) from Red Energy (new retailer)
- The waiving of all exit fees
- The issuing of a new payment card by TRU Energy

Key findings

A key theme that emerged from the 28 case studies was the repeated breaches of energy marketing consumer protections, particularly the Energy Retail Code and the Marketing Code of Conduct. Breaches related to:

- Misleading and deceptive conduct (case studies 1-9, 11, 14-16, 20);
- Retailers switching customers without consent, including marketing to non-account holders (case studies 6,8-11, 19-20, 24-5);
- Unconscionable conduct (case studies 1-4, 6-7, 9, 11, 14-15, 20, 27);
- Marketing to non-account holders (case studies 9-11); and
- Harassment (case study 28).

Some of the case studies did not involve breaches of consumer protections. However, in these cases, the consumer suffered significant detriment. These cases related to:

- Multiple signings (case studies 17-18); and
- Retailer inducements (case studies 9, 12-16).

The findings also demonstrate that many vulnerable members of the community are unable to provide the requisite consent for the purposes of entering into an energy market contract. Although these people are, in most cases, able to live independently, they will always struggle with energy contracts due to the complex nature of the transaction. This point has been acknowledged by the AEMC:

[t]he capacity to access, understand and make decisions on information about energy products and services and to give informed consent to the terms and conditions of an energy contract can be impaired by a variety of personal circumstances. This may include, for example, disabilities associated with old age, vision or cognitive impairment and literacy and numeracy capabilities.⁴⁸

Despite this, case studies 17, 19 and 20 indicate that marketers continue to procure contracts from consumers who are unable to provide the requisite consent.

⁴⁸ AEMC, *Review of the effectiveness of competition in retail electricity and gas markets in Victoria – First Draft Report*, October 2007.

The findings also highlight that all retailers are breaching regulatory requirements. While some retailers are engaging in misconduct more than others, this indicates that the problems outlined are widespread and are not limited to particular players.

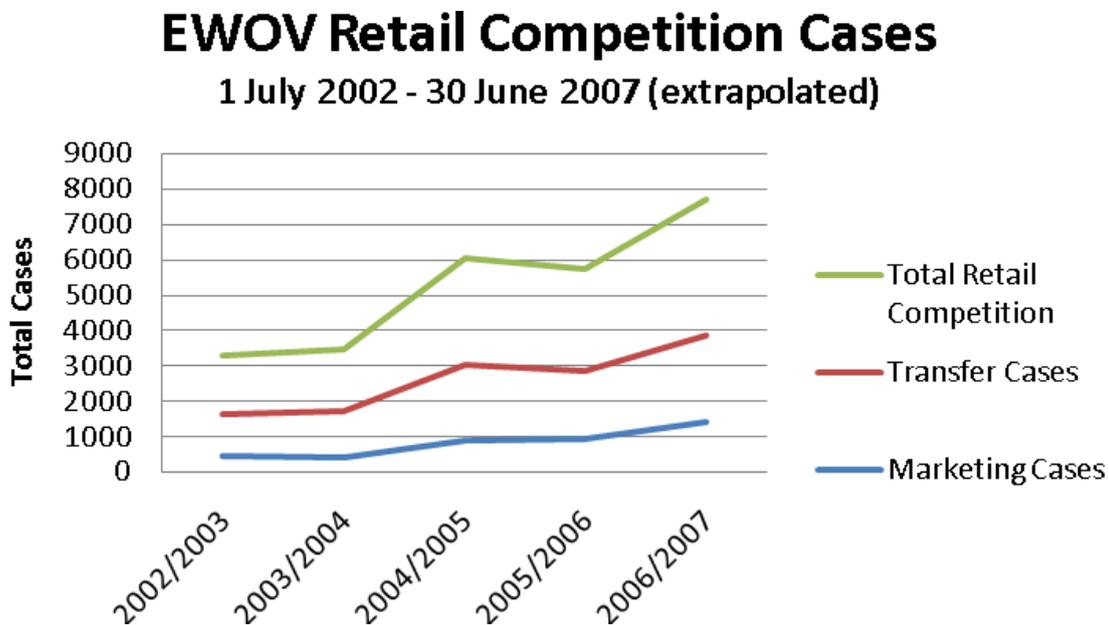
Finally, the case studies demonstrate the inability of many consumers to choose appropriate energy products when confronted by a marketer. Where consumers are being misled or are signing energy contracts without full understanding, they are most likely not choosing services that are cheapest and best suited to their needs. If consumers are unable to provide signals to retailers about the products and services that are desired, then competition will falter, and will fail to bring about outcomes that are in the consumer interest.

5. Consumer complaints to EWOV

Background

Since the introduction of full retail contestability in the Victorian energy market, EWOV has reported on marketing issues referred to it by consumers. Over that time, complaints have increased three-fold, from 449 in 2002/2003 to 1,423 in 2006/2007.⁴⁹

Figure 1



⁴⁹ EWOV, *Submission and specific information requested of EWOV by the Australian Energy Market Commission (AEMC) in relation to the AEMC's review of the effectiveness of competition in gas and electricity retail markets in Victoria* 29 June 2007 p.2

Latest information about complaints

In the period between January and June 2007, 6,610 issues from 5,959 electricity cases were handled by EWOV, with 25% of them specifically regarding retail competition, second only to billing errors at 37%.⁵⁰ Further breakdown shows that of the 1,620 retail competition cases, 616 complaints were in relation to marketing practices and 923 complaints related to transfer issues.⁵¹

EWOV categorises its complaints about marketing practices to capture issues including:

- advertising;
- door-to-door sales;
- information provided to consumers by retailers;
- telephone sales;
- other sales channels; and
- content and form of written offers.

In addition, complaints about transfer issues include:

- contract terms and conditions;
- cooling-off rights;
- delays in being transferred; and
- transfer error.

Over the past two reporting periods there has been a significant increase in door-to-door and phone sale issues reported to EWOV, as demonstrated by Table 2 below⁵².

⁵⁰ EWOV, *Resolution 24 (January – June 2007)*, September 2007 p.20

⁵¹ As above.

