



Level 2, 35 Spring St
Melbourne 3000, Australia
Telephone +61 3 9651 0222
 +61 1300 664 969
Facsimile +61 3 9651 3688

WORKING WITH COMMUNITIES -

A REPORT ON WORKSHOPS WITH MEMBERS OF
THE AFRICAN COMMUNITY, FINANCIAL
COUNSELLORS AND ENERGY RETAILERS

JUNE 2009

An appropriate citation for this paper is: *Summary Report: African Community Workshops*

PREFACE

In late 2008, the Footscray Community Legal Centre (Footscray Legal Centre)¹ approached the Essential Services Commission (the “Commission”) concerning the marketing conduct of Victorian energy retailers towards members of the African community in western Melbourne.

The Footscray Legal Centre expressed concerns that the African community was not coping with the complexities of the competitive energy retail market. Financial counsellors reported significant increases in the number of people seeking their assistance for energy related matters, including a high proportion of customers who appeared not to understand their new energy supply contracts.

In 1999, 30 per cent of the clients seen by the Footscray Legal Centre were from non-English speaking backgrounds and approximately 18 per cent of the presenting problems were energy-related. By 2008, staff estimated that 75 per cent of clients were from a non-English speaking African background and energy related problems had increased to 61 per cent.²

The Commission met with the centre staff and representatives of the African community in late 2008 and engaged the Footscray Legal Centre to provide a detailed report, including case studies.

The final *African Consumer Experience of the Contestable Energy Market in the West of Melbourne* report (the African community report) was provided to the Commission in mid-March by the Footscray Legal Centre.³ The six retailers identified in the African community report were provided with their cases studies prior to the workshops and assist them to inform their responses.

The Commission facilitated workshops with representatives of the African community, the centre staff, the Consumer Action Law Centre and energy retailers on 9 April 2009.

The Commission's objective in facilitating the workshops was to ensure that the African community representatives, with the assistance of consumer representatives, were provided with an environment where they could inform individual retailers of the challenges their communities faced with the competitive energy retail market. Separate workshops were held with each retailer and the Commission thanks all participants for their constructive participation.

¹ The Footscray Community Legal Centre is a community-based non-profit agency which aims to provide free legal advice, assistance and referral, and financial counselling to the people of the City of Maribyrnong and Western Suburbs of Melbourne.

² See Page 3 of *The African Consumer experience of the Contestable energy market in the West of Melbourne*.

³ The final report is published as an addendum to this report and at www.esc.vic.gov.au.

This report, which is published in conjunction with the final *African Consumer Experience of the Contestable Energy Market in the West of Melbourne* report, summarises that report and the outcomes of the workshops.

It sets out the 2009-10 work program to address issues raised through this consultation process and which form part of the Commission's recently published *Respecting Customers – Regulating Marketing 2009-10* program.⁴ A report of the outcomes will be made public at the completion of this regulatory program.

Dr Ron Ben-David
Chairperson

⁴ See report at www.esc.vic.gov.au

CONTENTS

Contents	I
1 THE AFRICAN COMMUNITY REPORT	2
2.1 Financial counsellors' experiences with retailers	2
2.2 Retailers' interactions with members of the African community	3
2.3 Footscray Community Legal Centre's analysis	3
2 WORKSHOP DISCUSSIONS	5
2.1 Overview of the workshops	5
2.2 Marketing conduct	6
2.3 Energy issues for financial counsellors	7
2.4 Community Education	9
3 2009-10 WORK PROGRAM	11
3.1 What will the energy retailers do?	11
3.2 What will the Commission do?	12

1 | THE AFRICAN COMMUNITY REPORT

The African community report details nineteen cases studies that highlight various interactions between six retailers, members of the African community and financial counsellors.⁵ The case studies were compiled by the Footscray Legal Centre staff and neither the retailers nor the Commission has investigated the specific details of each case study. However, the six retailers received a copy of the report before the workshops, and accepted the views expressed by the Footscray Legal Centre staff as the basis for the discussions at the April workshops.

