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2008–09 COMPLIANCE REPORT

FOR ENERGY RETAIL BUSINESSES

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PREFACE

The primary objective of the Essential Services Commission (the Commission) is to promote the long-term interests of Victorian customers with regard to the price, quality and reliability of essential services. In meeting this objective, one important function is to monitor the compliance of Victorian regulated energy businesses against their licence obligations. The Commission's broad approach to compliance and enforcement for retail energy businesses is outlined in the *Compliance Policy Statement for Energy Businesses*, November 2006 (Compliance Policy).¹

This report outlines the Commission's activities during the period 1 July 2008 to 30 June 2009 in meeting its obligations under the Compliance Policy. These activities include addressing serious and systemic issues arising from complaints referred by the public, the Energy Ombudsman and other Government or community organisations, and investigating breaches of regulatory instruments reported by the retail energy businesses.

Energy retailers must comply with a number of statutory and regulatory obligations in the competitive energy market. The Commission found that in 2008–09, energy retailers satisfactorily complied with most of their regulatory obligations.

In resolving non-compliance matters, retailers engaged with the Commission in good faith and generally remedied all breaches efficiently and effectively.

The Commission has assessed the retailers' level of compliance through both formal and informal monitoring. The Commission may use administrative undertakings and more substantive enforcement actions to remedy non-compliance, but encourages retailers to develop a culture of voluntary compliance.

In general, the Commission was satisfied that retailers' proposed remedial actions were sufficient to address any breaches and that further enforcement action was not warranted.

While there was a satisfactory level of general compliance, a number of retailers breached their billing, information provision and market conduct obligations. The Commission previously has reported on AGL's significant non-compliance with a number of regulatory obligations, which contributed to the overall level of non-compliance in the Victorian market in 2008-09.

The Commission remains concerned about the incidents of marketing conduct behaviour, which bring the energy market into disrepute and impact on the reputation of all retailers. The Commission will continue to monitor this behaviour

¹ See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Decisions+and+Determinations/Compliance+strategy>

closely, through its *Respecting Customers: Regulating Marketing Conduct 2009-10* program.

The report also sets out the number of wrongful disconnection payments made in the year. The Commission notes the disparity between the number of wrongful disconnections detected by the retailers and those identified through the customer contacting the Energy Ombudsman.

The Commission will continue to monitor retailers' compliance with their regulatory obligations in 2009–10, including the following specific compliance issues:

- that retailers monitor their sales agents' compliance with the marketing regulation;
- that all retailers provide customers with contractual information in an easily accessible and timely manner.

The Commission intends to undertake independent audits of all retailers in 2010, in conjunction with the other jurisdictions, with a particular focus on the capacity of the retailers' systems to detect and report compliance breaches, including wrongful disconnections.

The Commission will publish a 2009–10 compliance report in December 2010.

Dr Ron Ben-David
Chairperson

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1.1 The purpose of this report

In 2008-09 fourteen licensed energy retail businesses were actively selling to electricity customers in Victoria. Eight retailers also sell to gas customers. The Essential Services Commission (the Commission) monitors these retailers' compliance with their licence obligations through a range of mechanisms, including addressing serious and systemic issues arising from complaints received from the public, the Energy and Water Ombudsman (Victoria) ('the Energy Ombudsman') and other parties.

The retailers provide reports to the Commission when non-compliance with a regulatory obligation is established. The retailers are required to report the most significant breaches immediately, and other breaches at six-monthly intervals. The annual compliance reports provide the Commission with information on all regulatory breaches.

By monitoring and analysing the information obtained from these sources, the Commission can establish where there are systemic breaches of regulatory obligations, requiring attention.

This report provides an overview of the Commission's compliance activities and the level of compliance of those energy retailers active in the Victorian market in 2008-09.

1.2 The powers of the Commission

Regulated energy businesses in Victoria are governed by three principal Acts, the *Essential Services Commission Act 2001* (ESC Act), the *Gas Industry Act 2001* and the *Electricity Industry Act 2000*. As well as imposing obligations directly on the businesses, the Acts empower the Commission to issue licences to the businesses, and publish codes and guidelines for the conduct of their businesses.

The Commission has a wide range of enforcement measures available to it when responding to allegations of non-compliance with licence obligations. These measures range from less formal and administrative options to progressively more substantive statutory-based responses. The Commission may proceed with more significant enforcement actions where required, or where other measures have been ineffective, to address and rectify non-compliance.

