



# ENERGY RETAILERS COMPLIANCE REPORT

2013–14

April 2015



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# PREFACE

Energy retailers are required to comply with a range of regulatory obligations, and breaches of these obligations are reported periodically to the Commission. This report provides an account of non-compliance provided by retailers for the 2013-14 financial year.

During 2013-14, the retailers reported 1274 breaches of codes, guidelines and other regulatory instruments. This is a significant increase from the 675 breaches reported in the previous 12 months. A breach is counted when a retailer fails to meet one of the regulatory obligations that apply. Depending on the nature of the breach, it may affect one customer or it may affect many customers; sometimes thousands. The Commission considers all reportable breaches to be serious matters, but is particularly concerned with the alarming rise in the number of wrongful disconnections, which accounted for 1022 of the total breaches.<sup>1</sup>

The Commission is currently conducting an inquiry into ‘best practice’ financial hardship policies and practices of energy retailers. A large portion of the wrongful disconnections reported in 2013-14 were due to non-compliance with clauses of the Retail Code that are designed specifically to protect customers who may be facing payment difficulty. We are focused intently on hardship, and our work in this area includes an assessment of retailers’ policies. The ESC’s audit program, which is currently underway, will target many of the retailers’ policies to see if the business’s internal practices and procedures are contributing to the high number of errors made by retailer’s staff or agents that have led to wrongful disconnections.

In their responses to questions about the rising numbers, some retailers appear to accept that a certain number of wrongful disconnections are unavoidable, and that an

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<sup>1</sup> Every case of a customer being wrongfully disconnected is counted as a separate breach.

increase in disconnection activity leads inevitably to an increase in wrongful disconnections. The Commission does not share or accept this view and expects retailers to implement systems toward the elimination of wrongful disconnections. If retailers expect disconnection numbers to increase then they are obliged to ensure their process for disconnecting customers are improved ahead of that increase in disconnection activity.

Under reforms proposed by the Government, the Commission expects to publish more frequent compliance reports and extend its enforcement powers. The Commission is planning to focus on hardship and compliance in the next twelve months. We are upgrading our reporting systems in order to be more proactive in dealing with incidents of non-compliance. Our audit program will allow us to assess and report publicly on retailers' compliance frameworks by the end of 2015.

Dr Ron Ben-David

Chairperson

# 1 INTRODUCTION

## 1.1 THE PURPOSE OF THIS REPORT

The Essential Services Commission (Commission) is the independent regulator of energy businesses in Victoria. The Commission licences businesses that generate, supply and sell energy, and establishes codes and guidelines to regulate these businesses, to promote the long term interests of Victorian consumers with regard to the price, quality and reliability of essential services.

The purpose of this report is to:

- Give an overview of the energy retailers' compliance with their regulatory obligations over the 2013-14 financial year
- Discuss the Commission's compliance activities for 2013-14, and
- Outline the Commission's compliance activities for 2015.

During the 2013-14 period, 24 licensed electricity retailers were active in the residential and small business market. Of these, ten were also licensed to sell gas to these customers.

## 1.2 REGULATORY FRAMEWORK – RETAIL ENERGY BUSINESSES

The energy retail businesses in Victoria are governed by three principal Acts:

- the *Electricity Industry Act 2000* (EI Act)
- the *Gas Industry Act 2001* (GI Act)
- the *Essential Services Commission Act 2001* (ESC Act)

As well as imposing obligations directly on the businesses, the Acts empower the Commission to issue licences and publish codes and guidelines that regulate the conduct of the businesses.

Provisions of the EI Act and the GI Act, and Orders in Council made under those Acts, establish protections for customers. These protections take several forms, including licence conditions with which the businesses must comply in dealing with their customers, as well as processes for monitoring, reporting and auditing compliance, and enforcement action the Commission can take against non-compliant retailers.

Further protection is extended to domestic and small business customers, mainly through the operation of the Commission's Energy Retail Code (Retail Code) and the Code of Conduct for Marketing Retail Energy in Victoria (Marketing Code).<sup>2</sup>

The Retail Code sets out the terms and conditions of energy contracts that exist between retailers and their customers who have not actively sought out or accepted a market offer. It contains provisions around the contents of bills; keeping adequate records of life support customers; and the grounds for disconnecting customers. The Retail Code also sets out terms and conditions of the retailers' market offers and defines which of these terms and conditions can be altered by agreement between a retailer and a customer.

The Marketing Code sets out standards to protect customers in relation to door-to-door or other forms of marketing of energy contracts, and related training and record-keeping requirements.

### **1.3 OUR APPROACH TO COMPLIANCE AND ENFORCEMENT**

The Commission encourages a culture of compliance among the regulated businesses through cooperation and persuasion where possible. The Australian Standard

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<sup>2</sup> The Retail Code was updated in August 2013 to version 10a. The Commission assessed retailers' compliance against versions 10 and 10a as appropriate. Version 10 was amended to version 10a to implement the advanced metering infrastructure tariffs Order in Council 2013.

AS 3806-2006 Compliance Program provides principles and guidance for implementing a flexible and effective compliance program.

Such a program, if implemented and resourced effectively, builds compliance management and monitoring into the normal operating procedures of a business. This gives appropriate assurance that a retailer's staff can detect actual or potential compliance failures and respond promptly.

As a condition of their licences, retailers must monitor their compliance and self-report breaches to the Commission. Breaches are classified as Type 1, Type 2 or Type 3. Type 1 breaches are those that can cause the most significant customer detriment, and must be reported immediately. Type 2 and Type 3 breaches must be reported every 6 months and 12 months respectively.<sup>3</sup>

The Commission monitors the retailers' compliance with the obligations through various measures including:

- **Responding to notifications of breaches** – if retailers become aware of a material breach of a regulatory obligation they must notify the Commission in accordance with the Commission's Compliance Reporting Manual. The Commission will respond by investigating material instances of non-compliance.
- **Responding to complaints** – if a consumer complaint reflects a material or systemic breach of regulatory obligations, the Commission will conduct an investigation.
- **Regulatory compliance audits** – each retailer is required under its licence to appoint an independent auditor to conduct audits of its compliance with its regulatory obligations as directed by the Commission.
- **Assessing wrongful disconnection referrals from EWOV** – Where the Energy and Water Ombudsman (Victoria) (EWOV) and the retailer or customer are unable to agree on a resolution, EWOV will refer the complaint to the Commission for decision.

When we investigate breaches we require assurance that the retailer has:

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<sup>3</sup> A more detailed description of Type 1, Type 2 and Type 3 breaches is given in Appendix A.

- identified the cause of the breach
- put remedial action in place to stop the breach
- addressed any detriment that customers may have suffered
- implemented (or made plans to implement) corrective action to ensure the breach does not reoccur.

Where retailers' compliance reports, independent audits or other reports show the need, the Commission can sanction retailers for breaches of their regulatory obligations. The Commission can respond with voluntary administrative undertakings, statutory based enforceable orders, civil penalties, and ultimately revocation of a licence.

During 2015, the Commission expects to implement improvements to its compliance monitoring, reporting and enforcement frameworks in line with the Government's policies. In preparation, the Commission will work with stakeholders to streamline the breach reporting process by reviewing the regulatory obligations and classifications that retailers report against, and preparing guidance for retailers to improve the consistency of their reports.

## **1.4 RELIABILITY OF RETAILERS' COMPLIANCE REPORTING**

The reliability of the reports of compliance breaches that we receive from retailers depends on their capacity and willingness to detect non-compliance and report accurately. As required, the retailers assure the Commission that their compliance systems are effective and their reports of non-compliance are complete.

Such assurances and reports need to be tested periodically. The ability of the energy retailers' compliance systems to prevent or detect non-compliance, and the accuracy of the compliance reports they send the Commission are tested in the Commission's regulatory audit program.

During the 2014-15 financial year, the Commission commenced a retailer audit program and intends to audit the majority of retailers' compliance frameworks by the end of 2015. The audits will assess how well the frameworks are integrated with

policies, systems, management and practices of businesses. The auditors will evaluate how well the retailers have complied with selected obligations in practice and the results will be reported publicly.

## **1.5 OUR RELATIONSHIP WITH OTHER ORGANISATIONS**

The Commission has memoranda of understanding with other jurisdictional regulators. This assists us with our compliance and monitoring activities. We refer matters that we consider to be within the jurisdiction of other regulators such as the ACCC and Consumer Affairs Victoria.

Where potentially significant and widespread non-compliance issues are identified, the Commission will consult with the relevant agency to ensure a consistent and effective response to addressing the non-compliance.

We meet regularly with EWOV to identify significant compliance issues that may require intervention and in some cases enforcement action. Additionally, in 2013-14 the Commission continued its regular engagement with the Australian Energy Regulator and the Department of State Development, Business and Innovation (DSDBI).<sup>4</sup>

## **1.6 STRUCTURE OF THIS REPORT**

The remainder of this report is structured as follows:

- Chapter 2 gives an overview of the breaches reported by the retailers and the Commission's monitoring activities.
- Chapter 3 details disconnection breaches reported by retailers and the wrongful disconnection compensation cases referred to the Commission by EWOV.
- Chapter 4 details marketing other significant breaches reported by retailers.

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<sup>4</sup> From January 2015, DSDBI has been incorporated into the Department of Economic Development, Jobs, Transport and Resources.

- Chapter 5 describes EnergyAustralia’s compliance issues in 2013-14.
- Chapter 6 outlines the Commission’s upcoming activities in the area of compliance.
- Appendix A describes each breach type and defines isolated and systemic breaches.
- Appendix B provides a summary of the number of breaches reported by each energy retailer.
- Appendix C provides a summary of the breach reports submitted by each retailer.

## 2 OVERVIEW OF BREACHES IN 2013-14

As a condition of being licensed, Victorian energy retailers are required to comply with regulations and obligations contained in the codes and guidelines prepared by the Commission to protect customers. The retailers must regularly self-report breaches of their regulatory obligations to the Commission.

Regulatory obligations are classified as Type 1, Type 2 and Type 3. Type 1 obligations are those where non-compliance would have a very serious impact on customers. Type 2 regulatory obligations are those where non-compliance would seriously impact customers. All other obligations are classified as Type 3. Over time, the classification system has become less clear. The Commission considers it timely to address this issue. This is discussed, with other future work, in Chapter 6.

Breaches of any type can affect one or many customers. Retailers state the number of customers affected by a breach when they report to the Commission. Breaches are usually reported promptly after the event but retailers can report anticipated breaches of Type 1 regulatory obligations if they expect an event is likely to occur.

This chapter provides an overview of the breaches reported to the Commission during 2013-14.

We have reported EnergyAustralia's non-compliance separately in Chapter 5 as it gave a number of undertakings and assurances<sup>5</sup> to the Commission during the year to address several serious systemic breaches.

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<sup>5</sup> An undertaking is a guarantee by the retailer - generally given in a form of words that the Commission sets out - that they will undertake certain actions to comply with specified regulatory obligations by an agreed deadline, or there will be stated consequences, which the retailer acknowledges.

An assurance is a clear statement that the retailer makes to the Commission, verifying that they have complied or will comply with certain regulatory obligations.

## 2.1 SUMMARY OF RETAILERS' SUBMISSIONS

The number of breaches reported to us increased significantly in 2013-14; with instances of wrongful disconnection more than doubling from 442 to 1022. The Commission is very concerned that retailers do not appear to have the requisite safeguards in place to ensure that customers are not wrongfully disconnected. Particularly worrying is the case of a customer on life support whose supply was disconnected due to a basic error. Fortunately the customer was reconnected promptly and was unharmed.

Several retailers have attributed their increases to improved internal processes to identify wrongful disconnections after they have occurred. This may explain the growth in the reported numbers, but it does not provide the Commission with a satisfactory explanation of why the activity leading to wrongful disconnections persists.

Table 2.1 summarises the number and type of breaches reported to the Commission.

**TABLE 2.1 TOTAL BREACHES BY REGULATORY INSTRUMENT AND TYPE**  
2012-13 and 2013-14

Regulatory Instrument/ Breach type <sup>a</sup>	2012-13	2013-14
<b>Retail Code – Disconnection clauses<sup>b</sup></b>		
Type 1	426	1 004
Type 3	16	18
<b>Total</b>	<b>442</b>	<b>1 022</b>
<b>Retail Code – Other clauses<sup>c</sup></b>		
Type 1	19	12
Type 2	71	88
Type 3	4	5
<b>Total</b>	<b>94</b>	<b>105</b>
<b>Marketing Code<sup>c</sup></b>		
Type 1	117	130
Type 2	5	7
Type 3		1
<b>Total</b>	<b>122</b>	<b>138</b>

<b>Other regulatory instruments<sup>c</sup></b>		
Type 1	1	3
Type 2	6	6
Type 3	10	5
<b>Total</b>	<b>17</b>	<b>14</b>
<b>GRAND TOTAL</b>	<b>675</b>	<b>1 279</b>

<sup>a</sup> Compliance breaches are classified as Type 1, 2 or 3 depending on their severity. The classifications are described in detail in Appendix A.

<sup>b</sup> To compare results over time, we have counted each customer wrongfully disconnected as one breach

<sup>c</sup> Breaches in this category may affect more than one customer

### 2.1.1 WRONGFUL DISCONNECTIONS

The majority of wrongful disconnections in 2013-14 were attributed to errors by staff or agents and several retailers also cited an increased focus on credit management. Corrective action for most retailers consisted of retraining staff or agents to follow internal policies and procedures.

The Commission is concerned that despite retraining, wrongful disconnections continued to occur for the same reasons. This could indicate underlying deficiencies in the retailers' policies and processes in relation to disconnections, especially as retraining was commonly cited as a remedy for wrongful disconnections in the 2012-13 compliance report. The Retail Code is specific about the process a retailer must follow before disconnecting a customer, and retailers need to reflect it precisely in their everyday transactions.

Many of the protections of the Retail Code are intended specifically to maintain supply to customers who may be facing payment difficulties, and when these are breached, the impact extends to all the people who live at the premises. The scale of the problem – over 1000 cases – is very concerning, and the Commission will be monitoring this area very closely.

Momentum Energy advised that it wrongfully disconnected a customer relying on life support equipment after a sales agent did not flag the customer in the retailer's IT system as using life support equipment. This is an inexcusable breach, and illustrates the importance of comprehensive procedures to safeguard against careless errors. Momentum assured the Commission that the cause of the issue had been identified

and rectified. The Commission asked all retailers for assurances that they had processes in place to protect customers on life support from disconnection.