The key views expressed in the full report, and which were considered by workshop participants, fall into two categories – the issues arising for financial counsellors as they try to resolve issues for members of the African and other non-English speaking communities with energy retailers and the analysis of the case studies as outlined by the Footscray Legal Centre.

A summary of these views is outlined below. The full report is available at www.esc.vic.gov.au.

1.1 Financial counsellors' experiences with retailers

The Footscray Legal Centre's financial counsellors reported that it was not easy for them to resolve complaints and issues on behalf of their clients with the energy retailers. From their experience, the most frequent problems are:

- The difficulties in contacting call centre and hardship team staff - the companies do not answer phone messages and the hardship teams may take from 15 – 30 minutes to answer their phones, if they answer at all.
- Unnecessary requests for documents – retailers' hardship teams sometimes make requests for copies of client bank statements or completion of statements of affairs asking for details of assets, which is information considered unnecessary for the resolution of the problem.
- Extensive delays – the financial counsellors are required to wait several weeks for a retailer's response or often make repeat requests for Utility Relief Grant forms (and call centre staff are often not aware that clients can apply directly for these grants, which adds to inefficiencies in processing applications). The retailers also delay processing the financial counsellors' authority to act on behalf of their clients, creating delays in resolving the client's problems.

⁵ See pages 11-34 of the Report, available at www.esc.vic.gov.au

- Difficulties in resolving issues with clients who do not speak English - at each internal transfer stage non-English speaking clients are required to give a new authority for the financial counsellor to speak to each new company representative. The utility companies also require agencies to provide interpreter services.
- Unnecessary information being asked of the financial counsellors - personal details such as the counsellor's date of birth being required before the company representative will negotiate with them as a client representative.

1.2 Retailers' interactions with members of the African community

Based on their experience of working with their clients, the financial counsellors identified six broad issues arising from the case studies which they believe represent the broader African community's experience with energy retailers. These issues are:

- Retailers may be targeting potential customers from non-English speaking backgrounds, who have little understanding of the complex contractual obligations or their right to a cooling off period.
- Retailers may not be providing adequate contractual information on signing up people from more vulnerable communities - their clients frequently advised that they were not provided with a copy of the contract documentation at point of sale and rarely could provide the counsellors with a copy of the contractual document.
- People from these communities appear to have signed multiple contracts with multiple providers because they do not understand the contractual arrangements. This confusion results in some customers receiving different bills from a number of retailers.
- People from these communities would be unlikely to try to communicate directly with energy retailers because the call centre process and IVR systems are very difficult for non-English speakers to navigate.
- African community members have no concept or context for energy efficiency. The lack of understanding amongst community members as to how to minimise their energy usage seems to lead to in very high bills for energy which then requires assistance from financial counselling services.
- Retailers do not provide interpreter services and do not have appropriate processes for dealing with non English speaking clients.

1.3 Footscray Community Legal Centre's analysis

The Footscray Legal Centre considers that the case studies outlined in the report demonstrate that the retailers are not properly complying with their marketing regulatory obligations with members of the African community. In particular, they identified the following potentially systemic breaches of the *Code of Conduct for Marketing* (the Marketing Code), the *Fair Trading Act 1999* and the *Trade Practices Act 1974* when these customers where contacted by door-to-door sales staff:

- Contract negotiations not being undertaken with the authorised customer or a failure to obtain the customer's explicit informed consent to transfer, particularly because of communication difficulties between non-English customers and call centre staff.
- Misleading and deceptive marketing behaviour, in terms of the information being provided.
- Failure to provide contract documentation.
- Failure to provide information regarding cooling off periods.
- Failure to provide access to suitable interpreter services.

Further, the centre staff were concerned that, as customers, members of the African community were not provided access to hardship programs. As such, their capacity to pay was not properly assessed in developing payment plans and they were not assisted in managing their energy use and accessing energy efficiency assistance.