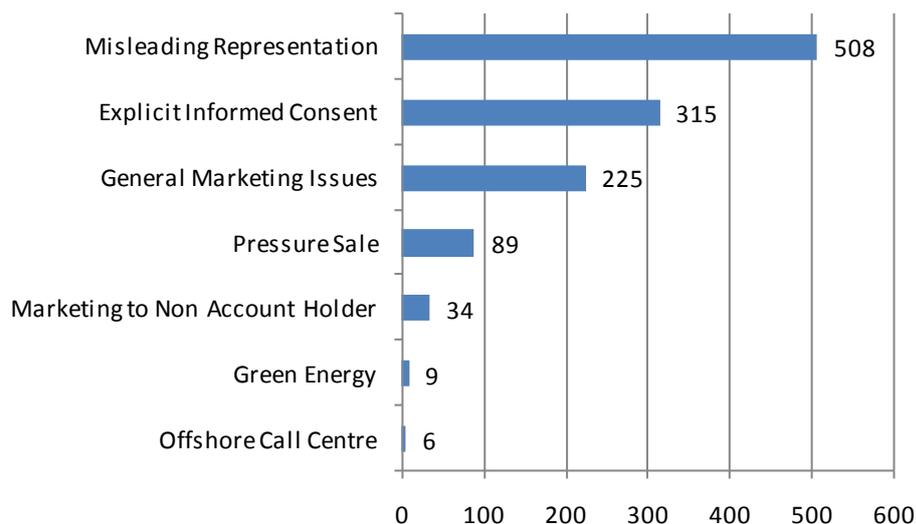
⁵² As above, p 14.

Table 2 – Marketing complaints made to EWOV

	Jan – June 07 No. of Issues	%	Jul – Dec 06 No. of Issues
Door-to-door sales	429	49	349
Phone Sales	334	38	195
Others	90	10	95
Advertising	16	2	15
Written	14	2	12
Total	883	100	666

Importantly, the type of marketing complaints referred to EWOV, specifically Marketing issues, include the following⁵³:

Figure 2 – Number of Marketing issues Raised 2006 / 2007 (1 July 2006 – 30 April 2007)



Systemic problems and enforcement

Where it identifies systemic issues or individual cases requiring further regulatory interpretation, EWOV refers matters to the ESC and CAV for enforcement purposes. As outlined above, ESC and CAV each play a role in enforcing marketing consumer protections in the energy market. EWOV meets regularly with the ESC for this purpose.

⁵³ EWOV, *Submission and specific information requested of EWOV by the Australian Energy Market Commission (AEMC) in relation to the AEMC's review of the effectiveness of competition in gas and electricity retail markets in Victoria* 29 June 2007 p.3

In 2005, after referral from EWOV, CAV obtained an enforceable undertaking against Energy Australia in relation to breaches of the Fair Trading Act. In the first half of 2007, EWOV reported three cases of marketing misconduct relating to two different energy retailers to the ESC and CAV for further investigation and possible enforcement activities.⁵⁴ Despite this, it does not appear that either ESC or CAV have taken any further action against these retailers in relation to allegations of marketing misconduct, or at least not publicly.

Electricity retailers' recent cases to EWOV

Table 3 illustrates the range of electricity retailers which have had marketing or transfer issues referred to EWOV.⁵⁵

While, host retailers AGL, Origin Energy and TRUenergy have high numbers of transfer errors, with limited marketing complaints (with TRUenergy as the exception with 47 reported cases), the majority of marketing complaints occur in relation to second tier retailers. These retailers generally experience less transfer related issues. The exception to this is Victoria Electricity which has high retail competition complaints across both transfer and marketing issues.

Origin Energy, AGL and TRUenergy may encounter increased transfer issues as a result of the increased number of transfers they manage, in comparison to new and second tier retailers. This could also be indicative of the number of consumers leaving their host, or returning, dissatisfied with their experience with a new retailer.

Table 3 - Reported Retailer Transfer and Marketing Issues to EWOV January – June 2007

Electricity Retailer	Transfer Issue	Marketing Issue
AGL	179	-
Origin Energy	145	-
TRUenergy	160	47
Australian Power and Gas	1	5
Country Energy	42	11
Energy Australia IPR	87	123

⁵⁴ EWOV, *Resolution 24 (January – June 2007)*, September 2007 p.16

⁵⁵ As above p.21-26

Jackgreen	17	8
Momentum Energy	35	33
Our Neighbourhood Energy	-	1
Powerdirect	69	49
Red Energy	38	35
Victoria Electricity	152	183

In addition to the retail issues specific to electricity, there are an increasing number of transfer and marketing complaints made to EWOV relating to gas and dual fuel issues. In the same reporting period, these represented 30% of total gas cases⁵⁶ and 66% of total dual fuel cases.⁵⁷

Commentary

EWOV is experiencing an increased number of complaints relating to electricity marketing following the introduction of full retail contestability.

Reported issues are reflected across the market, however are relative to market share, with evidence showing that the majority of marketing issues are the result of marketing activity by new market entrants.

Reflective of the findings in the case studies, EWOV is experiencing an increase in the number of incidences of misleading representation and issues around obtaining explicit informed consent, highlighting the need to address this as a systemic issue through tighter regulation, specifically as the AEMC proposes to endorse effective competition and pricing deregulation.

As previously mentioned, the level of reported incidences is only a fraction of breaches occurring in the market. EWOV itself believes that its

Cases on marketing provide extensive evidence of misleading marketing activity at least on the part of some retailers. It seems reasonable to assume that complaints received are an indication of similar instances about which customers have not complained.⁵⁸

⁵⁶ As above n 54 p.31

⁵⁷ As above. n 54 p.39

⁵⁸ EWOV, *Submission and specific information requested of EWOV by the Australian Energy Market Commission (AEMC) in relation to the AEMC's review of the effectiveness of competition in gas and electricity retail markets in Victoria* 29 June 2007 p.5

6. Summary of findings and recommendations

Overview

The case studies and analysis of complaints to EWOV in this report indicate a concerning increase in the level of marketing by electricity retailers that is in breach of the Energy Retail Code and the Marketing Code of Conduct.

The case studies conducted for this research have proven indicative of wider market issues. While only representing a small sample, the issues are reflected in EWOV's case load and highlight the themes and issues most prevalent.

As the case studies in this report demonstrate, retailers are regularly in breach of existing guidelines and laws, and increasingly, consumers are entering new contracts without a full understanding of the terms and conditions. High pressure selling practices are making many consumers more vulnerable to being transferred without full consent. Consumers have also regularly reported the following:

- agreeing to receive further information, and then receiving “new customer” letters;
- door-to-door sales to non-account holders;
- door-to-door sales to the elderly or people with limited English;
- misleading marketing of green energy;
- sales representatives implying that the retailer was “taking over” the area;
- sales representatives saying they are from the Government; and
- sales representatives saying “nothing will change except your bill” or “the supplier will stay the same” (technically true, but taking advantage of average customer's lack of understanding of the market).

The problem of direct selling

This report has demonstrated that direct sales channels, particularly door-to-door selling, are in and of themselves problematic, not only for individual consumers but also for the competitive market.