### **2.1.2 MARKETING CODE BREACHES**

The Commission considers that breaches of the Marketing Code are very serious because they impact consumer confidence in the energy market. In 2013-14, the retailers have again reported a significant number of Type 1 Marketing Code breaches, many of which affect multiple customers.

The breaches reported by the retailers included sales agents providing customers with incorrect information, transferring customers without their explicit informed consent and signing customers who were unable to fully understand the content of the contracts that they were signing.

Simply Energy reported half (65 breaches) of the total number (130) of Type 1 Marketing Code breaches, and advised the Commission that this was the consequence of significant growth in its customer base over the period, as well as an improved capability to detect breaches. Retailers generally reported that most breaches were caused by inappropriate actions of third party sales agents.

The Commission acknowledges that retailers will from time to time undertake marketing campaigns to increase market share. This does not excuse an increase in marketing breaches. The Commission requires retailers to comply with the Marketing Code during these activities, and reminds retailers that they are responsible for the conduct of their third party agents in these matters.

### **2.1.3 BILLING PROBLEMS**

The Commission is concerned that billing system problems feature again as the cause of a significant number of reported breaches. These breaches have resulted in customers receiving late or delayed bills, bills missing information and customers being

incorrectly charged. These breaches are serious because they can lead to ‘bill shock’<sup>6</sup> which may cause significant payment difficulties for some customers.

EnergyAustralia reported that it issued late and delayed bills because its IT system prevented bills from being issued within the required timeframes. EnergyAustralia had rectified the problem by February 2014.

AGL, Neighbourhood Energy and Origin Energy all reported cases where bills did not contain start and end index meter readings as required by the Retail Code. These breaches affected 290 000, 23 000 and 15 000 customers respectively.

The Commission recommends that retailers ensure they have an effective process to review proposed changes to business systems and corresponding procedures for continuing compliance when implementing changes, and that they adequately test changes to systems and procedures prior to deployment.

## 2.1.4 OTHER BREACHES

The Commission is concerned by breaches that result in customers not receiving contract renewal notices on time – a significant breach of this nature, affecting over 1600 customers was reported by Simply Energy. This lack of information from retailers potentially prevents customers from making timely and informed decisions about their energy contract and impacts efficient market operation.

The Commission considers that breaches involving customers being overcharged are serious – a breach of this nature was reported by Australian Power and Gas (APG).<sup>7</sup> Further, in this case the overcharge was a result of APG misinterpreting the requirements of the Retail Code in relation to additional retail charges.<sup>8</sup> The Commission requires that all retailers must understand their regulatory obligations. Retail licences are issued on the basis that the retailer has the technical capacity to

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<sup>6</sup> ‘Bill shock’ can be defined as a larger than expected bill which can lead to financial stress.

<sup>7</sup> AGL completed the purchase of Australian Power and Gas in April 2014.

<sup>8</sup> An additional retail charge means a charge relating to the sale of energy by a retailer to a customer other than a charge based on the tariff applicable to the customer.

fully comply with its regulatory obligations, and must maintain an ongoing capacity to do so as a condition of its licence.

## **2.2 COMMISSION'S ACTIONS IN RESPONSE TO BREACHES**

During the 2013-14 financial year the Commission implemented a number of initiatives to ensure retailers met their compliance obligations.

### **2.2.1 UNDERTAKINGS AND ASSURANCES**

EnergyAustralia gave assurances and undertakings to correct a number of issues related to customer billing, early termination fees and obtaining explicit informed consent before transferring customers from other retailers. Details of these can be found in Chapter 5.

Neighbourhood Energy and Origin Energy entered into administrative undertakings to provide smart meter customers with bills containing start and end index reads. Both retailers successfully met the undertakings.

APG gave the Commission an administrative undertaking that it would use best endeavours to identify, contact and reimburse customers who were overcharged an early termination fee. In June 2014, the Commission wrote to APG to state that it was satisfied that APG had used best endeavours to contact and reimburse all overcharged customers.

### **2.2.2 RETAIL REGULATORY AUDITS**

The Commission has commenced a program of independent audits of energy retailers' compliance with their regulatory obligations. The audits cover a range of areas of the retailers' operations where non-compliance would have significant consequences for customers, including:

- Disconnections: does the retailer have the policies and procedures in place to ensure that customers are not wrongfully disconnected?

- Life support: does the retailer ensure that the records of customers using life support are accurate and complete?
- Marketing conduct: are sales representatives trained and retested to ensure they are familiar with the regulatory obligations that relate to marketing energy?
- Billing: does the retailer monitor the timeliness and content of bills, and have processes in place to identify and address cases where customers are incorrectly charged?
- Compliance monitoring and reporting: does the retailer have reliable systems in place to monitor and report on compliance with their regulatory obligations?
- Complaints: does the retailer have an effective complaints handling system that enables the retailer to identify the root cause of systemic issues?

Where we find non-compliance with these obligations we will require the retailer to propose and implement corrective action. We will publish the findings of each audit on our website at [www.esc.vic.gov.au](http://www.esc.vic.gov.au).

### **2.2.3 MORE FREQUENT REPORTING AND ENFORCEMENT**

During 2015, the Commission expects to implement improvements to its compliance monitoring, reporting and enforcement frameworks in line with the Government's policies. This could include:

- Releasing more frequent reports on energy retailers' compliance
- Requiring retailers to report wrongful disconnections as a performance indicator
- New powers to issue court enforceable undertakings and infringement notices.

In addition, the Commission may conduct issue-specific audits of retailers based on reported breaches, as occurred in 2013-14 in the case of EnergyAustralia's billing system failures (see Chapter 5).



## 3 WRONGFUL DISCONNECTIONS

Consumers are protected from being disconnected in certain circumstances by explicit clauses in the Retail Code. These clauses are in place to ensure consumers have reasonable opportunities to pay their bill, that relevant information is offered to households that may be facing payment difficulties, and to ensure disconnection is a last resort. Cases of wrongful disconnection are a serious matter, and the Commission scrutinises these breach reports to ensure retailers are making sufficient efforts to meet their regulatory obligations.

This chapter looks in detail at retailers' reports of wrongful disconnection, including cases referred to the ESC by EWOV for decision.

### 3.1 REPORTING OF WRONGFUL DISCONNECTIONS

In order to lawfully disconnect a customer, a retailer must follow a particular process. This is to ensure customers are protected from being disconnected unfairly or without being provided opportunities to settle outstanding bills with their retailer. If a retailer fails to follow the process and disconnects a customer for non-payment, customers may complain to EWOV and may be compensated by the retailer.

Wrongful disconnection can cause considerable hardship and inconvenience to the customers involved, who lose access to an essential service contrary to statutory consumer protections, and compensation is payable by retailers.<sup>9</sup>

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<sup>9</sup> Since 2004, energy retailers have been required to make a payment to a customer who is disconnected from supply in a manner which is not in accordance with their contractual terms and conditions. Payment is set at \$250 for each fuel (electricity and gas) and for each day that supply is disconnected. If the customer does not contact the retailer within 14 days the payment amount is capped at \$3,500.

The Commission requires the retailers to report wrongful disconnection payments with information on the nature of the incident, the cause of the breach, the payment made and the actions planned to address the cause of the wrongful disconnection.

Retailers become aware of wrongful disconnections from three sources:

- Self-identified – where the retailer realises that a customer has been wrongfully disconnected, and pays the customer the required wrongful disconnection compensation
- Direct from customers – where a customer who has been disconnected contacts the retailer to question the circumstances of the action, and establishes that they are entitled to a wrongful disconnection payment
- EWOV – where a customer who has been disconnected contacts EWOV, which establishes that a payment is required during its investigation.<sup>10</sup>

The majority of wrongful disconnections reported are brought to retailers' attention by EWOV, which identifies wrongful disconnections through its casework and advises retailers that a wrongful disconnection payment is required. The Commission reviews wrongful disconnection cases where a customer or retailer does not agree with EWOV's assessment.

## 3.2 OVERALL NUMBER OF WRONGFUL DISCONNECTIONS

In 2013-14, the energy retailers reported wrongfully disconnecting 1022 customers. This is a significant and concerning increase from the 442 cases reported in 2012-13. Table 3.1 lists each retailer's total number of wrongful disconnections over the two years to 30 June 2014. The Commission asked retailers to provide explanations for the rise in non-compliance leading to disconnection.

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<sup>10</sup> It should be noted that some disputes are resolved at EWOV by the retailer making a "payment without admission of breach".

**TABLE 3.1 WRONGFUL DISCONNECTIONS BY RETAILER**  
Number of customers

<b>Retailer<sup>a</sup></b>	<b>2012-13</b>	<b>2013-14</b>
AGL Sales	140	116
Alinta Energy	0	53
Australian Power and Gas	14	130
BlueNRG <sup>b</sup>	-	1
Click Energy	2	18
Dodo Power and Gas <sup>b</sup>	-	1
EnergyAustralia	104	265
Lumo Energy	41	33
Momentum Energy	2	24
Neighbourhood Energy	0	42
Origin Energy	92	266
Powerdirect <sup>b</sup>	-	9
QEnergy <sup>b</sup>	-	1
Red Energy	12	25
Simply Energy	35	38
<b>Total All Retailers</b>	<b>442</b>	<b>1 022</b>

<sup>a</sup> This list only includes energy retailers that reported wrongful disconnections in either or both years.

<sup>b</sup> Retailer did not report figures in 2012-13

### 3.2.1 RETAILERS' RESPONSES

#### IMPROVED IDENTIFICATION

EnergyAustralia reported that it reviewed its compliance program and delivered compliance training across the organisation. This resulted in enhanced staff awareness of regulatory obligations and an increase in the number of breaches that were identified by EnergyAustralia. Around 50 per cent of its wrongful disconnections were self-identified.

Australian Power and Gas advised that the increase in wrongful disconnections was largely attributable to an improved wrongful disconnection detection process following its acquisition by AGL.

Origin Energy advised that it improved its internal processes to identify potential wrongful disconnections. The Commission observed an increase in Origin's self-identified breaches in the second half of the reporting period.

While the Commission is encouraged that retailers have put in place systems to self-identify customers who were wrongfully disconnected, we expect that these systems will also be used to identify the cause of the wrongful disconnection and ensure that it is not repeated.

## **NON-COMPLIANT NOTICES**

Click Energy reported several cases of disconnection after customers were issued non-compliant disconnection notices.

Momentum Energy reported that the increase in wrongful disconnections was primarily due to non-compliant disconnection warning notices. To address the issue, Momentum Energy advised that it put in place processes to ensure changes to letters and notices are reviewed and approved by the Compliance team.

The Commission expects that retailers will pay careful attention to the requirements of the Retail Code when designing and implementing changes to its bills and notices. The requirements under the Retail Code are clearly stated, and must be integrated into business processes.

## **INCREASED DISCONNECTION/CREDIT MANAGEMENT ACTIVITY**

Alinta Energy (which also owns Neighbourhood Energy), Click Energy and Origin Energy advised that they increased the number of disconnections in 2013-14. Alinta Energy (including Neighbourhood Energy) and Click Energy also advised customer credit management became a focus, which increased disconnection activity and the potential for wrongful disconnections.

Although credit management is a part of sound business practice, retailers must comply with the relevant clauses in the Retail Code before disconnecting a customer. Retailers' credit management processes need to include steps to identify circumstances where customers cannot be disconnected. The Commission does not accept that a greater focus on credit management resulting in increased disconnections would necessarily lead to a proportionate increase in *wrongful*

disconnections. The Commission rejects any suggestion that there is an acceptable rate of non-compliance when it comes to wrongful disconnections.

### **ERRORS BY RETAILER STAFF OR AGENTS**

Red Energy reported that the main reason for the increase in wrongful disconnections were errors made by staff. Red Energy has advised that it has reviewed the way it trains staff in relation to disconnecting customers.

## **3.3 WRONGFUL DISCONNECTIONS BY CLAUSE**

Most breaches of the Retail Code by the retailers related to clause 13 which details the procedures a retailer must follow before disconnecting a customer.

**TABLE 3.2 RETAILER BREACHES BY CLAUSE 2013-14**  
Retail Code Version 10a

<b>Clause</b>	<b>Breaches (no.)</b>
<b>Type 1</b>	
11.2 & 11.4(b) – Payment difficulties	252
13.1-13.4 – Grounds for disconnection	713
14 – No disconnection	39
<b>Type 3</b>	
13.5 – Customer’s right to request disconnection	18
<b>TOTAL</b>	<b>1 022</b>

### **CLAUSES 11.2 & 11.4(b) – PAYMENT DIFFICULTIES**

Almost one quarter of all wrongful disconnection cases were a result of retailers not correctly assessing whether a customer was in financial hardship, or not offering them assistance before disconnecting them. Under the Retail Code assistance includes offering the customer a payment instalment plan, information on the Utility Relief Grant Scheme (URGS), energy efficiency advice and providing advice on the availability of independent financial counselling.

AGL, Australian Power and Gas, Neighbourhood Energy and Origin Energy reported the highest numbers of breaches of this clause. The main reason for non-compliance was staff or agents failing to recognise that a customer was experiencing payment difficulties. These cases became evident after the customer contacted EWOV on being disconnected, and EWOV identified that the retailer did not follow the requirements of the Retail Code.

To address these breaches, the retailers typically retrained their staff to be better able to identify customers experiencing payment difficulties.

### **CLAUSE 13 – GROUNDS FOR DISCONNECTION**

The Retail Code sets out the steps that the retailer must take before disconnecting a customer. Clause 13 covers the content and timing of notices and the timeframes for payment that a retailer must offer the customer. Many of the steps in clause 13 are designed to ensure retailers identify customers facing payment difficulties.

Most retailers reported a range of errors by staff or third party agents that resulted in wrongful disconnection. For example:

- Staff or agents failing to check whether accounts had been paid before ordering a disconnection.
- Staff or agents disconnecting customers for a previous resident's debt.
- Staff or agents did not use best endeavours to contact the customer prior to disconnection
- Staff incorrectly processing customers' requests to close an account on leaving a property.

The other types of breaches captured under this section are disconnection warning notices that are not compliant, not received by the customer or not provided within the required timeframe. A number of retailers reported that they had issued disconnection warning notices that did not meet these requirements.

The most common reasons for this were:

- The retailer did not update mailing addresses correctly
- Disconnection warning letters contained the wrong timeframes for disconnection.