Based on this analysis, the Footscray Legal Centre staff requested that the Commission facilitate discussions between community sector representatives and retailers to discuss these issues further.

These broad issues therefore formed the starting point for the discussions held at the 9 April 2009 workshops.

This chapter outlines the broad issues that were discussed at the April workshops. Representatives from the African community, Footscray Legal Centre, Consumer Action Law Centre and relevant retailers attended. Separate workshops were held with each retailer.

2.1 Overview of the workshops

The retailers previously had been provided with the case studies that related directly to their interactions with customers. The focus of the workshops, however, was on the broader issues arising from the case studies, not the individual cases.

The Commission's objective in facilitating the workshops was to ensure that the African community representatives, with the assistance of consumer representatives, were provided with an environment where they could inform individual retailers of the challenges their communities faced with the competitive energy retail market.

Footscray Legal Centre staff outlined their concerns, as detailed in section 1.3. As well, they emphasised to retailers the significant increases in their workloads, due to the African communities' ongoing communication and comprehension difficulties in dealing with energy retailers on day to day issues.

The African community representatives outlined their own experiences and highlighted the cultural and educational factors that impact on their capacity to function in the Victorian community, including with energy supply.

All retailers confirmed their commitment to good marketing practices. In particular, they agreed that explicit informed consent should be provided by all customers in entering new contracts. They outlined the processes they have in place to ensure that all customers do make an explicit informed choice of retailers. Retailers also recognised that the significant language and comprehension issues identified through the report indicated a need for a review of current process to ensure the needs of non-English speaking communities were being met.

The sections below set out the three main areas of concern to financial counsellors that were identified through the African report and the workshop discussions.

2.2 Marketing conduct

What was discussed?

The community representatives expressed doubts that the retailers obtained the explicit informed consent of non-English speaking customers to new energy supply contracts. They noted that most African community customers had limited or no English language skills and required the assistance of a translation service to communicate in English, including with the financial counsellors.

Therefore, if financial counsellors needed translators to understand the nature of their clients' problems, consumer groups questioned how retailers could claim to have obtained explicit informed consent from their customers in marketing situations.

Many African community members are signed up to retailers via door to door sales contacts. Footscray Legal Centre staff noted that many of their clients will sign multiple contracts with little understanding of their ongoing rights and obligations, including the right to say 'No' to a sales agent and to use their cooling off rights. These clients were often unable to provide a copy of the contractual documentation, possibly because this documentation is not being provided at the point of sale.

Centre staff also noted that sales agents from competing retailers will often visit similar areas concurrently. This may result in customers signing up to multiple contracts with multiple retailers as they do not understand the rights and obligations of a fixed term energy contract.

Retailers confirmed that the majority of retailers' sales and marketing material, particularly for point of sale transactions, and the subsequent verification calls, relied on the consumer having basic English comprehension skills. All retailers stated that their sales representatives received extensive training to not proceed with a sale if there were language or comprehension difficulties, and expressed confidence that this training would minimise the likelihood of non-compliant sales.

Retailers agreed that it is their responsibility to ensure that their sales agents are complying with the law, that is, to provide information in a format that aids comprehension and ensures that customers can provide their explicit informed consent. When signing up to a new contract, retailers must also ensure that their customer has a copy of the contract documentation, including information regarding their cooling off rights and how to cancel a contract within the cooling off period.

In the event that a customer with limited comprehension skills agreed to transfer retailers, those retailers with voice verification processes believed that the sale would be cancelled immediately once the language difficulty was noted. However, the Footscray Legal Centre staff contended that, if retailers relied on these verification processes to ensure these customers had provided their explicit informed consent, the cases studies in the report demonstrated a failure of these processes.

What problems do these issues cause?

The language and comprehension issues experienced by members of the African community raise potentially significant compliance risks for retailers. These risks arise through both verbal and written communication to these customers.