Direct sales practices involve approaching consumers to pique their interest in a particular product that they are otherwise not interested in. More often than not, this requires placing significant pressure to coerce consumers into agreeing to a particular course of conduct. This finding accords with consumer experiences of door-to-door selling in other markets, which often involve marketers deploying psychological techniques to encourage sales.

Consumer behaviour in high pressure sales situations is not a rational basis for providing marketers and retailers with the appropriate signals about the types of products and services the market desires. In such an environment, a high rate of switching cannot be cited as evidence of demand side participation and effective competition.

Recommendation 1: That, in its review of the effectiveness of competition in the Victorian energy market, the AEMC acknowledge the specific and inherent problems associated with direct marketing. This includes acknowledging that direct marketing does not easily allow consumers to compare products and choose goods that will suit their needs.

The need for robust regulation

The case studies also demonstrate the need for robust regulatory standards around marketing conduct and an ongoing need for improved consumer protections. As the regulation of retail consumer protections moves to the national level, there is renewed need to ensure that the level of consumer protections that currently exist are strengthened and expanded to ensure retailer accountability and culpability for door-to-door sales malpractices.

Recommendation 2: That, in the move to a national regulatory framework for retail consumer protections, the framework for regulating energy marketing that exists in Victoria be replicated and applied.

Consumer control over who knocks on their door

Some consumers suffer significant detriment when they encounter door-to-door marketers, through no fault of their own. As the case studies, demonstrate, many consumers are transferred without requisite consent or without full understanding of the contract they have signed.

In these circumstances, it is worth considering further protection for consumers who might be especially vulnerable to door-to-door sales. In the telephone sales arena, the Federal Government has recently established the 'Do Not Call' register, which allows consumers to register their fixed line and mobile phone numbers to prevent telemarketers from contacting them.⁵⁹ The 'Do Not Call' Register has proven particularly successful with over 1.9⁶⁰ million phone numbers being registered in the six months since the establishment of the register in May 2007.

Given that door-to-door marketing can cause as much intrusion and detriment as telephone sales, a 'Do Not Knock' register could be extended to protect consumers who are vulnerable to direct sales approaches. A 'Do Not Knock' register could work in tandem with a consumer protection campaign that improved consumers' ability to reject offers from door-to-door sales people. Such a campaign would respond to the reality that many consumers, when confronted with a marketer, are unable to make rational, welfare-maximising decisions. A particular message of the campaign would be to encourage consumers to post 'Do Not Knock' messages on their doors.

⁵⁹ See www.donotcall.gov.au.

⁶⁰ As above

Recommendation 3: That Governments consider introducing a ‘Do Not Knock’ register, similar to the ‘Do Not Call’ register, that would allow consumers to register their address so that marketers would be banned from marketing to that address.

Recommendation 4: That Governments consider a targeted consumer protection campaign, to improve consumer ability to reject offers from door-to-door marketers. This should include encouragement of consumers to post ‘Do Not Knock’ messages on their doors.

Commission sales

In the competitive retail energy market, several energy retailers conduct sales through door to door and telemarketing activities and provide commissions to marketers who procure sales. This approach provides incentives to salespeople to coerce consumers into signing market contracts. In the worst cases, salespeople may be encouraged to procure sales without the requisite consent – many of the case studies demonstrate this occurring. In other cases, salespeople might be encouraged to put more pressure on particular consumers who are vulnerable. Particular consumers vulnerable to marketing practices identified in this report include elderly consumers and consumers from non-English speaking backgrounds.

Recommendation 5: That energy market regulators consider whether the use of commission sales by energy retailers requires further regulation so as to counter the incentive to unfairly coerce consumers to sign contracts. This could include a ban on commission sales for door-to-door energy marketing.

Explicit informed consent

While general contract law allows for consent to be implied from particular circumstances, in the context of essential services for which contractual relations have not been historically required, informed consent is integral to the operation of a fair and effective market. Explicit consent also ensures that the consent is verifiable and auditable (in writing signed by the customer or recorded by electronic communication).

Genuine informed consent consists of five principle components:

- information disclosure;
- capacity of the consumer to understand the information;
- genuine understanding by the consumer;
- complete voluntariness of the transaction; and
- that the decision making to enter the arrangement/contract is made by the consumer.

The case studies collated for this report demonstrate that contracts continue to be procured without explicit informed consent.

Recommendation 6: That the proposed national framework for retail consumer protections ensures that explicit informed consent is required before a consumer can enter into an energy market contract.

Failure of enforcement

Despite the existence of regular breaches of marketing consumer protections, since 2005 there have been no public regulatory enforcement activities taken in relation to energy retailers' marketing practices. This is despite the instances of marketing misconduct identified in this report. As outlined above, EWOV have referred matters to ESC and CAV for enforcement but there has yet to be any public response by those bodies. Publicity of regulatory activity provides a signal to other marketers about the consequence of misconduct and ensures retailers and marketers are publicly accountable for their actions.

Recommendation 7: That fair trading and energy regulators prioritise energy marketing misconduct in their regulatory and enforcement activities.

Recommendation 8: That any regulatory activity taken in relation to energy marketing practices by a regulator be made public through a media release or public announcement.

Trends identified by financial counselling agencies

Additional to the findings outlined above, financial counselling agencies interviewed for the purposes of this report have collectively identified the following issues and trends, as a result of electricity retail marketing:

- **Increased retail churn:** Many of the agencies believe that retail churn is accelerating, resulting in an increasing number of consumers signed to multiple companies over short periods of time.
- **Salespeople provide misleading or confusing information:** several energy retailers conducting door-to-door sales are not providing customers with an adequate level of information. Confusion is further compounded as electricity and gas are complex subjects and many consumers do not understand kilowatts, kilojoules, off peak, green energy etc and are required to make decisions in short periods of time at their doors.
- **Vulnerable are at risk:** Agencies are concerned particularly for people who are unable to make specific and conscious decisions about their own welfare, in particular, they feel that new energy retailers do not understand the situation of low income individuals and those suffering hardship and who have mental issues and do not tailor their marketing conduct appropriately.
- **Retail switching takes valuable company and agency time to unravel:** Agencies were concerned that these issues are resulting in the application of significant resources, human efforts, time and in most cases money to address and rectify marketing and transfer issues.

Recommendations from financial counselling agencies:

- That telephone sales to be followed up with the signing of a written contract;
- That longer cooling off periods be implemented for energy market contracts
- That payment plans and CentrePay arrangements be transferred automatically to a new retailer when a consumer switches; and
- That salespeople receive training in dealing with elderly and vulnerable consumers.

Consumer Action and FCRC strongly support these recommendations.