Alinta Energy, Click Energy, EnergyAustralia and Momentum Energy reported systemic breaches that resulted in incorrect timeframes for disconnection being included in warning letters. Each retailer amended its internal processes to ensure that disconnection warning notices are now compliant with the Retail Code.

### **COMMISSION RESPONSE – CLAUSES 11 AND 13**

The main reason cited for breaches of clauses 11 and 13 were errors by staff or agents. Typically the retailers addressed wrongful disconnections caused by these errors by retraining staff or third party agents to follow the correct procedures or policies. The Commission understands that mistakes will happen, especially where there are many individual transactions. However, the Commission considers that there must be strict safeguards in place where mistakes can lead to wrongful disconnection. Errors by staff or agents could be regarded as a systemic issue if the policies, processes and procedures are inadequate or ambiguous and are seen to contribute significantly to the number of mistakes being made.

The Commission is concerned with the increase in errors by staff or agents and is auditing retailers to assess whether the processes and procedures in place are sufficiently attentive to the requirements of the Retail Code.

### **CLAUSE 14 – NO DISCONNECTION**

The Retail Code contains seven specific instances where a retailer cannot disconnect a customer. For example, customers cannot be disconnected when they owe the retailer less than \$120 or the customer has an open complaint with EWOV. The Retail Code also states that customers on registered life-support equipment cannot be disconnected.

During the year, the Commission was notified of a serious breach of clause 14 of the Retail Code where Momentum Energy wrongfully disconnected a customer requiring life support equipment.

Momentum Energy did not flag a customer using life support equipment in its customer database, and later ordered the disconnection of the customer for non-payment. Momentum Energy has addressed this problem by placing additional IT controls to prompt the correct identification of a customer using life support equipment and requiring staff to undertake refresher training to understand life support obligations. The

error in Momentum Energy's records also affected the records of the distributor concerned, and the disconnection order was carried out. Fortunately, the customer was unharmed.

In response to this incident, the Commission wrote to all energy retail businesses and electricity distributors. We identified the chain of events leading to the disconnection. We made clear that all retailers and distributors must satisfy themselves that they had adequate controls over the capture and recording, or receipt and confirmation, of this information, to prevent or detect unintended alteration. We identified specific points of control that the businesses needed to verify in the update and communication process involving changes to their databases.

Our current independent audit program is assessing whether retailers have systems in place to ensure that the records of customers using life support are accurate and complete.

### **3.3.2 SYSTEMIC NON-COMPLIANT DISCONNECTION NOTICES**

The Commission continues to receive notification from retailers of non-compliant disconnection notices. While the number of non-compliant disconnection notices does not necessarily indicate the number of customers wrongfully disconnected, they represent a serious compliance failure.

We reported in the 2012-13 Compliance Report that over 60 000 AGL, and approximately 10 000 Powerdirect, non-compliant disconnection warning notices were issued to customers — both businesses incorrectly calculated the timeframes resulting in the disconnection warning period stated on the notices ending in less than the seven days required by the Retail Code.<sup>11</sup> Both retailers advised the Commission that they corrected this problem and that their disconnection notices are now compliant. An as yet unknown number of customers were disconnected and the Commission is working on the matter with the retailer.

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<sup>11</sup> Energy Retail Code version 10, which was in effect at the time.

The Commission is working through a similar issue where APG (now AGL) disconnected customers who were sent disconnection notices showing the incorrect warning period.

### **3.4 CASES REFERRED TO THE COMMISSION BY EWOV**

The Commission becomes involved in a wrongful disconnection case only after a customer makes a complaint to EWOV and the customer or the retailer disagrees with EWOV's proposed resolution. In these cases, the Commission makes a final decision based on material provided by all parties.

#### **3.4.1 CASES REQUIRING COMMISSION INVOLVEMENT**

In 2013-14, the Commission decided ten cases involving AGL and two cases involving Lumo Energy. The Commission decided that ten of these twelve cases represented wrongful disconnections for which compensation was payable.

##### **AGL**

The Commission found eight of the ten AGL cases were wrongful. The reasons for our decisions included:

- AGL did not use reasonable endeavours to cancel a previous disconnection request for a consumer who was no longer its customer at the time the disconnection was effected.
- AGL did not use reasonable endeavours to cancel a disconnection request for premises into which a new resident (who was not its customer) had moved.
- AGL did not appropriately assess the customer's capacity to pay and offer an instalment plan in accordance with clauses 11.2 and 13.2 of the Retail Code, despite the customer having shown sufficient signs that their failure to pay was due to a lack of sufficient income.
- AGL did not use best endeavours to contact a customer who failed to pay their bill due to a lack of sufficient income, prior to disconnecting them, as required by clause 13.2(a)(ii) of the Retail Code.

- AGL failed to provide a customer financial advice as required by clause 13.1(d) of the Retail Code.

## **LUMO ENERGY**

The Commission found that both of the Lumo Energy disconnections were wrongful. Lumo failed to comply with the terms and conditions of its contract with the customer and clause 13.4 of the Retail Code as it did not deliver a disconnection warning notice to the customer at the supply address, prior to disconnection.

# 4 OTHER BREACHES

This chapter summarises the breaches of the Retail Code, Marketing Code and other regulatory instruments which did not lead to wrongful disconnection.

## 4.1 RETAIL CODE – OTHER CLAUSES

### 4.1.1 TYPE 1 BREACHES

The breaches of the Retail Code that are classified as Type 1 (in addition to those leading to wrongful disconnection) relate to serious matters such as the obligations concerned with the charging of early termination fees and additional retail charges, the requirement to include EWOV's phone number on disconnection notices, and the information that must be provided to customers prior to the expiry of a fixed term contract.

Non-compliance with regulations requiring the retailer to inform the distributor of an address where life support equipment or continued supply is necessary is also classified as a Type 1 breach.

The most significant breaches reported to the Commission in this category for the 2013-14 year were:

- Origin Energy advised the Commission that it did not conduct a validation of its life support records during the 2012-13 reporting period as required by clause 26.7 of the Retail Code. This clause requires retailers at least once a year to take all reasonable steps to ensure the completeness of its records. Origin Energy advised the Commission that it validated customer supply addresses identified as requiring life support equipment with all distributors by the end of December 2013. The

Commission's energy retailer audit program will include this area of all retailers' operations to ensure that life support records are accurate and complete.

- More than 1600 Simply Energy customers were not provided with a contract renewal notice within the required timeframes as required by clause 24.3. This was because an automated renewals process did not correctly set contract start dates. Simply Energy rectified the problem to ensure later renewal notices were issued within the timeframes required by the Retail Code. To ensure customers were not disadvantaged, Simply Energy processed outstanding notices based on their current offer.
- Australian Power and Gas (APG) imposed additional retail charges on approximately 600 customers of over \$19 700 in total. The charges were applicable to market offer customers and were incorrectly applied to standing offer customers. APG addressed the issue by crediting the amount overcharged to the customers' next bills.
- APG overcharged early termination fees to more than 11 400 electricity and gas customers, resulting in a breach of clause 24.1. APG gave the Commission an administrative undertaking that it would use best endeavours to identify, contact and reimburse customers. By 20 May 2014 about 87 per cent (10 000) of the affected customers had been reimbursed. In June 2014 the Commission wrote to APG to state that it was satisfied that APG had used best endeavours to contact and reimburse all overcharged customers. The details of all monies that remained unclaimed were entered into AGL's business register of unclaimed money and processed according to AGL's unclaimed money policy, pursuant to the *Unclaimed Money Act 2008* (Vic).

#### 4.1.2 TYPE 2 BREACHES

Type 2 breaches relate to the retailer's obligation to connect, billing cycles, information that must be included in the bill, the basis of bills, undercharging and overcharging and when payment is due.

Breaches of these clauses are classed as Type 2, but are still very serious because they can lead to 'bill shock' which may cause significant payment difficulties for some customers. In 2013-14, there was an increase in the number of breaches that caused

customers to receive delayed or incorrect bills. The main reason cited by the energy retailers for these breaches was changes made to the IT systems that are used to generate customer bills.

The Commission requires retailers to have an effective process to review proposed changes to business systems and corresponding procedures for continuing compliance when implementing changes, and that they adequately test changes to systems and procedures prior to deployment. This will ensure that system changes do not compromise the customer's experience or lead to compliance breaches.

We consider these breaches to be systemic because of the large numbers of customers affected. Our independent audit program will assess whether retailers monitor the timeliness and content of bills, and have processes in place to identify and address cases where customers are incorrectly charged.

### **SIGNIFICANT NON-COMPLIANCE**

- AGL reported that over 290 000 customers with smart meters received bills that did not show the relevant index read for the end of the billing period as required by clause 4.2(h). This was due to a problem with the data validation process in AGL's billing system. AGL corrected the validation process in the billing system to prevent the problem from reoccurring. AGL also advised that it allowed customers to contact it at any time to request the missing data and/or request a compliant bill be reissued.
- Alinta Energy reported nine breaches that affected the bills of 1900 customers. The breaches resulted in customers receiving delayed bills or being incorrectly charged, resulting in breaches of clauses 3.1, 6.2 and 6.3. The cause of the breaches was changes to Alinta Energy's billing platform. Where customers received a delayed bill, they were given extra time to pay. Where a customer was incorrectly charged, their account was suspended to prevent further under or over charging and then the customer was rebilled the correct amount. Alinta Energy has made changes to its systems to prevent these problems from reoccurring.
- Click Energy reported nine breaches that affected the bills of about 16 000 customers. The breaches resulted in customers being overcharged or undercharged and customers not receiving bills, which is a breach of clauses 6.2, 6.3 and 4.2(k). Customers who were overcharged were provided with refunds. Click

Energy has not sought to recover funds from customers who were undercharged. The underlying cause of most of the breaches was the methodology that was used to estimate instalment bills for a specific product type. In September 2014, Click Energy changed the methodology by which the instalment bills are calculated. Click Energy advised that this change has addressed the problem. However, at the time of writing the compliance report some accounts are still in the process of being corrected.

- Dodo Power and Gas reported that 5000 customers did not receive bills that included monthly consumption graphs, resulting in a breach of clause 4.4. However at the time customers were able to see their consumption on the Dodo Power and Gas website. Dodo Power and Gas implemented corrective action to address the issue.
- Momentum Energy reported that it did not bill over 9400 customers at least every three months which is a breach of clause 3.1. This was because of delays in projects designed to improve the way concessions are allocated to certain customers. Momentum Energy has advised that it will continue to monitor billing cycles through exception reporting to ensure that customers are billed at least quarterly.
- Neighbourhood Energy reported that 23 000 customers with smart meters did not receive bills that displayed start and end index readings or include a graph displaying customers' monthly consumption as required by clause 4.2(h). The Commission required Neighbourhood Energy to enter into an administrative undertaking to address these issues. Neighbourhood Energy successfully met the requirements of the undertaking in February 2014.
- Origin Energy entered into an administrative undertaking with the Commission to include start and end index reads on the bills of its 15 000 Country Energy customers. Failure to include this information on bills results in a breach of clause 4.2(h). Origin Energy successfully met the requirements of the undertaking in October 2013.
- Origin Energy is also conducting a review to identify customers who were sold energy products that did not contain the features that the customers expected.. Once the analysis is complete, Origin Energy stated that it would contact affected customers to explain the error, and reimburse those customers who have been disadvantaged by the product mismatch. In addition, Origin Energy will not seek to

recover any ‘undercharge’ from a customer who has been advantaged. This incident relates to a breach of clauses 6.2 and 6.3.

- Red Energy overcharged more than 1300 customers because it did not correctly apply concessions to customer bills, resulting in a breach of clause 6.3. Red Energy identified the problem and put billing suspensions in place to avoid further incorrect bills being issued and where necessary reissued customers with the correct bill. Red Energy reported that the defect was fixed on 31 March 2014.

## 4.2 MARKETING CODE

The Marketing Code sets out standards to protect customers in relation to door-to-door or other forms of marketing of energy contracts, and related training and record-keeping requirements.<sup>12</sup> As in previous years, a number of retailers have reported breaches of the Marketing Code. This year, eight retailers reported 130 Type 1 breaches of the Marketing Code in total, which affected over 13 500 customers.

**TABLE 4.1 MARKETING CODE BREACHES BY RETAILER**  
2013-14

Retailer	Type 1 (no.)	Type 2 (no.)	Type 3 (no.)	Total (no.)
Alinta Energy	22	4		26
Blue NRG	1		1	2
Energy Australia	7	2		9
ERM Power	1			1
Lumo Energy	6			6
Origin Energy	13			13
Red Energy	15	1		16
Simply Energy	65			65
<b>TOTAL</b>	<b>130</b>	<b>7</b>	<b>1</b>	<b>138</b>

<sup>12</sup> The objectives of the Marketing Code are: to protect consumers and promote consumer confidence in the retail energy industry by identifying high standards of behaviour for marketing energy, to promote honesty, fairness and disclosure of information to consumers, to enhance efficient retail market operation by clarifying standards and promoting certainty and to reinforce that energy retail contracts are made with informed customer consent.

As in 2012-13, Simply Energy reported the most breaches, which this year affected over 4300 customers. The Commission is concerned about the number of breaches of the Marketing Code reported by Simply Energy and by other retailers. Non-compliant and inappropriate marketing activities by retailers and their agents can affect customers personally, diminish the effectiveness of the competitive market and undermine community confidence when participating in the market.

Our independent audit program will assess whether sales representatives are trained and retested to ensure they are familiar with the regulatory obligations that relate to marketing energy. To be clear, retailers are held fully responsible for the actions of their staff and agents in complying with the Marketing Code.

Most breaches reported by the retailers related to:

- The retailer or their agents signing up new customers without their explicit informed consent
- Sales agents failing to provide potential customers with the correct information about charges and rebates
- Sales agents ignoring 'do not knock' signs
- Sales agents failing to notify customers of the 10 day cooling off period
- Sales agents not explaining contract details to vulnerable customers
- The retailer failing to provide customers with the required contractual information within the required timeframe.

In the majority of cases, the retailer proposed and completed corrective actions to address the breach within the year. In many cases, where a sales agent or third party marketing firm failed to provide customers with the correct contractual information or gain a customer's explicit informed consent before transferring them, the retailer disciplined the agent. This usually took the form of retraining or, terminating the

contract with the agent, and if applicable de-registering the agent from Energy Assured Limited (EAL).<sup>13</sup>

Lumo Energy, Momentum Energy, Red Energy and Simply Energy are current members of EAL, and all disciplined their sales agents during the year.