- The verbal information provided to non-English speaking customers – sales agents must not mislead, provide inaccurate information or misrepresent their association with other organisations or entities. The risk of a retailer providing misleading or inconsistent information is increased as language and comprehension difficulties increase. Translation services also do not appear to be made available to non-English speaking consumers during the sales verification call.
- The written information provided to non-English speaking customers – there is a significant amount of information that must be provided to potential customers before they agree to a contract including the prices, terms and conditions of energy contracts, information regarding energy efficiency and their rights and obligations.

As the majority of marketing material, including contractual terms and conditions, cooling off rights and other important consumer information are currently provided in English, retailers have significant challenges to meet to ensure that explicit informed consent can be obtained from non-English speaking members of the community.

What could be done to fix these problems?

Workshop participants agreed that the diversity of cultures and languages of the African communities suggests that retailers cannot solely rely on their current processes which are based on customers having a reasonable comprehension of English.

Most retailers place a great degree of trust in their sales agents to recognise language and comprehension difficulties and not proceed with the sale. Retailers invest significant resources in training sales agents. However, most sales agent are employed on a commission basis, which may mean they have an incentive to secure a sale at any cost.

Retailers noted that they have agreements with sales agencies which enable non-compliant sales agents' employment to be terminated or the agency contract to be cancelled if complaints are not appropriately addressed. Retailers indicated that the penalty clauses of these service level agreements would be activated upon receipt of a number of complaints against a single agent or sales agency

2.3 Energy issues for financial counsellors

What was discussed?

The Footscray Legal Centre staff noted that much of the energy specific work that they now undertake involves sorting out multiple contracts, transfer of supplier

issues and other matters better dealt with by retailers directly or through improved community education.⁶

These difficulties are exacerbated because of problems with the retailers' call centres, for example:

- the repeated requests on financial counsellors to provide their own personal information, such as date of birth, before being able to discuss their clients' needs;
- transfers from department to department which increase the amount of already limited time that the financial counsellors are required to invest. In addition, each transfer of department results in further validation checks.
- requests for follow up or call backs regarding client issues are often not fulfilled.

The financial counsellors would prefer to have the retailers address these issues and not to have to refer complaints to the Energy Ombudsman.

The retailers noted that they are required to have translation services and hardship programs to assist non-English speaking and other vulnerable consumers. They also heard the financial counsellors' response that there are often delays in accessing these services.

Retailers also felt that they are bound by strict privacy regulations that place a significant duty of care of them when dealing with third parties to ensure that the customer has provided their consent to this person or agency assisting them. There was some discussion as to whether these same standards are applied to the retailers' door-to-door marketing.

What problems do these issues cause?

The discussion between the retailers and the financial counsellors on these issues revealed that the financial counsellors felt frustrated because their contacts with the retailers are not being handled well or efficiently.

Retailers advised that they have existing hardship programs and translation services to assist customers from non-English speaking backgrounds when dealing with retailers. However, they acknowledged that access to these services is dependent on customers being able to communicate their issues adequately to the retailers.

Footscray Legal Centre staff noted that navigating through a call centre or IVR system is often a challenge for competent English speakers, particularly if they are transferred around different departments. The incentive to call a retailer to resolve a complex issue, via a translation service, would also diminish if there is a strong likelihood that the customer will be transferred around numerous departments.

⁶ It was also noted that approximately 160 Financial Counsellors are available within Victoria and that in a time poor environment there are substantively more pressing issues for them to address such as mortgage and other financial matters.

Consequently, these staff indicated that they may be forced to directly refer customers to EWOV if timely process improvements cannot be made.

What could be done to fix these problems?

The financial counsellors believe that a number of these problems could be overcome if they could ensure more direct access to a suitably skilled level within the retailers' call centre, that could act as a 'one stop' shop for their enquiries. They recognise that the retailers must abide by privacy regulations when dealing with their customers, but are concerned that the strict adherence to these rules means inefficiencies that can frustrate their customers and their advocates. This may lead to complaints regarding a lack of service.