Conclusion

It is increasingly likely that the AEMC will recommend that the Victorian government proceed with full pricing deregulation, despite a lack of definitive evidence demonstrating engaged demand side participation. The case studies outlined in this report provide strong evidence that consumers are not making informed decisions that are in their interests. Indeed, the limited choice available to them at the doorstep prohibits them making such choices, and the poor selling practices exacerbate the problem.

Increasing numbers of complaints about marketing practices also evidences the need for not only robust regulation relating to marketing, but the need for regulators that are willing and able to enforce the law. Strong regulatory protections have failed many consumers, who have been misled, deceived and in some cases harassed by energy marketers.

The recommendations provided throughout this report identify key areas where policy and regulatory intervention is required. Implementation of these recommendations will encourage effective competition by providing the environment for consumers to make decisions that are in their interests, thereby encouraging industry to respond efficiently and appropriately to consumer demand. The recommended framework will also protect vulnerable consumers by providing them with the right to 'opt out' of retailers' marketing campaigns.

Appendix Case Studies

1. Salesperson claimed that new retailer was now supplying electricity to the area

Location:

Rural

Summary:

Mr J had moved three times in 2004 and 2005. Each time Mr J moved, he contacted his supplier TRU Energy and advised them of his change of address. On each occasion his supply of electricity continued and he continued to utilise Easy Pay payment card.

In November 2005, Mr J was visited at home by a representative of Red Energy who informed Mr J that this company had taken over electricity supply in his area. The representative completed a form to supply electricity which Mr J signed as he believed he had no choice. Then the representative promised Mr J a payment card. This did not arrive so Mr J made no payments.

Mr J then received a final bill from TRU Energy, which included a \$90 exit fee. Mr J had no idea TRU Energy had placed him on a contract when he moved to his current property and could not recall any discussion about a contract. He believed that he had simply changed his address. TRU Energy confirmed they had placed Mr J on a contract when he moved to his current property. They also confirmed that his electricity supplier was now Red Energy.

Unhappy with TRU Energy for placing him on contract without his consent and with Red Energy for misleading him into signing with them. Mr J sought the assistance of the Energy and Water Ombudsman (EWOV).

Issue:

- Salesperson from new retailer claimed that their company had taken over electricity supply for the area
- Customer didn't believe they had given permission to be placed on contact with existing retailer

Outcome:

- Transfer back to TRU Energy (existing retailer) from Red Energy (new retailer)
- The waiving of all exit fees
- The issuing of a new payment card by TRU Energy

Assessment:

By informing a customer that the company is taking control of energy supply in an area, the salesperson breaches the energy marketing code which states that retailers "must not engage in ... misleading or deceptive conduct"

Source: Davey House, Wonthaggi

2. Salesperson claimed sale of Retirement Village required residents to change energy retailer

Location:

Rural

Summary:

The Happy Resident Retirement Village was recently sold by its owners resulting in both a change of ownership and management. During the ownership transfer process, a representative from Red Energy visited the residents of the village. The door-to-door sales representative explained to all residents that because the management of the complex was changing (which they all knew, understood and accepted) they would also have to change their energy supplier to Red Energy. Almost all of the residents accepted this verbatim and signed over to Red Energy thinking this was a legitimate change.

For some residents this created confusion and issues with payment plans, concessions, and multiple bills. For those persons who act on behalf of the residents (eg those with power of attorney) the switch created additional concerns and issues.

Issue:

- Salesperson claimed that their company had taken over electricity supply for the entire retirement village

Outcome:

- Some residents on finding out they were “tricked” into signing have sought a return to their previous supplier and others have remained with the new retailer.

Assessment:

By informing a customer that the company is taking control of the energy supply for the retirement village, the salesperson breaches the energy marketing code which states that retailers “must not engage in ... misleading or deceptive conduct”

Source: Financial & Consumer Rights Council

3. Salesperson claimed to be from existing company offering a better deal

Location:

Rural

Summary:

Ms W was a customer with TRU Energy. Because of previous financial difficulties, Ms W was on a long-term payment plan to reduce her debt and to help manage her accounts. She also was receiving the appropriate State government concessions.

In early 2007, Ms W was approached by a door-to-door sales person from Energy Australia. She claims that he said he was from TRU Energy. The door to door sales person told her that he was offering a deal to people in the area which involved no fixed contracts. The salesperson stated that the supplier stayed the same - only the retailer changed. Ms W believed she was signing up for a better deal whilst staying with TRU Energy and the salesperson did not correct this perception.

Ms W received a final account and debt notice from TRU Energy to finalise her account. She then visited a financial counselling agency to seek assistance. Negotiations commenced with Energy Australia, which proved unsatisfactory so assistance from EWOV was sought.

Issue:

- Customer believed they were getting a better deal with their existing retailer

Outcome:

- Energy Australia refunded all fees and charges
- Customer was reinstated with TRU Energy from the date she was transferred
- Customer placed back onto her original payment plans and her concessions were reinstated.

Assessment:

By giving the impression that the customer is signing up to a better deal with her existing company, the salesperson breaches the energy marketing code which states that retailers "must not engage in unconscionable, misleading or deceptive conduct"

Source: Davey House Wonthaggi

4. Salesperson advised customer all units in complex were changing

Location:

Urban

Summary:

Ms J was approached by a door-to-door sales person from Red Energy. The sales person advised her that everyone in their units were changing to Red Energy and he simply was seeking her authorisation to change too.

Ms J had already been contacted by AGL, Red Energy and Victoria Electricity so was aware this wasn't the case.

Issue:

- Customer advised flat complex was being switched to a new retailer

Outcome:

- Customer refused to switch

Assessment:

By informing a customer that the retailer is taking control of energy supply for all customers in an area, the salesperson breaches the energy marketing code which states that retailers "must not engage in unconscionable, misleading or deceptive conduct"

Source: Council of the Ageing

5. Salesperson told the customer their direct debit would switch if she changed retailer

Location:

Rural

Summary:

Mrs S was visited by a sales person from AGL who encouraged her to switch from her existing retailer. The salesperson asked to see her existing bills. The sales person sat with Mrs S and went through her existing gas and electricity bills to show her how much Mrs S would save by changing.

Concerned about losing her existing direct debt arrangement if she switched, Mrs S was assured that the direct debit would be transferred over too. Reassured Mrs S signed up to transfer her electricity and gas accounts.

Soon Mrs S realised that her direct debit had stopped she contacted both her previous supplier and AGL on numerous occasions, but could not get anyone to understand her concerns.

Two months later, Mrs S ended up with two bills with large amounts of money outstanding, which showed that the direct debit had not been changed over and had in fact been stopped.