#### 4.2.1 TYPE 1 BREACHES

Significant Type 1 breaches of the Marketing Code included:

- Simply Energy reported 46 breaches of clauses 3.2 to 3.6 (affecting 46 customers) during the year because its sales agents misled potential customers by wilfully providing them with incorrect information. It also reported 17 breaches of clauses 4.1 and 4.3 (affecting 17 customers) during the year because its sales agents signed up new customers without their explicit informed consent. Simply Energy addressed these cases by cancelling the transfer without penalising the customer financially. Simply Energy also advised that it regularly gathers assurances from third party sales agents that field work training is conducted in line with the Marketing Code. Also, sales agents were disciplined under the EAL Code (which includes being deregistered).
- Simply Energy reported that over 4300 customers were not issued a welcome pack within the required timeframe, resulting in a breach of clauses 3.2 to 3.6. This was because Simply Energy's customer service supplier failed to check for new customer information daily. To address the breach, Simply Energy commenced a daily reconciliation process to ensure that each new customer receives a welcome pack on time. Simply Energy advised that affected customers would still have the benefit of the 10 day cooling off period, because this does not commence until the welcome pack arrives.
- Lumo Energy reported that a sales agent working in the Mildura area signed up nine customers from non-english speaking backgrounds without explaining the energy contract's terms and conditions in a way that the customers could readily understand, resulting in a breach of clauses 3.2 to 3.6. Lumo Energy investigated

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<sup>13</sup> EAL manages a voluntary code of practice approved by the ACCC and aims to increase service standards in door-to-door sales of retail energy products by members through its code of practice and agent registry. AGL, EnergyAustralia and Origin Energy all announced that they would withdraw from door to door selling in 2012-13.

these cases and cancelled the affected customers' contracts without financial impact. The sales agent's contract was terminated, and they were deregistered from the EAL scheme.

- Origin Energy mistakenly transferred over 2800 customers from other retailers, resulting in a breach of clauses 4.1 and 4.3. The reason for the incorrect transfers was a mismatch between the address data held in the Market Settlement and Transfer Solution (MSATS) system and the address data supplied by the customer. Where an error was detected the customer was transferred back to their previous retailer without financial impact. Origin Energy addressed the problem by changing its internal procedures to monitor customer address data to ensure transfer errors were kept to a minimum.
- Origin Energy failed to send contractual information to 1700 new customers within two days, resulting in a breach of clauses 3.2 to 3.6. Origin Energy rectified the problem by requiring its third party contractor to implement processes to ensure timely dispatch of contract information. Origin Energy wrote to affected customers with an explanation and apology, and an offer to proceed with the sale—including obtaining the customer's further explicit informed consent.
- Alinta Energy, and Red Energy in total reported over 30 Type 1 breaches of the Marketing Code. These breaches related to:
  - customers being transferred without giving their explicit informed consent,
  - potential customers being given incorrect information regarding their energy contract,
  - customers not being provided contractual information in the required timeframes
  - misconduct of sales agents, for instance providing incorrect, deceptive or misleading information, misrepresenting themselves, falsifying sales and acting unconscionably.

Corrective action for these breaches included disciplining the sales agents or terminating their contracts, retraining sales agents and transferring customers back to their previous retailers at no cost.

## **4.3 TYPE 1 AND TYPE 2 BREACHES OF OTHER REGULATORY INSTRUMENTS**

### **4.3.1 RETAIL ELECTRICITY LICENCE**

Retail electricity licences require that retailers comply with all applicable laws, and a breach is classified as Type 1.

Momentum Energy reported that 72 customers received correspondence containing the personal information of other customers. This is a breach of the *Privacy Act 1988* (Cth). The cause of the breach was a processing failure at the retailer's mailing house. Momentum Energy retrained staff on the obligations that relate to privacy.

### **4.3.2 GUIDELINE 19 – ENERGY PRICE AND PRODUCT DISCLOSURE**

Blue NRG reported two breaches (Type 2) of Guideline 19 where it failed to publish its standing offer, and wrongly required customers to provide personal and technical information to access market offer information and price and product information statements (PPIS) on its website. Blue NRG claimed that in the start-up phase of its operations it failed to properly scope the requirements for its contractual arrangements and PPIS because it was unfamiliar with its regulatory obligations. In May 2014, Blue NRG advised that it undertook an audit of all its regulatory obligations and adequately addressed any non-compliance including the deficiencies described above. The Commission reiterates that all retailers must understand their regulatory obligations.



# 5 ENERGYAUSTRALIA

## 5.1 BACKGROUND

EnergyAustralia implemented a new billing system in September 2012 (known as C1) and continued to service some of its customers through a transitional arrangement with Ausgrid (formerly EnergyAustralia NSW) until November 2014 via a SAP billing system.

As a result of problems occurring in implementing the new systems and delays requiring correction, EnergyAustralia experienced a significant number of systemic breaches throughout 2012-13. In the Compliance Report of that year, the Commission reported the difficulties experienced by EnergyAustralia in meeting its regulatory obligations, particularly in relation to customer bills.

In 2013-14, EnergyAustralia continued to report breaches of a number of clauses of the Retail Code that prescribe the timing, content and calculation of customer bills. The breaches were attributed to IT system defects.

A number of breaches have since been rectified. However, the Commission is concerned that breaches first reported in late 2012 continued in the 2013-14 period, affecting large numbers of customers.

The underlying causes were defects in the SAP and C1 billing system. In 2013-14, most customers received bills generated by the C1 system but, for various reasons, some customers continued to receive bills generated by Ausgrid's SAP system.<sup>14</sup>

EnergyAustralia had implemented C1 in September 2012 to replace an earlier system (CISPlus) and deal with several recurrent billing issues. However, as a result of

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<sup>14</sup> Background information on EnergyAustralia and Ausgrid can be found in Essential Services Commission, 2014, 2012-13 Compliance Report – Energy Retail Businesses, October. This report can be found on the Commission's website [www.esc.vic.gov.au](http://www.esc.vic.gov.au)

problems and delays in implementing C1, EnergyAustralia continued also to use the SAP system, which had been designed for New South Wales requirements and which did not comply fully with the information requirements of Victoria's Retail Code.

In its 2013-14 annual compliance breach submission, EnergyAustralia reported over 20 Type 2 breaches of its obligations which affected more than 250 000 customers. The most common breaches were:

- Failure to provide bills within the prescribed timeframes (this problem has now been addressed and performance is now at a 'business as usual' level)
- Failure to provide required information on bills produced in the SAP system, including start and end index readings, average daily cost for each tariff type, and a graph of monthly consumption over a 12 month period (this problem was resolved in November 2014)
- Overcharging and undercharging through:
  - Issuing bills for a period greater than nine months
  - Using incorrect rebates to calculate bills
  - Applying incorrect early termination fees
  - Failing to provide pay-on-time discounts to eligible customers
  - Charging customers an additional exit fee in error on changing market offers.

EnergyAustralia demonstrated a high level of cooperation with the Commission on these matters and has displayed commitment to improving its compliance culture and resolving the issues outlined in this chapter. This commitment is reflected in the improvements that the Commission has observed in 2014.

## 5.2 ENFORCEMENT AND MONITORING

In August 2013, and again in November 2013, we required EnergyAustralia to provide formal administrative undertakings to reduce the number of bills that it was failing to issue on time. Also in November 2013, we sought undertakings from EnergyAustralia related to:

- Applying early termination fees correctly
- Providing information on bills to Ausgrid smart meter customers.

At the same time, we sought and obtained adequate assurances from EnergyAustralia that it would address issues about:

- Applying discounts or rebates to accounts
- Accurately reporting the numbers of late-billed and unbilled customers to the Commission
- Resolving customer detriment caused by back-billing beyond nine months
- Recording customers' explicit informed consent to new contracts.

Throughout the 2013-14 period, the Commission closely monitored EnergyAustralia's progress in resolving compliance issues through frequent direct reporting (particularly of billing performance) and independent audits of billing. We published details of the assurances and administrative undertakings on our website to reflect the seriousness and systemic nature of EnergyAustralia's non-compliance with its regulatory obligations. Although it has taken substantial time to reach compliance, EnergyAustralia has worked to cooperate with the Commission. Details of these undertakings and assurances and EnergyAustralia's remedial actions are as follows.

### **5.2.1 ASSURANCE AND UNDERTAKING: LATE AND UNBILLED ACCOUNTS**

EnergyAustralia gave the Commission an administrative undertaking in August 2013, requiring the retailer to halve the number of late bills that it was reporting at that time. If achieved, this would represent a significant improvement over a short period of time. In September 2013, EnergyAustralia reported that it had met the undertaking.

During the period under review, there were two independent audits of EnergyAustralia's billing processes. The first audit covered EnergyAustralia's billing processes in general; the second, followed up the remedial action that EnergyAustralia took in response to the first audit.

The first audit found that EnergyAustralia had not retained records to demonstrate that the numbers of late bills that it reported were accurate. The follow-up audit found that EnergyAustralia had taken necessary remedial action, and assured the Commission that the number of late bills issued had been halved by mid-September 2013.

We noted that EnergyAustralia continued to report fewer late bills, but the rate of improvement had levelled off somewhat since the first undertaking was discharged. The Commission therefore required a second undertaking, to again halve the number of late bills that it had reported in November 2013. The retailer was able to report meeting this undertaking before the required date in February 2014.

The Commission has continued to monitor the number of late and unbilled accounts reported by EnergyAustralia every two weeks over the period July 2013 to June 2014. The total number of late and unbilled accounts reduced by 93 per cent over that period.

### **5.2.2 ASSURANCE: EXPLICIT INFORMED CONSENT**

A third party vendor, engaged by EnergyAustralia, failed to record the explicit informed consent of customers before transferring them from their existing retailer. Energy Australia addressed the issue by immediately suspending the activities of, and terminating its contract with, the third party vendor in September 2013.

EnergyAustralia reported that the customers affected were generally unaware of the fact that they were being transferred away from their preferred retailer and only became aware when they received a welcome pack from EnergyAustralia. In these cases EnergyAustralia requested that the customer's previous retailer transfer them back and it also reversed any exit fees.

EnergyAustralia undertook a campaign to contact approximately 16 000 Victorian customers who were potentially affected by 24 December 2013. Further attempts were made by EnergyAustralia to contact the remainder and by 1 July 2014 slightly fewer than one third of the customers responded to EnergyAustralia's telephone calls and letters and, of these, 964 customers asked to return to their previous retailer.

### **5.2.3 UNDERTAKINGS: EARLY TERMINATION FEES AND SMART METER INFORMATION**

In a transaction in March 2011, EnergyAustralia (then TRUenergy) acquired the accounts of about 120 000 customers whose accounts were processed on the SAP system of the NSW-based entity Ausgrid.

The bills for these customers did not provide the following information required for Victorian smart meters:

- start and end index reads
- a message where more than 48 hours of trading intervals have been estimated or substituted
- the average daily cost per tariff segment
- a graph of annual monthly consumption.

The audits of EnergyAustralia's billing had shown that the C1 system did comply with Retail Code requirements and EnergyAustralia initially proposed to transfer all the SAP-based customers to C1 by March 2014. Considering the cost and difficulty of upgrading the SAP system instead to meet Victorian requirements, the Commission agreed to take no action on EnergyAustralia's non-compliance until that date.

But by November 2013 EnergyAustralia had deferred the mass transfer of those customers to the C1 system and we sought an undertaking that the smart meter information would be provided to relevant customers on or with every bill in 2014. Noting that early termination fees had been incorrectly charged to some customers who transferred between two of EnergyAustralia's own contracts – one on SAP and the other on C1 – we also sought an undertaking to refund these fees by the end of 2013, if the task could not be completed sooner.

EnergyAustralia gave a formal assurance that it would complete remediation of the early termination fee issue by the end of November 2013. However, it advised that it could neither upgrade the SAP system nor complete the mass customer transfer until late in 2014. Instead, the retailer proposed to contact all the relevant customers to offer them the information on request.

The Commission noted that EnergyAustralia had continued to engage customers in contracts that required their bills to be processed on the SAP system. However, the Commission accepted that it could not require EnergyAustralia to give an undertaking to upgrade the SAP accounts or to accelerate their conversion to C1, to a degree that was economically or technically imprudent. We therefore required EnergyAustralia to maintain contact with customers and ensure the information was provided to customers when requested.

In June 2014, EnergyAustralia advised that accounts were no longer being transferred to SAP or created in SAP. In November 2014, after the period covered by this report, EnergyAustralia completed the transfer of all SAP accounts to C1. The Commission required EnergyAustralia to provide examples of the bills issued to such customers, for assurance that the information on the bills complied with Retail Code requirements.

## 5.3 FURTHER BREACHES

Despite the undertakings and assurances given by EnergyAustralia in November 2013, the retailer reported further breaches that affected large numbers of customers relating to:

- Customers being transferred without giving their explicit informed consent. This was a Type 1 breach of the Marketing Code.
- Customers affected by billing delays and not receiving notification of tariff changes. This was a Type 2 breach of the Retail Code.
- Undercharging and overcharging. This was a Type 2 breach of the Retail Code.

### 5.3.1 CUSTOMERS TRANSFERRED WITHOUT GIVING THEIR EXPLICIT INFORMED CONSENT

EnergyAustralia transferred 748 customers between its own systems in error and without the customers' explicit informed consent, between 1 July 2013 and 30 June 2014. As well as inconsistency in industry data, the causes of error included mistakes in obtaining or processing customers' meter and address details, resulting in the wrong customer being transferred, or delays in cancelling customers' transfer requests. As required by established industry procedures, EnergyAustralia corrected the errors by organising for the customer's previous retailer to transfer the customer back.

EnergyAustralia was required by the Commission to cancel any bills sent to the customers affected, and to monitor the situation and resolve customer queries when they occurred.

Customers impacted by billing delays not receiving notification of tariff changes In two separate breaches reported during 2013-14, a total of about 8000 customers did not

receive notification of tariff increases when required. EnergyAustralia printed a suitable message on bills issued around the time of the two tariff changes. However some bills, whose printing was delayed, did not show the message. EnergyAustralia therefore credited the accounts of the customers who had been billed at the higher tariffs for which they had not received notification.

### **5.3.2 UNDERCHARGING AND OVERCHARGING**

In addition to the issues covered by the administrative undertakings, EnergyAustralia reported another eight breaches related to undercharging and overcharging in 2013-14. These breaches affected over 11 000 customers.