Retailers noted that they have already created financial hardship teams with direct contact numbers to assist in resolving hardship related enquiries, and that financial counsellors can readily access these services. There was some debate as to the general availability of hardship teams and ongoing time constraints, but retailers also indicated that financial counsellors should directly approach them if current processes were hindering the speedy and efficient resolution of their client's complaints.

2.4 Community Education

What was discussed?

The African community covers a wide range of nationalities and cultures. General literacy in English and often in the written form of their own languages is not guaranteed. New arrivals may not have had the benefits of a secure energy supply in their country of origin and while the concept of a contract may not be new to many new arrivals, understanding their rights and obligations in the retail energy industry can present significant challenges.

Sources of confusion include bill formats, general correspondence and multiple accounts being received from different retailers. New arrivals also have limited understanding of the ways to ensure energy efficiency and how to minimise the likelihood of substantial high bills that may cause financial hardship.

The workshops also noted that members of the African community need assistance in understanding the implications of a contractual document and its associated terms and conditions, including cooling-off periods, and access to Do Not Call lists and other consumer protections.

It is also clear that these issues are not limited to the retail energy market and that the African communities currently experience similar comprehension challenges when entering mortgage or tenancy agreements, applying for car loans, finance agreements, mobile phone contracts and credit cards.⁷

⁷ Pages 12-14, Issue 198 April 2 2009 of *The Devil's Advocate*, newsletter from the Financial & Consumer Rights Council , available at www.fcrc.org.au

What problems do these issues cause?

All workshop attendees recognised the need for education and information to assist customers such as those from the African community.

Settlement agencies, which often are the first point of contact for new arrivals, were identified as a key component of any future community education initiatives. African community representatives noted that these agencies are required to provide a wide range of information about Australian society in general, and that energy information is a small component provided in a very short time period.

It was agreed that any community education program would have a number of challenges. In addition to literacy and comprehension issues, cultural and religious beliefs need to be considered in terms of how and who the information will be provided to. For example, the Footscray Legal Centre staff noted that many new arrivals from Ethiopia may have come from urban environments and may therefore be more financially literate than Sudanese arrivals, who may have come from a more rural or pastoral environment with very different energy supply arrangements.

Retailers noted that the success of any community education initiative is highly dependant on the community engaging with the process. It is important that community leaders have a commitment to the program goals. At least one retailer noted that a failure of community leaders to remain engaged with its' outreach program lead to the program's demise.

What could be done to fix these problems?

Discussions between workshop participants noted that these literacy and language matters present significant challenges to retailers, financial counsellors and the African community as there is no single solution that could be immediately implemented to resolve these broad issues.

A number of retailers noted that they already undertake extensive work within non-English speaking communities to provide education around financial literacy, energy efficiency and other matters. It was noted that many consumer organisations and financial counsellors offer similar education services.

The African Community representatives who attended recognised the benefits that effective, targeted and culturally appropriate information can have for their people. They highlighted that their communities already have regular gatherings which would present ideal opportunities for retailers to attend to assist the communities understanding of energy bills, contracts and the retail energy market in general.

The case studies presented in the African Report, together with the discussion at the workshops, highlight on-going work for energy retailers and the Commission so that these issues for members of the African community and financial counsellors are properly addressed.

3.1 What will the energy retailers do?

The energy retailers who attended the workshops confirmed that they take their marketing obligations very seriously and that they spend significant time and resources in ensuring their sales agents are aware of, and comply with, their obligations.

They stated that they do have processes in place to ensure that explicit informed consent can be provided. However, they recognised that these processes are primarily based on the assumption that the customer has a good knowledge and comprehension of English. Retailers confirmed that sales agents are trained to not proceed with a sale, if there are language or other comprehension difficulties and that the sales verification processes should be a safeguard that explicit informed consent has been provided.

There are currently a number of ongoing retailer funded community initiatives to assist non-English speakers to understand energy contracts and other assistance are available to them.