Issue:

- Customer believed their existing direct debt arrangements would switch too

Outcome:

- Customer refers issue to EWOV
- Customer restored to existing power company
- Customer not responsible for any fees or charges
- Customer discovers other neighbours had experienced the same situation

Assessment:

The salesperson misled the customer by promising that the direct debit arrangements would continue. Direct debits are established directly between customer and retailer and need to be re-established for each new relationship. This behaviour breaches Energy Marketing Code.

Source: Ballarat Community Support

6. Salesperson switched customer without consent or signed contract

Location:

Urban

Summary:

Mr S was an AGL customer. In December 2006, a door-to-door sales person visited him from Origin. Mr S advised the salesperson that he was not seeking to switch. The salesperson continued the conversation asking Mr S to produce a copy of his existing AGL account. The salesperson then demonstrated the potential savings that could be achieved by changing companies. Mr S again declined the offer to switch.

In February 2007, Mr S received an account from Origin. Not only had he been switched from AGL to Origin but he was also now on a Green Energy Plan, which added a significant amount to his monthly account.

Mr S sought professional financial counselling assistance. The counsellor upon investigation found that Mr S had not given permission for the switch, as there was not a signed contract authorising any change.

Issue:

- Customer switched without consent or signed contract

Outcome:

- EWOV was contacted
- As a result of EWOV's intervention, the account with Origin was cancelled and all fees and charges waived
- Customer was restored to AGL

Assessment:

The most significant breaches of the Energy Retail Code and Energy Marketing Code is the failure to obtain Explicit Informed Consent from the customer

Source: FCRC

7. Salesperson switched forged customer information after customer refused to switch

Location:

Urban

Summary:

Mr W was a customer with Origin who supplied both his gas and electricity. Mr W is on a benefit so is eligible for the concession rate.

A door-to-door sales person from Power Direct visited the customer offering him electricity service. Mr W did not complete a contract, however shortly after, Mr W received a utility bill from Power Direct addressed to a "Mr L" at his address. Mr W attempted to resolve the situation with the company and then visited a financial counselling service.

Power Direct refused to discuss the matter with Mr W or his financial counsellor as the Power Direct accounts department stated that they were "unauthorised" persons. Power Direct required the account holder themselves to identify themselves to discuss the account. This was impossible as the name and identity of the account holder were fictitious. In addition, Power Direct refused to allow the client or their financial counsellor to view a copy of the contract because they were "unauthorised", so the matter proceeded to the EWOV.

Issue:

- Customer refused offer but was switched anyway
- Salesperson had forged contract information

Outcome:

- EWOV was contacted and acted to resolve the situation
- Discussions continued between energy retailers, EWOV, Financial Counsellor and Mr W for some months
- Power Direct acknowledged that contract and signature were false
- Power Direct waived all fees and charges
- Customer reinstated with previous retailer Origin
- Salesperson had already left Power Direct

Assessment:

The salesperson engaged in unconscionable, misleading or deceptive conduct, a significant breach of the Energy Marketing Code.

Source: Darebin Family Services

8. Salesperson switched Hardship customer without consent

Location:

Urban

Summary:

Ms M was an Origin electricity and gas customer, known to their Hardship team. A door-to-door sales person representing AGL approached her. Mrs M claims the salesperson discussed possible discounts if she switched to AGL, however, she states that she didn't sign anything and ended the conversation.

A few weeks later Ms M received an account from AGL and a closing account from Origin. Ms M visited a financial counsellor to resolve the situation.

The counsellor rang Origin who confirmed that Ms M had transferred to AGL. When AGL was contacted and asked for evidence of a signed contract, the counsellor was placed on hold. After a period of waiting the operator stated that AGL would cancel Ms M's account and waive all fees and charges. AGL declined to comment on the existence or non-existence of a signed contract.

Issue:

- Melbourne metropolitan area
- Customer refused offer but was switched anyway
- Retailer unable to produce contract
- Retailer immediately cancelled contract and returned customer to previous retailer

Outcome:

- Customer reconnected to Origin
- Customer placed back on her existing payment plan

Assessment:

Signing up a customer without their permission involves engaging in unconscionable, misleading or deceptive conduct a breach of the Energy Marketing code

Source: Good Shepherd Youth & Family Service Inc.

9. Salesperson switched Hardship customer without consent

Location:

Urban

Summary:

While Mrs L was away, a sales person from TRU Energy (which was already Mrs L provider) visited, offering a free \$100 gift voucher with Myer Stores if the household changed over to TRU Energy.

When Mrs L returned home, she learnt that her disabled son, excited by the prospect of a Myer voucher had signed the paperwork, signing the gas and electricity over to his name, as existing account holders were ineligible for the offer.

After reading the paperwork, Mrs L contacted the salespersons listed. The salesperson explained that as the paperwork had now been lodged with TRU Energy, there was nothing further she could do. She advised Mrs L to ring TRU Energy.

When Mrs L rang TRU Energy she found that she could not do anything about the account, as she was no longer listed as the account holder. She was advised that her son was now responsible for her electricity and gas and liable for her bills. To change this situation, the son had to ring the company.

Mrs L arranged for her son to ring TRU Energy. She coached him through cancelling the transfer and changing the accounts back to her name.

Issue:

- Urban area
- Customer's son signed contract to gain gift voucher

Outcome:

- Customer was reinstated
- The process took several calls

Assessment:

The sales person engaged in behaviour that could be considered unconscionable by enrolling the son of the household account holder. In addition, it could be argued that the son was taken advantage of because of his disability.

Finally, the sales person failed to gain consent from the customer. These are breaches of the Energy Retail Code and Energy Marketing Codes.

Source: Ballarat Community Support

10. Salesperson promised customer a discount

Location:

Urban

Summary:

Mrs G had a 19-year-old son who at the time was not living at home, but spending some of his time there. He was at his mother's when a representative of Victoria Electricity visited the house and presented an energy offer to him, which included a gift voucher if he switched.

The son did not state that he had no authority to change over his mother's accounts and signed up.

The son removed all bills and correspondence from the letterbox so that his mother did not know that she had switched retailers. This continued until Mrs G was disconnected from her electricity.

At this point Mrs G who was the account holder, approached a welfare agency for assistance. The agency attempted to contact Victoria Electricity who refused to speak to the welfare worker because they did not believe she was a genuine welfare worker, suggesting that the worker was a friend who was trying to help the family avoid payment of the charges.

The client attempted to ring the company herself on several occasions. Each time she was referred to the same person who did not believe she was being genuine. Mrs G believed that a notation had been made on her client file suggesting she was an aggressive client.