EnergyAustralia undertook a number of actions to remediate customers that were incorrectly charged, including:

- Sending letters to customers to advise them of the issue
- Cancelling and rebilling customers who were incorrectly overcharged
- Crediting accounts of overcharged customers.

In the cases where a customer was undercharged, EnergyAustralia did not recoup the additional amounts. Instead it amended the customer's account so they could be billed correctly.

EnergyAustralia demonstrated a high level of cooperation with the Commission on these matters and has reported that most of these breaches were closed in 2013-14, with the remainder due for completion in the first quarter of 2015.

The Commission continues to work with EnergyAustralia to ensure its compliance performance improves. An audit of EnergyAustralia's compliance with its regulatory obligations is scheduled to commence within the next three months.



# 6 NEXT STEPS

This chapter outlines the Commission's future compliance and related activities. These include:

- Reviewing the compliance framework
- Retail energy business regulatory audits
- Reviewing the way the energy retailers manage customers in financial hardship.

## 6.1 REVIEW OF COMPLIANCE FRAMEWORK

The Commission's compliance framework comprises the compliance strategy, compliance policy and the compliance reporting manual. The Compliance strategy and Compliance policy were prepared in 2006 and 2007, respectively. Since then, there have been changes in the way the energy sector is regulated. For example the Australian Energy Regulator (AER) now regulates the energy distribution businesses and from 2009, retail energy prices have not been regulated in Victoria.

In response to these changes and others, the Commission considers that it is timely to review the Compliance strategy and Compliance policy. Where necessary, the documents will be amended to reflect the Commission's current approach to compliance (which will include reviewing the way breaches are classified) and enforcement generally and the existing regulatory arrangements. Stakeholders will be consulted extensively during the review to gain their feedback on any proposed amendments.

We will also review the Compliance Reporting Manual. This will provide the retailers with clearer guidance on what we expect to see when they report breaches to us. This

should enable retailers to report breaches on a more consistent basis which in turn will better allow consumers to compare compliance performance among retailers.

## **6.2 RETAIL REGULATORY AUDITS**

In late 2014, the Commission developed a retail audit program to provide itself with independent assurance that retailers are complying with their licence obligations. In particular, obligations pertaining to industry codes and guidelines, such as the Energy Retail Code and the Marketing Code, as well as to assess the reliability and quality of information reported to the Commission.

During 2015, the majority of retailers will be subject to an audit. Retailers are required to nominate an audit firm to conduct the regulatory review and enter into a tripartite deed with the auditor and the Commission. The auditor provides a report detailing the results of the review. For any non-compliances identified; retailers are to submit a compliance plan to the Commission detailing remedial actions proposed with dates for completion. All audit reports will be published on the Commission's website upon finalisation of the audit.

## **6.3 HARDSHIP REVIEW**

The Commission has been asked to conduct an inquiry into 'best practice' financial hardship policies and practices of energy retailers. The purpose of the inquiry is to provide confidence in the assistance arrangements offered by energy retailers to customers experiencing financial difficulties. As part of the inquiry, the Commission will review energy retailers' policies, practices and procedures and assess whether these reflect 'best practice'. The inquiry will also consider the design and efficacy of regulatory obligations regarding the assistance provided to customers experiencing financial hardship in order to ensure that customers receive targeted and effective assistance to avoid disconnection. The Commission is required to provide its preliminary advice to Minister for Finance and Minister for Energy and Resources no later than August 2015. A copy of the terms of reference for the inquiry is available from the Commission's website: [www.esc.vic.gov.au/](http://www.esc.vic.gov.au/)

# APPENDIX A

## CLASSIFICATION — TYPE 1, TYPE 2, TYPE 3 BREACHES

For the purposes of compliance reporting, breaches of regulatory obligations are classified according to the likely severity of the impact that the breach may have on customers.<sup>15</sup>

**Type 1** breaches could critically affect customers and includes incidents where the effect increases over time if not rectified quickly. Retailers must report all actual or potential Type 1 breaches immediately.

Each month, businesses are required to report cases of Wrongful Disconnection Payments to the Commission. We allow monthly reporting of these Type 1 breaches because the breach has generally been remedied by the time it has been identified and reported.

**Type 2** breaches must be reported six-monthly. They are breaches of regulatory obligations where:

- Non-compliance could seriously affect customers
- the obligation is new or has not been complied with in previous years and/or
- the impact of that non-compliance increases over time.

Retailers are required to take prompt action to remedy any breach, regardless of the reporting frequency. The Commission also expects a Type 2 breach to be reported

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<sup>15</sup> The regulatory obligations and their classifications into Type 1, 2 or 3 breaches are summarised in the Commission's Compliance Reporting Manual (Energy Retail Businesses), which can be accessed on the Commission's website ([www.esc.vic.gov.au](http://www.esc.vic.gov.au)).

immediately, if the retailer identifies that the nature of the obligation and the number of customers affected make the breach more significant.

**Type 3** breaches are breaches of all other regulatory obligations and are considered to be less serious. The retailers are required to report them once a year.

## SYSTEMIC OR ISOLATED BREACHES

The Commission assesses whether the reported breaches are systemic or isolated.

The Commission is generally more concerned by systemic breaches, as they often result from persistent failure to maintain normal management oversight and supervisory control, particularly in IT system maintenance and operation. Such breaches may also stem from complaint-management practices that address the symptoms but not the causes of customer dissatisfaction.

Systemic breaches may affect significant numbers of customers. For example, in computer-based operations, a retailer's IT processes can repeatedly fail to produce the intended results, and records are therefore wrongly selected or formatted, or calculations are incorrect. In manual operations, incorrect instructions to staff, inadequate error-checking or supervision and similar factors may cause recurrent breaches.

Isolated breaches tend to affect fewer customers. Retailers' employees or agents may fail to follow established procedures or may process individual transactions incorrectly – but the impact is limited. One isolated error may affect many customers but, unless the error seems part of a pattern of similarly unreliable operation, it may be less significant than a systemic problem affecting fewer people over an extended period. In most cases, EWOV is well placed to deal with isolated breaches arising from customer complaints.

The Commission recognises that errors will occasionally be made but, when retailers report significant breaches, we assess whether they take appropriate remedial action to compensate customers, correct their systems and train their staff as appropriate.

# APPENDIX B

**TABLE B.1 SUMMARY OF BREACHES BY RETAILER AND TYPE**  
2013-14

Energy Retailer	Type 1 WDP <sup>a</sup>	Type 1 Other <sup>b</sup>	Type 2 <sup>b</sup>	Type 3 WDP <sup>a</sup>	Type 3 Other <sup>b</sup>	Total Breaches
AGL Sales	116	0	4			120
Alinta Energy	53	23	15			91
Australian Power and Gas	130	5	1			136
Blue NRG	1	2	3		3	9
Click Energy	17		9	1	1	28
Dodo Power and Gas	1		1		3	5
EnergyAustralia	265	10	42		5	322
ERM Power	0	1	1			2
Lumo Energy	27	6		6		39
Momentum Energy	24	1	2			27
Neighbourhood Energy	42		2			44
Origin Energy	260	14	8	6		288
Powerdirect	9		3			12
QEnergy	1					1
Red Energy	20	15	11	5		51
Simply Energy	38	66				104
<b>Total</b>	<b>1 004</b>	<b>143</b>	<b>102</b>	<b>18</b>	<b>12</b>	<b>1 279</b>

**Notes:** The Commission requires retailers to report breaches against each licence they hold. This means if an incident affects both gas and electricity customers, a breach is recorded against each licence – or in other words, two breaches are recorded.

AGL Sales (QLD), Aurora Energy, Diamond Energy, EnergyAustralia Yallourn, Pacific Hydro, People Energy, Powershop and Sun Retail did not report any breaches of their regulatory obligations during 2013-14.

**a** Breaches of the Retail Code (v10a) that resulted in wrongful disconnections. The Commission counts each customer wrongfully disconnected as one breach.

**b** Includes breaches of the Retail Code (v10a) apart from those resulting in wrongful disconnection, and breaches of the Marketing Code and other regulatory instruments.



# APPENDIX C

## SUMMARY OF RETAILERS' BREACH REPORTS

### TYPE 1 BREACHES

**TABLE 2.1 ELECTRICITY RETAIL LICENCE**

The licence sets out the conditions the retailer must abide by when retailing energy.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Alinta	<u>Clause 22</u> 2 sales representatives failed to leave the property following a request by the customer.	This was a result of the sales agents not adhering to policies that govern the sales process. The sales representatives were terminated and no longer work for Alinta. Reinforcement training was conducted.	Isolated
Momentum	<u>Clause 21</u> 72 customers received correspondence containing the personal details of other customers.	This was the result of a processing failure at the mail house. Staff were retrained on obligations pertaining to privacy.	Systemic

**TABLE 2.2 RETAIL CODE**

The Retail Code specifies the terms and conditions required in a contract for the supply or sale of energy.

#### **Clauses 11.2 & 11.4 (b) – Payment difficulties**

The Code outlines the process for assessment and assistance to domestic customers experiencing financial difficulties, and for invoking legal proceedings in relation to debt collection.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
AGL	1 customer was wrongfully disconnected.	This was due to the customer not being assessed for hardship assistance and not offered a second instalment plan.	Isolated

		The customer was reconnected and paid a WDP. Staff members were retrained on the disconnection process.	
AGL	29 customers were wrongfully disconnected.	This was due to the customer not being provided information about URGS, financial counselling or energy efficiency advice while experiencing payment difficulties, including the provision of a second instalment plan. Impacted customers were reconnected and paid a WDP. Staff members were provided feedback.	Systemic
AGL	2 customers were disconnected while displaying willingness to pay.	No causes for the breaches were provided by the retailer in reports to the Commission on these 2 disconnections. Impacted customers were reconnected and paid a WDP.	Isolated
Alinta	3 customers were wrongfully disconnected.	This was due to the customer not being provided information about URGS, financial counselling or energy efficiency advice and not being offered a second instalment plan. Impacted customers were reconnected and paid a WDP. Staff members were retrained on the disconnection process.	Isolated
Alinta	7 customers were wrongfully disconnected.	Causes of the wrongful disconnection included not offering a second instalment plan, not providing information about URGS, financial counselling or energy efficiency advice and not conducting a capacity to pay assessment. Impacted customers were reconnected and paid a WDP. Staff members were retrained and new processes were introduced to assess capacity to pay.	Isolated
APG	44 customers were disconnected whilst experiencing financial difficulty.	Causes of the wrongful disconnections included not providing information about URGS, financial counselling or energy efficiency advice. Impacted customers were reconnected and paid a WDP. Staff members were provided feedback and retraining.	Systemic
APG	12 customers were disconnected while experiencing financial difficulty.	Causes of the wrongful disconnections were due to not offering the customer a second instalment plan as required by the Retail Code. Impacted customers were reconnected and paid a WDP. Staff members were provided feedback and retraining.	Isolated
APG	16 customers were	Causes of the wrongful	Systemic

	disconnected whilst experiencing financial difficulty.	disconnections were due to not conducting a capacity to pay assessment as required by the Retail Code. Impacted customers were reconnected and paid a WDP. Staff members were provided feedback and retraining.	
EA	4 customers were disconnected prior to receiving information about URGS, financial counselling or energy efficiency advice.	Process improvements have been implemented to ensure that all relevant information is provided to customers upon identification of hardship. Impacted customers were reconnected and paid a WDP.	Isolated
EA	11 customers were disconnected in error after being identified as experiencing financial difficulty.	This was due to the disconnection service order not being reversed following identification of hardship. Impacted customers were reconnected and paid a WDP.	Isolated
EA	1 customer was disconnected prior to being offered a second instalment plan.	The customer was reconnected and paid a WDP. Staff members were provided feedback and retraining.	Isolated
EA	1 customer was disconnected after their account was finalised in error.	This was due to errors by staff or agents. System enhancements were implemented. The customer was reconnected and paid a WDP.	Isolated
Lumo	1 customer was wrongfully disconnected.	This was due to the customer not receiving hardship assistance prior to disconnection. The customer was reconnected and paid a WDP.	Isolated
Lumo	7 customers were disconnected while experiencing financial difficulty.	Causes of the wrongful disconnections were due to not conducting a capacity to pay assessment as required by the Retail Code. Impacted customers were reconnected and paid a WDP. Staff members were provided feedback and retraining, internal documents were also updated.	Isolated
Momentum	2 customers were wrongfully disconnected.	Cause of the wrongful disconnections included not offering one customer a second instalment plan and not conducting a capacity to pay assessment to the second impacted customer. Impacted customers were reconnected and paid a WDP.	Isolated
Neighbourhood	32 customers were wrongfully disconnected.	This was due to customers not being assessed for hardship or experiencing payment difficulty, not receiving the disconnection notice prior to disconnection and not being offered a second instalment plan. Impacted customers were reconnected and paid a WDP. Staff members were retrained.	Isolated

Origin	31 customers were disconnected without being assessed for hardship.	Impacted customers were reconnected and paid a WDP.	Isolated
Origin	7 customers were wrongfully disconnected without being offered a second instalment plan.	Impacted customers were reconnected and paid a WDP.	Isolated
Origin	19 customers were wrongfully disconnected without being offered information about URGS, financial counselling or energy efficiency advice.	Impacted customers were reconnected and paid a WDP.	Isolated
Powerdirect	1 customer was disconnected prior to receiving information about URGS, financial counselling or energy efficiency advice.	The customer was reconnected and paid a WDP. Feedback was provided to the agent involved.	Isolated
Red	6 customers were wrongfully disconnected.	This was due to customers not being assessed for hardship or experiencing payment difficulty, not being provided information about URGS, financial counselling or energy efficiency advice, not conducting a capacity to pay assessment and not being offered a second instalment plan. Impacted customers were reconnected and paid a WDP. Staff members were retrained.	Isolated
Simply Energy	14 customers were wrongfully disconnected.	This was due to customers not being offered a second instalment plan, not being assessed for hardship or experiencing payment difficulty and not being provided information about URGS, financial counselling or energy efficiency advice. Impacted customers were reconnected and paid a WDP. Staff members were retrained.	Isolated

### Clauses 13.1 – 13.4 – Grounds for disconnection

The Retail Code sets out the process that a retailer must follow before disconnecting a customer in these clauses. This includes;

- A retailer’s obligations to customers before disconnecting their supply, such as offering payment assistance and efficiency advice
- Timing and content of disconnection notices
- A retailer’s obligations to reconnect customers that it has disconnected