Notwithstanding, the retailers took seriously the issues that were raised in the report and at the workshops and gave the following commitments:

- to continue to liaise with the community groups and the wider African communities to ensure that they improve their marketing and retail service to customers from these communities
- to review their existing processes to ensure that financial counsellors can access a suitable level of call centre staff to efficiently assist in resolving any complaints
- to consider whether their existing community initiatives to assist non-English speaking customers to understand energy contracts and assistance could be extended to these communities
- to work with the Commission to review their marketing and contractual material to ensure that it is relevant and appropriate for these communities.

3.2 What will the Commission do?

The Commission expects that the marketing practices of retailers operating under a Victorian licence will:

- *be respectful, polite and courteous* – that marketers will only contact customers during legitimate hours, will terminate contacts when asked to and will always speak to customers with care and respect
- *be accurate and informative* – that the data and facts provided are truthful and comprehensive to enable customers to make the proper decision for their circumstances
- *not bring the market into disrepute* – that marketers will not mislead or deceive customers and will adhere always to their obligations under the consumer and fair trading laws.

The Commission has recently published its *Respecting Customers – Regulating Marketing Conduct 2009-10* program for Victorian retail energy businesses which sets out how the Commission expects these objectives to be realised.

Many of the issues raised by the staff of the Footscray Legal Centre and members of the African community will be addressed as this program is implemented by the Commission and the retailers. The program will be enhanced in the following ways to directly benefit members of the African communities:

Implementation of the next stages of the Your Choice education campaign

In 2008, the Commission ran a consumer information campaign designed to ensure that Victorians could exercise informed choice. The “Your choice’ campaign provided practical steps for those contacted by telemarketers or door-to-door salespersons. This information was distributed directly to each Victorian household as well as to consumer and special interest groups

The Commission will extend its ‘Your Choice’ information campaign, which will run from June to December 2009. It will focus its efforts on those customers who are disadvantaged or vulnerable, including Victorians with low levels of literacy in English. Consultation will specifically occur with the members of the African community and Footscray Legal Centre staff to identify any particular initiatives which will assist that community. The Commission will also involve Sustainability Victoria on initiatives to directly improve energy efficient information to these communities.

Consultation will also continue with the Footscray Legal Centre staff to identify whether the Commission, the energy retailers and the Energy Retailers’ Association of Australia (the industry association) can assist in providing relevant information to the settlement agencies or specific community centres.

Monitoring and enforcement of marketing conduct compliance

The Commission’s regulatory program for 2009-10 includes the following initiatives, which will be enhanced to address the issues raised in the African community report and at the workshops:

- A compliance review of all retailers' complaints-handling processes and systems between June-September 2009, the results of which will be published on the Commission's website. Additional attention will be given to how retailers handle complaints from people from non-English speaking backgrounds and financial counsellors.
- A compliance review of *Guideline 19: Energy Product Disclosure* to ensure that retailers are complying with the requirement to provide a written offer summary to domestic customers in accordance with the obligations.⁸ The offer summary sets out simply and clearly the tariff and terms and conditions of the contract the retailers are offering to customers, which they can use to compare with other offers if they wish. The review will consider how this essential information could more effectively be provided to people from non-English speaking backgrounds.
- A review of retailers' marketing material, including telemarketing scripts, to ensure they are appropriate for customers with language or literacy difficulties and that customers are provided with sufficient information and assistance to provide their explicit informed consent to a new market contract. Consultation will particularly occur with the staff of the Footscray Legal Centre and members of the African community to assess its appropriateness.

Monitoring and review

The *Respecting Customers – Regulating Marketing Conduct 2009-10* program will be continuously reviewed within the Commission.

A status report on actions to date will be incorporated in the Commission's *Energy Retailers' Compliance Report 2008-09* to be published in December 2009.

A final report on *Respecting Customers - Marketing Conduct Regulatory Program 2009-10*, its implementation and issues identified through the implementation, will be published in June 2010.

These reports will incorporate progress on initiatives arising from the African Community report.

⁸ See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Codes+and+Guidelines/>