Issue:

- Customer's son signed contract to gain gift voucher

Outcome:

- Case was taken to EWOV
- The account with Victoria Electricity was closed and Mrs G was restored to her previous company
- The process took several calls and many weeks to resolve

Assessment:

The sales person failed to gain consent from the account holder, in breach of the Energy Retail Code and the Energy Marketing Code of Conduct.

Source: Laverton Community Centres

11. Salesperson signed up non-account holder

Location:

Urban

Summary:

Mrs N is a sole parent with two teenage boys. She has been separated from her husband for a long period of time. Mrs N works full time and has been a regular accounts payer to her energy provider AGL.

In early 2007, Mrs N received an account from Power Direct that included about six months of power usage. The bill had also been issued in both her name and the name of her ex-husband. Previously her AGL bills had only been in her name.

Mrs N rang AGL to ascertain the situation. AGL advised her that she had changed retailers a while ago and was now with Power Direct. Mrs N was surprised, as she had not asked to transfer retailers and knew she had definitely not signed anything.

On discussing the situation with her children, her 14-year-old son told her he had answered the door one day many, many months earlier. He had signed a document for a sales representative so that the company could send information about energy to his parents.

Mrs N contacted her local city council who referred her to a financial counsellor.

Issue:

- Customer's son signed contract

Outcome:

- Negotiations between the customer, the Financial counsellor and Power Direct were lengthy
- The customer was returned to AGL and her account was reinstated
- Power Direct cancelled all fees and charges
- Mrs N paid for her power usage since the transfer

Assessment:

The sales person engaged in unconscionable, misleading or deceptive conduct and failed to gain consent from the customer. These are both significant breaches of the Energy Retail Code and Energy Marketing Codes.

Source: City of Yarra Financial Counselling Service, Fitzroy

12. Salesperson enticed customer with incentives

Location:

Urban

Summary:

Mr S is with AGL for his electricity supply and TRU Energy for his gas supply and has eligible concessions and payment plans on each. Mr S has been supported by his local financial counselling service for a significant period of time.

Both AGL and TRU Energy have contacted Mr S on several occasions to entice him to relinquish the other company so as to combine his gas and electricity with the one retailer, on a dual fuel contract.

After multiple approaches, Mr S was then contacted by Origin who tried to encourage him for both his electricity and gas supplies with a \$50 bonus incentive. He accepted the offer but his transfer was not able to proceed due to accumulated debt with the existing retailers.

Issue:

- Customer enticed by company with financial bonus

Outcome:

- Customer remained with existing companies
- Customer regularly informs counselling service of door to door salespeople offering enticements to switch

Assessment:

No breach of the Energy Retail and Energy Marketing codes

Source: City of Yarra Financial Counselling Service, Fitzroy

13. Salesperson intimidates customers from non-English speaking background

Location:

Rural

Summary:

AGL sent a team of door-to-door sales representatives to Mildura. The sales people offered potential customers DVD's and small kitchen appliances as incentives to move to AGL.

Five customers from culturally and linguistically different backgrounds reported to financial counsellors that they found it very difficult to understand the discussions of the door-to-door sales people and also felt intimidated to change however they refused.

Issue:

- Customer enticed by other company with gifts

Outcome:

- Customers remained with existing companies

Assessment:

The offering of incentives does not breach the code, however, the reporting of intimidation by customers suggests that the salespeople may have not ceased negotiations at the request of the potential customers.

Source: Financial & Consumer Rights Council (FCRC)

14. Salesperson offered incentive which expired immediately

Location:

Rural

Summary:

Consumers from Sunbury reported having visits from sales people from both Red Energy and AGL. It was reported that both companies offered incentives for customers who changed companies.

Some customers reported feeling pressured by these door-to-door sales people when they were advised if they didn't change retailers on the spot, then the incentive offers would expire immediately.

Issue:

- Customers enticed by incentives to switch companies and were informed that the offers expired immediately

Outcome:

- Some customers changed companies whilst other customers remained with existing companies

Assessment:

The sales person engaged in unconscionable, misleading and deceptive conduct. This is a breach of the Energy Marketing Code of Conduct.

Source: Sunbury Community Health Centre/ Financial & Consumer Rights Council (FCRC)

15. Salesperson promised customer discount that was not received

Location:

Rural

Summary:

Mr A is a pensioner in his 80's. He has been a TRU Energy customer since 2003.

In April 2004 he was approached by a Momentum door-to-door sales person who successfully switched Mr A's account. Mr A was enticed by a promised 5% discount on his bills as well as his pension concession.

In early 2006 Mr A rang and complained to Momentum that he still hadn't received his 5% discount nor was he receiving a discounted pension concession rate. He was advised that it would be fixed in his next bill. He rang several times requesting his discount and concession but despite being promised they would be on his next bill, he received neither.

In August 2006, Mr A was visited by a Red Energy door-to-door sales person and decided he would change suppliers as he wasn't happy with the service from Momentum. After Momentum received details to transfer his account to Red Energy, Mr A received a call from Momentum to try and entice him back. Mr A explained his issues. Soon after that he received a final account that did not include any back dated 5% discounts, no pension concessions but also included a \$100 fee for "breaking contract".

Mr A approached a financial counsellor to seek assistance.

Issue:

- Customer enticed by 5% discount to switch companies
- Customer did not receive the discount over the two year period

Outcome:

- Customer is on a two-year contract with Red Energy.
- Momentum withdrew its \$100 fee
- Customer did not receive his 5% discount from Momentum
- Customer did not receive pension concession discount for the whole time he was with Momentum

Assessment:

By promising a discount (multiple times) that was never provided, the company engaged in deceptive and misleading behaviour

Source: Davey House, Wonthaggi

16. Salesperson enticed customer with discount

Location:

Rural

Summary:

Mrs M is 60 years old and on a disability support pension. She is a resident in an older style Government housing apartment that has an off peak electricity heat bank installed. Mrs M was with TRU Energy and settled her accounts via a payment plan.

Mrs M believed that she was being over-charged on her accounts so when she received a call from a Victoria Electricity telemarketer, she was enticed to change supplier by the offer of a 7% "on time" payment discount, accompanied by a monthly bill and a direct debit arrangement.

Unfortunately, Mrs M was not told that if she went onto a payment plan for the monthly bill option then she would not be eligible for the 7% "on time" discount. In addition, because she was placed on a Direct Debit system, Mrs M was unable to budget for how much was going to be withdrawn from her account whenever her bill payment time came due.

Mrs M approached her nearest support service for financial counselling.

Issue:

- Customer offered discount
- Customer unaware that her payment method made her ineligible for the discount

Outcome:

- Customer was reinstated with TRU Energy from the date she was transferred
- Customer was placed back onto her original payment plans and her concessions were reinstated.