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
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AGL	2 customers were disconnected after entering agreed payment plans.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	1 customer was disconnected outside minimum timeframes.	The customer was reconnected and received a wrongful disconnection payment.	Isolated
AGL	1 customer was disconnected after transferring away from the retailer.	The customer was reconnected and received a wrongful disconnection payment.	Isolated
AGL	4 customers were disconnected when the wrong site was entered into the service order.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	6 customers were disconnected after receiving non-compliant warning notices.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	9 customers were wrongfully disconnected due to processing errors by retail agents.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	8 customers were disconnected in error as the disconnection service order was not cancelled.	Errors by staff or agents resulted in customers being wrongly disconnected. Customers were reconnected and received a wrongful disconnection payment.	Isolated
AGL	7 customers were disconnected where notices were sent to the wrong address.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	6 customers were disconnected after having provided assurances that they would pay.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	1 customer was disconnected where the retailer failed to use best endeavours to contact the customer.	The customer was reconnected and received a wrongful disconnection payment.	Isolated
AGL	5 customers were disconnected where the retailer failed to cancel the service order after issues were resolved.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	2 customers were disconnected while on the hardship program.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	9 customers were erroneously disconnected due to errors in processing "move out" arrangements	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	3 customers were disconnected without receiving financial counselling, energy efficiency and/or concession advice, despite showing signs of financial difficulty.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	1 customer was disconnected	The customer was reconnected	Isolated

	without being assessed for capacity to pay.	and received wrongful disconnection payments.	
AGL	7 customers were disconnected after payment was made toward outstanding amount.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	2 customers were disconnected due to errors by the distribution business.	Customers were reconnected and received wrongful disconnection payments.	Isolated
AGL	5 customers were disconnected while a billing dispute was open with the retailer.	Customers were reconnected and received wrongful disconnection payments.	Isolated
Alinta	35 customers were disconnected following receipt of disconnection letters which were not compliant with the Retail Code.	Customers were reconnected and received wrongful disconnection payments. Letters have been amended.	Isolated
Alinta	6 customers were disconnected outside the required timeframes.	Due to staff procedural errors customers were wrongfully disconnected. The customers were reconnected and received a wrongful disconnection payment.	Isolated
Alinta	1 customer was disconnected without receiving relevant notifications.	This was due to the customer not providing updated contact details. The customer was reconnected and received a wrongful disconnection payment.	Isolated
APG	1 customer was disconnected without receiving the required time to pay.	The customer was reconnected and received a wrongful disconnection payment. The staff member involved was retrained.	Isolated
APG	10 customers were disconnected where the retailer failed to use best endeavours to contact the customer prior to disconnection.	Customers were reconnected and received wrongful disconnection payments.	Isolated
APG	7 customers were disconnected where the retailer could not provide evidence that best endeavours had been made to contact the customer prior to disconnection.	Customers were reconnected and received wrongful disconnection payments.	Systemic
APG	9 customers were disconnected without the retailer sending a registered letter to advise of the pending disconnection.	Customers were reconnected and received wrongful disconnection payments.	Isolated
APG	3 customers were disconnected as "occupier" accounts after they had provided identification.	Customers were reconnected and received wrongful disconnection payments.	Isolated
APG	10 customers were disconnected without being offered a second payment plan in a 12 month period.	Customers were reconnected and received wrongful disconnection payments.	Isolated
APG	6 customers were erroneously	Customers were reconnected and	Isolated

	disconnected due to errors in processing "move out" arrangements.	received wrongful disconnection payments.	
APG	1 customer was disconnected where the retailer could provide evidence that all notices were sent.	The customer was reconnected and received wrongful disconnection payments.	Isolated
APG	1 customer was disconnected after the disconnection notice was sent to the wrong address.	The customer was reconnected and received a wrongful disconnection payment.	Isolated
APG	5 customers were disconnected without receiving financial counselling, energy efficiency and/or concession advice, despite showing signs of financial difficulty.	Customers were reconnected and received a wrongful disconnection payment.	Systemic
APG	2 customers were disconnected outside the allowed timeframes.	Customers were reconnected and received wrongful disconnection payments.	Isolated
Click	14 customers received disconnection notices that were not compliant.	This was due to disconnection notices not including the correct dates. Customers received wrongful disconnection payments. Disconnection notices have been updated.	Isolated
Click	2 customers were disconnected without warning.	Due to data entry error customers were disconnected. The customers were reconnected and received wrongful disconnection payment. The agents involved were provided feedback.	Isolated
Dodo	1 customer was disconnected following receipt of a disconnection notice that was not compliant	This was due to the incorrect day being coded into the notice. The customer was reconnected and received a wrongful disconnection payment.	Isolated
EA	16 customers were disconnected when agents raised service orders for the wrong date or address.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	2 customers were disconnected when agents failed to cancel service orders.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	5 customers were disconnected due to agent errors processing new customers moving in.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	6 customers were disconnected due to agent errors relating to transfers.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	15 customers were disconnected after agents triggered the "unknown customer" process erroneously.	As a result the "unknown customer" process was reviewed. Customers were reconnected and received wrongful disconnection	Isolated

		payments.	
EA	6 customers were disconnected due to other errors by customer service agents.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	2 customers were disconnected earlier than allowable.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	7 customers were incorrectly disconnected due to duplication of accounts.	An additional step has been added to the disconnection checklist to act as a control. Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	2 customers were disconnected and no record of the warning notices was kept on file.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	3 customers were disconnected based on non-compliant warning notices.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	5 customers were disconnected after warning notices were delivered to the wrong address.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	2 customers were wrongly disconnected when the incorrect property was de-energised.	Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	14 customers were disconnected due to IT issues relating to the shutdown of duplicate accounts.	A system modification was implemented to address this issue. Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	53 customers were wrongfully disconnected due to IT issues when customers vacated a property.	A system modification was implemented to address this issue. Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	105 customers were disconnected after receiving disconnection notices which displayed non-compliant timeframes.	As a result, disconnection notices have been updated. Customers were reconnected and received wrongful disconnection payments.	Isolated
EA	4 customers were disconnected due to IT issues relating to market transfers.	A system modification was implemented to address this issue. Customers were reconnected and received wrongful disconnection payments.	Isolated
Lumo	1 customer was disconnected where the retailer failed to use best endeavours to contact the customer prior to disconnection.	Customer was reconnected and received a wrongful disconnection payment.	Isolated
Lumo	2 customers were disconnected where an agent cancelled accounts when a customer asked	Customers were reconnected and received wrongful disconnection payments.	Isolated

	to change billing details.		
Lumo	2 customers were disconnected due to processing errors relating to transfers.	Customers were reconnected and received wrongful disconnection payments.	Isolated
Lumo	1 customer was disconnected while on agreed payment plan.	Customer was reconnected and received a wrongful disconnection payment.	Isolated
Lumo	1 customer was disconnected earlier than the date stated on the disconnection notice.	The customer was reconnected and received a wrongful disconnection payment.	Isolated
Lumo	2 customers were disconnected after warning notices were sent to the wrong address.	Customers were reconnected and received wrongful disconnection payments.	Isolated
Lumo	5 customers were erroneously disconnected due to processing errors by retail agents.	Customers were reconnected and received wrongful disconnection payments.	Isolated
Lumo	1 customer was disconnected following assurances that they would be contacted to discuss the pending disconnection for non-payment.	The customer was reconnected and received a wrongful disconnection payment.	Isolated
Momentum	1 customer was disconnected without receiving a reminder notice.	The occupier disconnection process has been reviewed. The customer was reconnected and received a wrongful disconnection payment.	Isolated
Momentum	15 customers were disconnected after receiving notices that were not compliant.	Systems have been updated to ensure notices are compliant. Customers were reconnected and received wrongful disconnection payments.	Systemic
Momentum	3 customers were disconnected prior to best endeavours being used to make contact before disconnection.	As a result the hardship policy was updated. The customers were reconnected and received wrongful disconnection payments.	Isolated
Neighbourhood	8 customers were disconnected without receiving relevant notifications.	These were caused by notifications not being sent to customers, and updated contact details not being sought from customers in certain cases. Customers were reconnected and received a wrongful disconnection payment. Staff members involved were retrained.	Isolated
Neighbourhood	1 customer was disconnected after establishing a payment arrangement.	This was due to the disconnection service order not being cancelled following establishment of the payment arrangement. The customer was reconnected and received a wrongful disconnection payment. The staff member involved was retrained.	Isolated

Neighbourhood	1 customer was disconnected without receiving the required time to pay.	No reason for the breach was provided. The customer was reconnected and received a wrongful disconnection payment. The staff member involved was retrained.	Isolated
Origin	4 customers were disconnected without receiving the required time to pay.	The customers were reconnected and received a wrongful disconnection payment. Staff were retrained on the process.	Isolated
Origin	2 customers were disconnected in error as the disconnection service was not cancelled.	Errors by staff or agents resulted in both customers being wrongly disconnected. Impacted customers were reconnected and received a wrongful disconnection payment. Staff were retrained on the process.	Isolated
Origin	4 customers were disconnected following the establishment of a payment plan.	Customers were reconnected and received a wrongful disconnection payment. Staff were retrained on the process.	Isolated
Origin	13 customers were erroneously disconnected due to processing errors by retail agents.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	18 customers were disconnected where reasonable assurances to pay were made.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	15 customers were disconnected where the retailer failed to use best endeavours to contact the customer prior to disconnection.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	10 customers were disconnected while a billing dispute was open with the retailer.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained.	Isolated
Origin	10 customers were disconnected while on the hardship program.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	21 customers were disconnected as "unknown customer" accounts after they had provided identification.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	24 customers were erroneously disconnected due to errors in processing "move out" arrangements.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	49 customers were disconnected who did not receive all warning and reminder notices.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated

Origin	7 customers were disconnected after payment was made toward outstanding amount.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	4 customers were disconnected after agreed payment plans were not set up by retail agents.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	4 customers were disconnected without being offered revised payment plans.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	2 customers were disconnected earlier than the date stated on the disconnection notice.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	2 customers were disconnected without receiving URGS advice, despite showing signs of financial difficulty.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Origin	Incorrect meter numbers led to 3 customers being disconnected.	Customers were reconnected and received wrongful disconnection payments. Staff were retrained on the process.	Isolated
Powerdirect	2 customers were disconnected following receipt of a disconnection notice which was not compliant with the Retail Code.	Impacted customers received a wrongful disconnection payment. Staff involved in the disconnection process were retrained.	Isolated
Powerdirect	2 customers were disconnected in error as the disconnection service was not cancelled.	Errors by staff or agents resulted in both customers being wrongly disconnected. Impacted customers were reconnected and received a wrongful disconnection payment. Staff involved in the disconnection process were retrained.	Isolated
Powerdirect	2 customers were disconnected without receiving financial counselling, energy efficiency and/or concession advice, despite showing signs of financial difficulty.	Customers were reconnected and received wrongful disconnection payments. Staff involved in the disconnection process were retrained.	Isolated
Powerdirect	2 customers were erroneously disconnected due to processing errors by agents.	Customers were reconnected and received wrongful disconnection payments. Staff involved in the disconnection process were retrained.	Isolated
Q Energy	1 customer was disconnected.	This was due to an internal processing issue. The customer received a wrongful disconnection payment	Isolated
Red	3 customers were disconnected following receipt of a	Notices were amended to ensure compliance. Impacted customers	Isolated

	disconnection notice which was not compliant with the Retail Code.	received a wrongful disconnection payment.	
Red	10 customers were disconnected due to data entry and procedural errors.	Errors by staff or agents resulted in internal processes not being followed customers were wrongfully disconnected. Impacted customers received a wrongful disconnection payment. Staff involved in the disconnection process were retrained.	Isolated
Red	The retailer failed to use best endeavours to contact 1 customer about their outstanding bill before disconnecting them.	The retailer failed to comply with internal processes prior to disconnection. The customer received a wrongful disconnection payment and was enrolled in the retailer's hardship program. Staff involved in the disconnection process were retrained	Isolated
Simply Energy	1 customer was disconnected following receipt of a disconnection notice which was not delivered within the required timeframes.	No reason for the noncompliance was provided. Staff involved in the disconnection process were retrained. The customer received a wrongful disconnection payment.	Isolated
Simply Energy	1 customer was disconnected without receiving the required time to pay.	This was caused by a staff member failing to follow the approved process. The customer was reconnected and received a wrongful disconnection payment. The staff member involved was retrained.	Isolated
Simply Energy	2 customers were disconnected without receiving relevant notifications.	This was caused by an internal processing error. Impacted customers received a wrongful disconnection payment.	Isolated
Simply Energy	8 customers were wrongfully disconnected.	These were caused by by agents not following the correct processes prior to disconnection. Staff members involved in the disconnection process were retrained and impacted customers received a wrongful disconnection payment.	Isolated
Simply Energy	1 customer was wrongfully disconnected.	This was due to not being provided sufficient time to pay an undercharged amount. Staff members involved in the disconnection process were retrained and the impacted customer received a wrongful disconnection payment.	Isolated
Simply Energy	The retailer failed to use best endeavours to contact 2 customers about their	The retailer failed to comply with internal processes prior to disconnection. Impacted	Isolated

outstanding bill before disconnecting them.

customers received a wrongful disconnection payment. Staff members involved in the disconnection process were retrained.

## Clause 14 – No disconnection

Clause 14 of the Retail Code sets out specific circumstances in which a retailer may not disconnect a customer.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
AGL	2 customers were disconnected while an outstanding complaint was being investigated.	Both cases were due to errors by staff or agents; impacted customers received a wrongful disconnection payment and the staff members involved were retrained.	Isolated
AGL	1 customer was disconnected while an outstanding complaint was being investigated.	The customer was reconnected and received a wrongful disconnection payment.	Isolated
AGL	2 customers were disconnected while on the hardship program.	Both cases were due to ; errors by staff or agents impacted customers received a wrongful disconnection payment and the staff members involved were provided feedback.	Isolated
Alinta	1 customer was disconnected on the incorrect day.	This was due to errors by staff or agents the customer received a wrongful disconnection payment and the staff member was retrained.	Isolated
APG	The retailer disconnected 2 customers whose outstanding debt was less than \$120.	This was due to internal processing issues. Both customers received a wrongful disconnection payment and the staff members involved were retrained.	Isolated
APG	1 customer was disconnected while having an URGS application pending.	This was due to errors by staff or agents as the account was not updated with information pertaining to the application. The customer received a wrongful disconnection payment.	Isolated
Blue NRG	1 customer was disconnected on the incorrect day.	This was due to errors by staff or agents, the customer received a wrongful disconnection payment and the staff member was retrained.	Isolated
Click	1 customer was wrongfully disconnected.	This was due to the retailer not confirming whether the site was occupied. The customer received a wrongful disconnection payment and the staff member was retrained.	Isolated
EA	1 customer was disconnected while an outstanding complaint	This was due to errors by staff or agents the, customer received a	Isolated

	was being investigated.	wrongful disconnection payment and documentation pertaining to this task was updated.	
Lumo	4 customers were disconnected on the incorrect day.	These cases were due to errors by staff or agents as agents did not follow the appropriate internal processes. Impacted customers were reconnected received a wrongful disconnection payment and the staff members involved were retrained.	Isolated
Momentum	The retailer disconnected 1 customer whose outstanding debt was less than \$120.	This was due to internal processing issue as the NMI is linked to a consolidated account whose outstanding balance was over the threshold. The customer received a wrongful disconnection payment.	Isolated
Momentum	1 customer was disconnected while an outstanding complaint with EWOV was being investigated.	This was due to errors by staff or agents as the status of the account was not updated which would have acted as a control. Staff were reminded of this requirement. The customer received a wrongful disconnection payment.	Isolated
Momentum	1 life support customer was disconnected for non-payment.	The agent who arranged the connection did not flag the premise appropriately within the IT system. The premise was off supply for 9 hours. In response to this incident, the retailer has placed additional IT controls to prompt the correct identification of a customer using life support equipment and required staff to undertake refresher training to understand life support obligations.	Isolated
Origin	The retailer disconnected 6 customers whose outstanding debt was less than \$120.	These were due to the retailer not being aware of payments being made by the customer prior to the disconnection being performed. Impacted customers received a wrongful disconnection payment.	Isolated
Origin	4 customers were disconnected while having an URGS application pending.	This was due to errors by staff or agents. Both customers were reconnected and received a wrongful disconnection payment.	Isolated
Origin	1 customer was disconnected while an outstanding complaint was being investigated.	The customer was reconnected and received a wrongful disconnection payment.	Isolated
Simply Energy	5 customers were disconnected due to data entry and procedural errors.	Due to errors by staff or agents resulting in internal processes not being followed customers were wrongfully disconnected. Impacted customers received a wrongful disconnection payment. Staff involved in the disconnection	Isolated

Simply Energy	4 customers were disconnected due to data entry errors resulting in incorrect address details or service orders being raised.	process were retrained. Impacted customers were reconnected and received a wrongful disconnection payment from the retailer. Internal processes were also updated.	Isolated
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### Clause 15 – Reconnection

Clause 15 of the Retail Code sets out the obligations to be followed when reconnecting a customer.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Simply Energy	1 customer was not reconnected within the required timeframes.	This was due to an IT processing issue. The customer was later reconnected and received a wrongful disconnection payment.	Isolated

### Clauses 24.1(d), 24.2(a) & 24.3(a) – Termination

When a retailer may impose an early termination fee.

When a retailer may terminate a contract for a customer's breach.

Information provided to a customer before the expiry of fixed term contract.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
APG	19 customers were not notified of expiry of fixed term contract within the required timeframes.	This was due to a fault in the billing system. Customers were contacted and informed of the issue.	Systemic
Simply Energy	1682 customers were not notified of expiry of fixed term contract within the required timeframes.	Due to contract start dates not being applied correctly, renewal notices were not produced. Customers were contacted and informed of the issue.	Isolated

### Clauses 26.4(b), 26.7 – Information on tariff changes and life support

A retailer must give notice to a customer, as soon as practicable, of any variation to the tariff that affects the customer.

As soon as practicable, a retailer must provide details to the distributor of an address where life support or continued supply is necessary.

As soon as practicable, a retailer must report a fault at such an address to the distributor.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
EA	950 solar customers did not receive 20 day notice of tariff price/structure changes.	This was due to legacy system issues. Customers were informed of the issue and were not disadvantaged as they were paid a higher solar credit.	Systemic
EA	8183 customers did not receive 20 day notice of tariff price/structure changes.	Due to billing delays customers did not receive the required notification. Customers continued to be billed on the previous charges and those overcharged were reimbursed.	Systemic
Origin	The retailer did not conduct a validation of its life support records during the 2012-13 reporting period.	Validation of all customer supply addresses identified as requiring life support was completed by 30 December 2013 with all distributors and continues to be performed on a regular basis.	Isolated

### Clause 28.3 – Energy and Water Ombudsman Victoria

The existence, operation and contact details of the Energy and Water Ombudsman Victoria must be shown on any disconnection warning notices.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Blue NRG	The disconnection warning notice template did not include the number of the Energy and Water Ombudsman Victoria. No customers were disconnected.	This was due to a failure to review the template. The template was subsequently updated.	Isolated

### Clause 30 – Additional retail charges

Outlines the circumstances where a retailer may impose additional retail charges.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
APG	1952 standing offer customers were charged a fee not permitted under their contract.	This was due to confusion regarding the applicability of the fee. Customers were credited the overcharged amount on their next bill.	Systemic

### Clause 31 – Agreed damages

Describes the terms and conditions and amounts of agreed damages payable to the retailer by the customer when breaching their contract.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
APG	11,400 customers were charged a termination fee in excess of \$20.	This was due to a misinterpretation of the Retail Code. Customers were contacted and reimbursed.	Systemic

The retailer was subject to an undertaking for this systemic issue.

### TABLE 2.3 MARKETING CODE

The Marketing Code specifies standards and conditions for the marketing of energy including cooling off and explicit informed consent.

#### Clauses 3.2-3.6 – Information, cooling-off and conduct

Retailers must not mislead consumers, provide certain information to them and allow a cooling off period.

The retailer’s obligations in relation to the conduct of sales agents and the provision of offer information to consumers.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Alinta	3 customers were provided with incorrect pricing information.	Agents involved were retrained and customers were transferred to their previous retailer.	Isolated
Alinta	5 customers were incorrectly marketed to by sales agents.	Due to errors by staff or agents, unconscionable, misleading and deceptive conduct of sales agents, customers were incorrectly transferred. Alinta investigated each case and initiated retrospective transfers for each customer.	Systemic
Blue NRG	Approximately 6000 customers were not advised prior to signing with the retailer that they may be contacted to confirm their consent and understanding of the contract.	This was due to an oversight and contractual information has been updated to reflect this requirement. As no customers were contacted for the consent audit, there was no customer detriment experienced.	Systemic
EA	31 customers were incorrectly marketed to by sales agents.	Due to unconscionable, misleading and deceptive conduct of sales agents, customers were incorrectly transferred. The contract with the marketing channel was terminated.	Systemic
EA	12 new customers did not receive contractual information within the required timeframes.	This was caused by processing deficiencies at the mail house. Additional controls were implemented to monitor the dispatch of contracts.	Systemic
Lumo	11 customers were incorrectly marketed to by sales agents.	Due to unconscionable, misleading and deceptive conduct of sales agents, customers were incorrectly transferred. The sales agents were terminated and customers were	Systemic

		transferred to their previous retailer.	
Lumo	11 new customers did not receive contractual information within the required timeframes.	This was due to errors by staff or agents. Information was sent to customers and the cooling-off period was extended for impacted customers. The sales agents involved were retrained.	Systemic
Origin	841 new customers did not receive contractual information within the required timeframes.	This was due to processing issues. Information was sent to customers which included an apology letter and the cooling-off period was extended for impacted customers.	Systemic
Origin	1 customer was incorrectly marketed to by a sales agent.	The customer was transferred to their previous retailer. All sales conducted by the sales channel were investigated and all customers were contacted to ensure they understood they entered into an agreement.	Isolated
Red	10 individual breaches relating to conduct of sales agents were identified, which included providing incorrect information, misrepresenting themselves and falsifying the sale.	Due to unconscionable, misleading and deceptive conduct of sales agents, customers were incorrectly registered to transfer. Customers were handled individually and were sent apology letters or provided with credits and transferred to their previous retailer as appropriate.	Isolated
Simply Energy	46 individual breaches relating to conduct of sales agents were identified, which included providing incorrect or misleading information, misrepresenting themselves, acting unconscionably and falsifying the sale.	Due to unconscionable, misleading and deceptive conduct of sales agents, customers were incorrectly registered to transfer. Impacted customers were handled individually and transferred to their previous retailer as appropriate or provided with credits. Sales agents involved were terminated.	Isolated
Simply Energy	3566 new customers did not receive contractual information within the required timeframes.	This was due to a processing delay. A reconciliation process was introduced to mitigate future occurrences.	Systemic

### Clauses 4.1 & 4.3 – Consumer consent

Retailers must obtain explicit informed consent (EIC) of the consumer and the rules regarding sales to minors and authorised consumers.

Each calendar year, the retailer must audit a sample of customers' market contracts to ensure that each customer has given EIC.

Retailers must keep records for one year, which must be made available for independent audit as required.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Alinta	3 customers were transferred without providing explicit informed consent.	Terminated contract of sales channel and impacted customers were transferred back to their previous retailer.	Isolated
EA	964 customers transferred to EA without providing their consent.	The retailer's telesales agents failed to obtain explicit informed consent. Terminated contract of the sales channel and contacted all customers to confirm if EIC was obtained. If not, customers were transferred to their previous retailer. The retailer has extensively reviewed its arrangements with third parties and implemented significant controls to prevent a reoccurrence of this nature.	Systemic
EA	748 customers were transferred to the retailer due to system or human errors, including failure to cancel transfers within the cooling off period and incorrect premise information provided by the customer.	The retailer requested the previous retailer to retrospectively transfer the customer's NMI. Bills were cancelled and customers informed of the issue and were not required to pay any invoices.	Systemic
ERM	The EIC of 26 business customers was not recorded.	This was caused by a failure of the voice recording system. Impacted customers were contacted to ensure EIC was recorded.	Isolated
Origin	2830 customers were transferred in error.	This was due to the wrong NMI being selected to transfer. The retailer requested the previous retailer to retrospectively transfer the customer's NMI.	Isolated
Origin	3 customers were transferred to the retailer without explicit informed consent.	The retailer requested the previous retailer to retrospectively transfer the customers impacted. One of the sales agents involved was terminated and the transfer was cancelled.	Isolated
Simply Energy	17 customers were transferred to the retailer without explicit informed consent.	The sales agents involved were terminated and the transfer was cancelled.	Isolated

## Clauses 6 – Marketing and consumer information

Retailers must ensure that they do not misrepresent the purpose of their contact with consumers, and abide by the National Privacy Principles.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Red	2 sales agents falsified two sales.	Both customers were transferred back to their previous retailers. The sales agents involved were disciplined under the Energy Assured Limited Code of Conduct and de-registered.	Isolated

Red	2 sales agents misinterpreted the purpose of their visit.	The sales agents involved were sanctioned under the Energy Assured Limited Code of Conduct. One sales agent was de-registered and the other was provided additional training.	Isolated
Red	1 sales agent knowingly sold to a person who was impaired.	The sales agent was disciplined under the Energy Assured Limited Code of Conduct and was provided additional training.	Isolated

# TYPE 2 BREACHES

**TABLE 3.1    MARKETING CODE**

The Marketing Code specifies standards and conditions for the marketing of energy including contact with consumers and dispute resolution.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Alinta	<u>Clauses 2.1 - 2.3</u> The retailer's sales agent failed to observe no canvassing signs.	The sales agents involved were terminated.	Systemic
EA	<u>Clauses 7</u> Complaints from prospective customers were not recorded for a three month period.	Complaints from prospective customers were not logged as the form was unavailable due to human error. Complaints are now handled directly by the Customer Relations team and are recorded appropriately.	Isolated
Red	<u>Clause 2.1 - 2.3</u> A sales agent failed to observe no canvassing signs.	A letter of apology was sent to the customer and their details were added to a Do Not Contact list.	Isolated

**TABLE 3.2    ELECTRICITY RETAIL LICENCE**

The licence sets out conditions the retailer must abide by when retailing energy.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Alinta	<u>Clauses 9.1 – 9.3</u> 1107 customers who moved to a standing offer were not sent a Welcome Pack.	An automated solution has been implemented to send packs out in a timely manner.	Systemic
Blue NRG	<u>Clause 12.3</u> A deemed customer was not provided advice in writing that it was supplied under a deemed arrangement.	Internal processes were developed to identify customers who may be on a deemed contract.	Isolated
EA	<u>Clauses 9.1 – 9.3</u> 17 318 customers did not receive accurate tariff and terms and condition information in writing.	The retailer has amended the process to ensure that customers in a deemed relationship now receive a letter containing their rights, tariff information and the terms and conditions. Customers were contacted by letter and encouraged to make contact to receive the tariff information.	Systemic

**TABLE 3.3 GUIDELINE 19 – ENERGY PRICE AND PRODUCT DISCLOSURE**

Guideline 19 specifies the requirements related to publishing and providing information regarding offers to customers.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Blue NRG	<u>Clauses 2.1 – 2.2</u> The retailer failed to publish on its standing offer on its website.	The retailer believed that as this offer was not actively marketed it was not required to publish it on the website. The website has been updated to include the standing offer.	Isolated
Blue NRG	<u>Clause 3.1</u> Customers were required to provide personal and technical information to access market offer information and Price and Product Information Statements.	The retailer acknowledged a lack of understanding of the requirement and subsequently updated its website to not require such information from customers.	Isolated
EA	<u>Clause 3.6</u> Five Price Fact Sheets available on the retailer’s website displayed incorrect pricing information.	A checking process has been implemented to check all files prior to uploading the Price Fact Sheets on the website.	Isolated

**TABLE 3.4 RETAIL CODE**

The Retail Code specifies the terms and conditions required in a contract for the supply or sale of energy.