Assessment:

In not fully explaining the consequences of the payment method, the salesperson engaged in misleading conduct. Fully explaining the tariffs and payment methods is a requirement of the energy marketing code.

Source: Davey House Wonthaggi

17. Customer signed multiple contracts

Location:

Urban

Summary:

Ms W has mental health issues. One of the by-products of her condition, as noted by her counsellor, is that she will never say no to someone, in particular, always saying yes to salespeople.

Ms W was with Origin and her financial counsellors assisted her to establish concrete payment plans with all concession details locked in with Origin.

They were surprised when Ms W visited the City of Yarra with Red Energy accounts and realised that she had been transferred. On restoring her to Origin, she visited the financial counsellors with accounts for another provider, Victoria Electricity.

Issue:

- Customer signs up for every offer they receive

Outcome:

- It is intended customer will return to Origin with both concessions and plans restored
- It is hoped that they will be able to lock her in with Origin to prevent further transfers

Assessment:

It could be argued that in her health situation, the customer is not making adequate informed consent on the understanding that salespeople are able to readily identify the situation.

Source: City of Yarra Financial Counselling Service, Fitzroy

18. Customer seeking a better deal switched twice

Location:

Rural

Summary:

A sales representative visited from AGL visited Mr T and he switched his services to them. Mr T stated to financial counsellors that he had been impressed by the discounts offered by AGL so switched from TRU Energy.

After receiving his bill, Mr T did not believe that he had received the discounts he sought. As a result, when visited by a Country Energy representative, he switched to this company.

Mr T then received multiple bills as his current and previous retailers sent current and final accounts. He also did not wish to stay with Country Energy and in confusion he approached a financial counsellor who assisted him to sort out his accounts.

Issue:

- Customer seeking better deal so switched retailers twice

Outcome:

- Customer returned to TRU Energy
- Country Energy and AGL cancelled his accounts and waived all cancellation fees

Assessment:

No breach of any codes unless the company promised a discount which was not delivered in which case the salesperson was misleading in their presentation

Source: Financial & Consumer Rights Council (FCRC)

19. Customer signed with multiple retailers with minimal understanding

Location:

Urban

Summary:

Mr R is from a culturally and linguistically different background and cannot write or speak English well. In his 50's, Mr R also suffers from schizophrenia.

Mr R consulted a financial counsellor, as he was confused about his energy accounts. He brought with him connection letters and bills from five different retailers. He didn't know what bills were due, how much he owed and to what company. He did recall signing forms, but was totally unaware of the consequences of doing so, claiming he thought the sales representatives were from the government.

Issue:

- Customer signs up for every offer they receive

Outcome:

- Matter referred to EWOV
- Customer returned to Origin
- The companies cancelled his accounts and waived all cancellation fees

Assessment:

With his health situation and language difficulties, it is clear that the customer is not making adequate informed consent, a breach of the Energy Retail Code and Marketing Code of Conduct.

Source: Broadmeadows Uniting Care

20. Customer confused by salesperson

Location:

Urban

Summary:

Mr P lives in public housing, is a single parent and has low literacy and numeracy skills. When he moved into public housing, the housing worker organised his utility connections. The worker organised payment plans with TRU Energy to pay off accumulated debts and ensure payments were on time. Mr P remained unclear as to which energy utility he belonged. In April, 2007, Mr P approached a financial counselling agency with bills from four different companies. Power Direct had visited Mr P and he had signed up with them. He had received monthly bills from them for providing the service with no charges as he was still being billed by TRU Energy for the actual usage.

The next bill was from Origin who had also visited, and even though Mr P told them that he was contracted to TRU Energy, the salesman informed him that “they” had permission for him to change and that he would receive a bonus of electrical goods from them after a qualifying period.

Issue:

- Customer believed his existing direct debt arrangements would switch too

Outcome:

- Agency took three months to resolve the customer’s billing problems

Assessment:

With his literacy skills, it would appear that the customer is not making adequate informed consent, a breach of the Energy Retail Code and the Marketing Code of Conduct. In addition, the company has engaged in deceptive behaviour by stating they have permission to switch the customer.

Source: Laverton Community Centre

21. Customer signed contracts with multiple companies

Location:

Urban

Summary:

Mr K is an elderly person from a culturally and linguistically different background residing in public housing. Mr K had been with Origin.

Door-to-door salespeople from Victoria Electricity, Jack Green and then Red Energy visited Mr K in the second half of 2006. Mr K signed contracts with each of the retailers and then became confused on receiving connection letters, bills, and then final bills from each. He visited a financial counselling agency in February 2007 to seek understanding and to resolve the problem.

Through the assistance of an interpreter service, telephone calls were placed to all of the retailers. The financial counsellor did not involve EWOV but advised the retailers that this route would be taken if a satisfactory outcome was not achieved.

Issue:

- Customer signed up for every offer he received

Outcome:

- Customer was returned to Origin
- Jack Green refunded all money paid
- Victoria Electricity waived all fees and charges
- Customer has been told to not sign anything in future from any door to door person
- Customer has been placed on CentrePay to ensure he is not troubled by bill payments

Assessment:

No breach of any codes but the customer did not have an adequate understanding of what was happening.

Source: Darebin Family Services

22. Night shift worker agreed to switch while asleep

Location:

n/a

Summary:

The Bs are a working married couple in their late 40's. They use AGL and pay regularly into an Easyway account to manage their gas and electricity bills.

Mr B works nightshift and sleeps during the day. One day during his sleep, Mr B answered the phone. The call was from a TRU Energy telemarketer. Mr B spoke briefly with the telemarketer and then went back to bed. He promptly forgot about the call and could not recall any details of it.

A few months later, the Browns received an account from TRU Energy in Mr B's name. This was despite the fact; they were still paying their Easy way account to AGL.

When Mrs B contacted TRU Energy, the company played the tape of the conversation with her husband from months before where he agreed to change retailers. Mr. Brown could still not recall the conversation.

The family visited a financial counsellors and the matter was taken up with the Energy and Water Ombudsman of Victorian (EWOV).

Issue:

- Night shift worker switches accounts while in state of sleep

Outcome:

- TRU Energy sent a letter of apology
- TRU Energy reduced the costs of the accounts of \$250
- TRU Energy cancelled their account
- Their accounts were reinstated with AGL and their Easy way program continued

Assessment:

No breach of the Energy Retail and Energy Marketing codes

Source: Financial Counselling Victoria

23. Customer does not recall signing

Location:

Urban

Summary:

Ms C lives in her own home and was a customer with AGL. Ms C has had contact from door to door sales people representing TRU Energy, Origin, Victoria Electricity and another second tier retailer.