### Clause 2 – Retailer’s obligation to connect

A retailer must connect as soon as practicable.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Alinta	2 customers were not connected on the date requested.	Both customers were connected and were compensated for the inconvenience.	Isolated
EA	26 gas connections were not actioned within the required timeframes.	This was a result of an IT error which delayed the service order being sent to the distributor. An interim solution was implemented until the system issue was resolved.	Isolated

### Clause 3.1 – Billing cycles

Retailer obligations to issue bills to customers:

- Electricity – issued every three months;
- Gas – issued every two months;
- Dual Fuel – issued as agreed between retailer and customer.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
AGL	2796 customers received delayed bills.	These bill delays were caused by a number of reasons such as not receiving the data or valid meter reading readings from the distributor. The retailer monitors billing activity via operational reports which track unbilled customer accounts. Detailed analysis is carried out, with the underlying root causes being investigated and resolved to prevent future reoccurrences. Delayed bills are accompanied by a letter advising of the delay and an offer of a payment plan.	Isolated
Alinta	1625 customers were not billed within the prescribed timeframes.	Delays of bills were caused by system issues and have been resolved following system enhancements.	Systemic
Alinta	A customer received a bill covering periods over 3 months.	This was a result of human error and the bill was reissued.	Isolated
Click	225 customers received invoices daily.	This was due to a system processing issue. Impacted customers were reissued bills.	Isolated
EA	5271 customers were not billed within the prescribed timeframes.	This delay was due to manual intervention required to resolve billing exceptions. Implemented a number of enhancements to address system issue which have caused delays.	Systemic
Momentum	9483 customers were not billed within the prescribed timeframes.	This was a result of unsuccessful system and process improvements; the issue was resolved on 30 September 2014.	Systemic
Neighbourhood	906 customers were not billed within the prescribed timeframes.	System and performance issues caused a billing backlog resulting in bills not being issued in a timely manner. The billing system was improved and messages placed on customer bills.	Systemic
Powerdirect	435 customers were not billed within the prescribed timeframes.	These bill delays were caused by a number of reasons such as not receiving the data or valid meter reading readings from the distributor. The retailer monitors billing activity via operational	Isolated

		reports which track unbilled customer accounts. Detailed analysis is carried out, with the underlying root causes being investigated and resolved to prevent future reoccurrences. Delayed bills are accompanied by a letter advising of the delay and an offer of a payment plan.	
Red	I customer received delayed bills due to network issues.	Due to meter data not being available customers received delayed bills. Offered equal time to pay and honoured pay on time discounts.	Isolated

### Clauses 4.2 & 4.4 – Information and graphs

Rules governing the minimum information to be included on a customer's bill and the rules requiring consumption graphs to be included on bills.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
AGL	291 752 customers received bills not displaying the end index read for the billing period.	This was caused by an issue with the data validation process and has been corrected.	Systemic
Click	974 customers received bills without a due date.	The issue was resolved on 30 July 2014 following implementation of a system modification. There was no customer impact as impacted customers were in credit.	Systemic
Dodo	Approximately 5000 customers did not receive bills containing a graph displaying consumption for the billing period.	The issue was resolved on 4 April 2014 following implementation of a system modification to resolve the issue.	Systemic
EA	83 991 smart meter customers (previous Ausgrid customers) did not receive bills displaying start and end index reads and other required information.	This was caused by system constraints. Customers were advised via a bill message to contact the retailer should they wish to access the missing information. The issue was resolved on 21 November 2014.	Systemic
EA	All smart meter customers (EnergyAustralia customers) did not receive bills displaying start and end index reads.	The issue was resolved on 18 May 2014 following implementation of a system fix.	Systemic
ERM	79 customers received bills without index reads.	The issue was resolved on 30 September 2014 following implementation of a modification to the system.	Systemic
Neighbourhood	23 212 customers received bills without index reads or a graph	System changes were implemented to allow index reads	Systemic

displaying consumption information.

and consumption graphs to appear on bills. This was completed on 30 November 2014.

Origin	15,000 former customers of Country Energy received bills which did not display index reads.	The issue was resolved on 8 October 2013 following migration of customers to Origin's billing system.	Systemic
Powerdirect	No more than 4859 business customers received bills which did not correctly display a consumption graph for the billing period. This breach only impacts business customers with a non-interval meter following receipt of an estimated read.	The retailer is in the process of resolving this issue. Customers are able to contact the retailer and seek their consumption history. This breach is not an issue under existing regulations as the current requirement is to display consumption data for each monthly period over the past 12 months for smart meter customers only, of which the retailer does comply with.	Systemic

### Clauses 5.1 – 5.3 – Basis of bill

The bill must be based on actual meter readings at least once every 12 months or based on estimations as per prescribed conditions.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Alinta	4 customers were billed twice for the same billing period.	This was a result of a system error which was later rectified.	Systemic
EA	2978 customers did not receive an actual read in a 12 month period.	This was caused by the customer restricting access to their meter or the distributor's inability to receive actual meter read data. Customers advised to contact retailer to establish actual meter read.	Isolated
Red	1 customer received a delayed bill.	This was due to the distributor not providing billing information in a timely manner. The delay was escalated and the customer was provided with an extension.	Isolated
Red	6 customers received a delayed bill.	This was caused by missing meter data following exchange of their meter.	Isolated

### Clauses 6.2 & 6.3 – Undercharging and overcharging

Sets out conditions under which a retailer may recover money from a customer who has been undercharged, unless this is due to an unlawful act by the customer, and conditions under which the retailer must repay a customer who has been overcharged.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
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AGL	4 customers were overcharged and not advised and credited within the prescribed timeframe.	Internal processing issues led to the delay. Customers were notified and reimbursed.	Isolated
Alinta	332 customers were charged incorrect rates.	As a consequence customers were charged incorrectly. A system modification was implemented on 26 February 2014 to correct pricing, and customers were reissued bills.	Systemic
APG	140 solar customers were overcharged.	Customers were reimbursed and notified.	Systemic
Click	Following a meter exchange 2565 customers received bills which were incorrect.	This was caused by the retailer not being advised of the new tariff applicable to the account by the distributor. Impacted customers were notified and a process improvement has been implemented to identify accounts.	Systemic
Click	23 solar customers were overcharged.	The overcharge was a result of solar credits not being applied to the account. All accounts were reissued with the credits appearing on the bill.	Systemic
Click	317 customers were overcharged.	The overcharge was a result of the system not separating usage charges appropriately between Peak, Shoulder and Off Peak. All accounts were reissued with the credits where applicable.	Isolated
Click	2330 customers were incorrectly charged the Service to Property Concession. Customers were consequently either overcharged or undercharged.	This was caused by a system error. Over half of the customers impacted have been remediated, while the remaining customers will be rectified shortly.	Systemic
Click	2765 customers were overcharged due to duplicate charges being applied to their bill.	A system upgrade has mitigated the issue. Investigations are still ongoing, however a number of accounts have been reversed and reissued.	Systemic
Click	9549 customers were incorrectly charged for usage; as a result customers were either overcharged or undercharged.	Investigations are still ongoing, and a project has been established to manage the corrections.	Systemic
EA	177 869 customers were overcharged.	This was due to a product discount and credits not being applied. The majority of impacted customers were notified and credited by November 2013, with the exception of 351 accounts which were corrected in July 2014.	Systemic
EA	8837 customers were overcharged and not all were notified within the prescribed timeframes.	This was due to a system and processing error. The issue was resolved on 30 August 2013.	Systemic
EA	3414 solar customers were billed incorrectly resulting in overcharging or undercharging.	This was due to errors during the setup of the account. Accounts have been amended to reflect the correct	Systemic

		solar rebate credit.	
EA	11 063 customers were incorrectly charged a termination fee when transferring between EA's two separate operating systems.	Impacted accounts were identified and credited. This issue was resolved on 30 November 2013.	Systemic
EA	5525 customers were overcharged as they did not receive a rebate due on their first bill.	All rebates were applied as of 1 March 2015.	Systemic
EA	2921 customers were direct debited twice.	All transactions were reversed and the retailer has implemented a new direct debit processing system which will eliminate the root cause of this issue. This was resolved on 5 July 2013.	Systemic
EA	1231 customers were overcharged due to the double billing of off peak consumption.	A system defect caused this issue. A system modification was implemented to correct the defect on 10 July 2014. Customers were rebilled by 10 July 2014.	Systemic
EA	An undefined number of customers (less than 4000 nationally) have been incorrectly charged an exit fee when transferring to another plan with the retailer.	This was due to an error in the application of exit fees when establishing the new plan. Prior to the implementation of a system control to correct the issue, exit fees were reversed from impacted accounts. Remediation is expected by 30 April 2015.	Systemic
EA	Duplicated charges were applied to accounts resulting in 606 customers being overcharged.	A system enhancement was implemented to rectify the issue and prevent future reoccurrences of this system deficiency. Impacted customers were notified and credits applied to accounts. This issue was resolved on 30 June 2014.	Systemic
EA	1 multi-site customer was overcharged.	This was due to a system error; processes have been implemented to prevent reoccurrences. The customer's account was cancelled and rebilled. This issue was resolved on 8 July 2014.	Systemic
EA	157 customers were charged rather than credited for their solar generation.	This was a result of data migration issues and incorrect account set up. Accounts were corrected by 28 February 2015.	Systemic
EA	477 solar customers were overcharged.	This was due to solar credits not being applied. Accounts have been corrected to ensure credits are applied by 30 September 2014.	Systemic
EA	82 customers were incorrectly direct debited when their accounts were in credit.	This was caused by a system defect which was rectified on 5 March 2014. Refunds were issued to customers.	Systemic
Origin	865 customers were overcharged.	This was due to the incorrect network tariff being assigned to the account resulting in overcharging. A system	Systemic

change was implemented on 29 June 2013 to correctly map accounts. Customers were sent letters advising of the issue.

Origin	302 customers were overcharged or undercharged.	This was a result of incorrect account set up and various system issues. The retailer will contact all customers and will not be seeking to recover any undercharged amounts, while customers overcharged will be reimbursed.	Systemic
Origin	3 customers were not offered equal time to pay for undercharged amounts	Customers were reconnected and paid compensation.	Isolated
Red	1332 customers were overcharged.	This was due to the incorrect concession amount being applied to the account. This defect was rectified on 31 March 2014 as customers received replacement bills inclusive of the concession.	Systemic

### Clauses 7.1(b) & (c), 7.2 – Payment of a bill

The pay-by-date is no less than 12 days from the date of despatch which is the date of the bill unless specified.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Click	584 customers did not receive their bill on the day it was issued.	Customers were sent the invoice following identification of the issue, and the bill due date was extended to ensure the appropriate time to pay was provided.	Isolated

### Clause 9 – Shortened collection cycles

The retailer's right to apply shortened collection cycles and notice requirements.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Origin	11 customers were disconnected and not provided notification prior to being placed on shortened collection cycles.	An IT issue caused customers to be placed on a shortened collection cycle. Customers were reconnected and received a wrongful disconnection payment.	Isolated

### Clause 26.6 – Energy efficiency advice

Retailers must upon request provide energy efficiency advice to customers.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Red	A customer was not provided energy efficiency advice prior to disconnection.	A wrongful disconnection payment was provided to the customer along with hardship assistance.	Isolated

# TYPE 3 BREACHES

**TABLE 4.1     MARKETING CODE OF CONDUCT**

The Marketing Code specifies standards and conditions for the marketing of energy including cooling off and explicit informed consent.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Blue NRG	<u>Clauses 2.4 - 2.5</u> The commencement and conclusion times of personal visits and telephone marketing activities were not recorded.	The failure to record the start and end times of marketing activities was due to the lack of awareness of this particular obligation. Marketing representatives were provided training to ensure adequate awareness of the obligation.	Systemic

**TABLE 4.2     GUIDELINE 19 – ENERGY PRICE AND PRODUCT DISCLOSURE**

This document specifies the requirements related to publishing and providing information regarding offers to customers.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Blue NRG	<u>Clause 4.1</u> Offer Summaries provided to customers did not contain all relevant information.	Offer Summaries have been updated to reflect requirements of Guideline 19.	Isolated

**TABLE 4.3     GUIDELINE 13 – GREENHOUSE GAS DISCLOSURE**

Guideline 13 specifies the minimum information concerning greenhouse gas emissions connected with the generation of electricity which a retailer must include in each bill issued to a customer.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Blue NRG	<u>Clause 1.5</u> Guideline 13 was not published on the retailer’s website.	Upon identification of breach the Guideline was published on the website.	Isolated

Dodo	<u>Clause 1.5</u> Guideline 13 was not referenced in the Customer Charter.	The Customer Charter was updated to include a reference to the Guideline.	Isolated
EA	<u>Clause 1.5</u> Guideline 13 was not published on the retailer's website.	The omission of the Guideline was an oversight. As the Guideline has been repealed there is no longer a requirement for the document to be published on a retailer's website.	Isolated

#### TABLE 4.4 RETAIL CODE

The Retail Code specifies the terms and conditions required in a contract for the supply or sale of energy.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Click	<u>Clauses 26.2 - 26.5</u> Price Fact Sheets for the Quick product displayed incorrect pricing.	The incorrect charges displayed on the Price Fact Sheets were due to a typographical error. Customers were not overcharged as the rates shown were higher than actually charged. Price Fact Sheets have been updated to reflect the correct charges.	Isolated
Click	<u>Clause 13.5</u> A customer was wrongfully disconnected.	The disconnection was raised for the incorrect account. Additional training was provided to the team responsible for raising disconnection service orders. The customer received a wrongful disconnection payment.	Isolated
EA	<u>Clauses 4.5 - 4.6</u> Dual fuel customers, who had not specified division of payment, did not have their payments applied to electricity and gas in proportion to their respective values.	Where the customer didn't specify, payment went to the oldest debt first. EA will continue to monitor and resolve customer queries as they arise.	Systemic
EA	<u>Clause 10.1</u> 3955 customers had their billing cycles altered from quarterly to monthly without providing consent for this change.	The retailer has identified and corrected the system configuration issue which led to this breach.	Systemic
Lumo	<u>Clause 13.5</u> Six customers were wrongfully disconnected.	Failure to raise disconnections for the correct date requested by the customer. The customer was reconnected and a Wrongful Disconnection Payment applied to the account.	Isolated

Origin	<u>Clause 13.5</u> Six customers were wrongfully disconnected.	Failure to raise disconnections for the dates requested by the customer. Wrongful Disconnection Payments were applied to customer accounts.	Isolated
Red Energy	<u>Clause 13.5</u> Five customers were wrongfully disconnected.	Failure to raise disconnections for the dates requested by the customer or for the correct premises were due to human error. Feedback provided to agents and Wrongful Disconnection Payments applied to customer accounts.	Systemic

#### TABLE 4.5 INFORMATION SPECIFICATION (SERVICE PERFORMANCE)

This document details the performance indicator data to be reported by retailers.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Dodo	Hardship data was not provided for the July to December 2013 period.	IT failures prevented this data being available for submission. The data was later provided in the following period.	Isolated