On one occasion, Ms C was visited by a door to a sales representative from TRU Energy. She claims she told them she wasn't interested. Soon after, however, she received a bill from TRU Energy, at which point, Ms C visited a Financial Counsellor

After some investigation, TRU Energy was able to demonstrate that Ms C had indeed signed a contract. The customer continued to state that she has not memory of signing a contract.

Issue:

- Customer does not recall signing a contract.

Outcome:

- TRU Energy cancelled her account and waived all fees and charges
- The customer was transferred back to AGL

Assessment:

- No breach occurred

Source: Financial Counselling Victoria

24. Customer wanted to get rid of salesperson

Location:

Urban

Summary:

Mr G is from a culturally and linguistically diverse background and has limited proficiency in English. He received a large final bill from TRU Energy, which included a \$90 fee for contract termination. Mr G brought the bill to his financial counsellor who had assisted him to be on the TRU Energy Hardship program, which allowed him to pay his account in instalments. He stated that he had no idea why he would have received a final bill.

After some discussion, Mr G recalled he had been visited by a door-to-door sales person a few weeks previously. Because he could not understand the sales person due to limited confidence with English, he signed a form to make the person leave. He stated that he had no idea that he had signed a contract to cancel his supply with TRU Energy and create a new account with AGL.

The financial counsellor noted that *"it had taken a long time to establish Mr G with appropriate concessions and payment plans in the first place, and now they had to spend even more time dealing with both AGL and TRU Energy to sort out the problem"*

Issue:

- Melbourne metropolitan area
- Customer had no understanding they were changing companies; merely wanting to get rid of salesperson

Outcome:

- Two months of discussions
- AGL cancelled customer's account
- AGL withdrew all fees and charges
- Customer was transferred back to TRU Energy with all payment plans, concessions and hardship details reinstated

Assessment:

Customer has not provided informed consent.

Source: Broadmeadows Uniting Care

25. Customer with mental health issues signed contract

Location:

Urban

Summary:

Ms O is a 58-year-old pensioner who was with Origin for all her energy needs. A Red Energy door-to-door sales person approached her in May 2007. It is unknown exactly what occurred on the day the door-to-door sales person visited Ms O, as she has no memory of what occurred. However, she signed a contract to change her retailer.

Accounts then began arriving for Red Energy, which Ms O took to her support service, as she was puzzled as to why she was now receiving Red Energy accounts.

Ms O has mental health issues, which, according to her financial counsellor, would present as unwell exhibiting such behaviours as extreme fidgeting, anxiety, regular crying, and rapid speech. Her counsellor believes that *“a salesperson would know that Ms O was not able to make a coherent decision”*.

Issue:

- Customer with mental health issues

Outcome:

- Customer was returned to Origin
- All of the customer’s concession and payment plans reinstated
- Red Energy waived all fees and charges

Assessment:

With her mental health situation, it is clear that the customer would not be able to make adequate informed consent. If the salesperson was aware of this, then this behaviour would be a breach of the code.

Source: Darebin Family Services

26. Customer had no understanding they were changing company

Location:

Urban

Summary:

Mr H in his late 50's had been connected with Origin to supply his gas and electricity for about 8 years. He was on a payment plan that included concessions. He had been struggling to pay this debt but according to his financial counsellor was managing to maintain his payment schedule.

In May 2007, Mr H approached a financial counsellor because he had received a final bill from Origin. When he was asked to produce his accounts, he provided accounts from AGL and not Origin. Mr H showed confusion and was unable to explain how he had changed retailers. He declared he had no memory of making the change.

Upon investigation, Mr H recalled that he was contacted by a telemarketer several months prior but was sure he said to the person that he wasn't interested. He did not recall the actual conversation.

The financial counsellor contacted AGL who refused to disclose any information about Mr H's accounts. They suggested contacting Origin to arrange a transfer back. Origin requested that AGL needed to finalise the accounts before transfer proceedings could begin.

Issue:

- Melbourne metropolitan area
- Customer had no understanding they were changing companies

Outcome:

- After 14 conversations and 12 hours of phone calls and meetings with their client and companies to arrange a transfer back, this matter remains unresolved as at August 2007.
- The account has yet to be re-established with Origin
- The customer has a \$280 debt
- The customer has yet to be billed for the usage between May and August 2007

Assessment:

Inconclusive.

Source: Broadmeadows Uniting Care

27. Customer had no understanding they were changing company

Location:

Urban

Summary:

Mr B is a 50-year-old man with an acquired brain injury. Whilst he is able to function mentally, however, he often gives the impression with his slurred speech that he is intoxicated. According to his support service: *"It is that obvious Mr B does not have normal speech behaviour."*

The customer was with Origin and paid fortnightly into an Easyway account via CentrePay so was managing his energy bills and was in fact about \$75 in credit. In May or June 2007, a door-to-door sales person visited Mr B. The customer insists that after the discussion with the salesperson, he did not sign any document or agree to anything.

When Mr B received a new account from AGL, he took it to his financial counselling service. The counsellor rang AGL who, when asked for proof of the signed contract, declined and instead, cancelled the account back to the date of transfer and waived all fees and charges.

Issue:

- Customer had no memory of switching retailers

Outcome:

- Customer was returned to Origin
- All of the customer's concession and payment plans reinstated
- AGL waived all fees and charges
- Origin initially requested payment for the energy charges for the period the customer was with AGL, but after discussion with counsellor, Origin waived these charges

Assessment:

There is no record of the exact conversation that took place the day the AGL sales person visited Mr B. Whether the customer signed without understanding or whether the salesperson engaged in behaviour that breached the Energy Marketing Code is difficult to assess.

28. Customer harassed

Location:

Urban

Summary:

Mrs S was contacted by Red Energy who asked her to consider switching. When Mrs S hesitated, the salesperson asked to see Mrs S's accounts to show her potential savings. When Mrs S produced a bill it transpired that the bill was in the name of Mr. Smith.

The salesperson advised Mrs S that she wanted to speak with the account holder Mr. Smith to offer him the same opportunity to switch. When Mrs S indicated that this was not possible, the salesperson became insistent, and in Mrs S view, harassed her so that she would call her husband to the door.

At this point, Mrs S indicated that the reason why Mr S was unavailable was due to his death several years before. She explained that she had simply never updated the billing details. Mrs S was not convinced that the sales person believed her.

Issue:

- Customer harassed

Outcome:

- Customer remained with existing retailer

Assessment:

No breach

Source: Financial & Consumer Rights Council (FCRC).