1.3 The Commission's approach to compliance and enforcement

The Commission's overall approach is to encourage a culture of compliance among the regulated businesses. To this end, it supports the voluntary adoption by

businesses of the Australian Standard AS3806-2006 Compliance Programs, which provides principles and guidance for implementing a flexible and effective compliance program within a business.

The Commission is committed to adopting a co-operative and persuasive enforcement approach because when this approach is successful it works better than punitive sanctions in accomplishing long-term compliance. However, compliance cannot be based solely on encouraging voluntary compliance and where necessary, sanctions will be applied

The Commission's enforcement actions, in order of increasing consequence, include:

- Issuing a letter confirming that a breach has occurred and outlining the remedial action that the business is expected to take;
- Serving a provisional enforcement order, under section 53 of the *Essential Services Commission Act 2001*, requiring the business to comply with a licence condition or to rectify a contravention;
- Serving a final enforcement order, under section 53 of the *Essential Services Commission Act 2001*, following 28 days notification of this intention to the regulated business;
- Levying a penalty for non-compliance under the provisional or final enforcement order;
- Appointing an administrator to the business of a licensee where there has been a contravention of licence conditions which threatens the security of the energy supply, and any other remedies to enforce compliance have not been adequate; and
- Varying or revoking a licence.

Further details of the Commission's approach are documented in its Compliance Policy.²

1.4 The Commission's relationships with other organisations

The Commission has well-established relationships with other jurisdictional regulators and both government and community agencies, which assist its compliance monitoring activities. Memoranda of Understanding (MOU) formalise the relationships between the Commission and the other bodies.

In particular, Consumer Affairs Victoria (CAV), the Energy Ombudsman and Department of Human Services (DHS) have an active role in monitoring the conduct of the regulated energy businesses in the market.³

² See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Decisions+and+Determinations/Compliance+strategy/Compliance+strategy.htm>

³ See <http://www.esc.vic.gov.au/public/About+ESC/Memoranda+of+Understanding/>

Where potentially significant and widespread non-compliance issues have been identified, the Commission will consult with the relevant agency to ensure that a consistent and efficient response to addressing the non-compliance is taken.

The Commission also consults with the Australian Competition and Consumer Commission (ACCC) on marketing conduct matters. In 2008–09, the Commission continued discussions with the Australian Energy Regulator (AER) to inform the AER of the scope and nature of the Commission's energy industry monitoring role, in preparation for the transfer of these functions.

The Commission's Customer Consultative Committee (CCC) and consumer organisations have also provided valuable information about customers' experiences that helps to identify potential non-compliance issues to be addressed with the retailers.

1.5 Structure of the report

The remainder of this report is structured as follows:

- Chapter 2 summarises the retailers 2008-09 annual compliance reports by categorising the breaches as systemic or isolated, and setting out the remedial actions taken by the retailers.
- Chapter 3 summarises the wrongful disconnection compensation cases identified by retailers, customers or the Energy Ombudsman.
- Chapter 4 summarises other compliance issues arising 2008-09, through the Commission's marketing conduct work program, its independent auditing program, and its investigation of customer complaints.
- The Appendix gives details of the retailers' compliance reports to the Commission.

2.1 Overview

There are 4.3 million electricity and gas customers in Victoria, approximately 1.08 million of whom changed retailer in 2008-09.⁴ The Commission understands that, in a dynamic, competitive market, there is a significant amount of marketing undertaken by retailers; retailers report that their sales agents contact thousands of customers in their marketing campaigns.

Given this market activity, the Commission found that the number of reported instances of non-compliance with the regulatory obligations was relatively low and that in general, the retailers' reported remedial actions were sufficient to address any breaches. There were few breaches of the Energy Retail Code and further enforcement action was not warranted.⁵

The report highlights breaches of the Marketing Code of Conduct. The Commission accepts that the retailers contract third-party sales' agents on commission and, as with any market, marketing behaviour occurs which is not condoned by the licensed retailers. Nevertheless, some incidents reported by retailers were quite serious. The remedial actions taken by the retailers, in the main, were appropriate, but the Commission requires retailers to continuously monitor their sales agents' training and customer complaints to ensure that this behaviour does not continue.

The Commission will continue to regulate and report marketing conduct behaviour through its *Respecting Customers* strategy.⁶ It will continue to consult with CAV where complaints about retailers' marketing conduct behaviour are serious or potentially systemic.

The Commission notes that retailers have identified breaches of regulatory obligations in their annual report, which were not reported in accordance with the Compliance Reporting Manual. For example, some retailers did not report serious and systemic breaches until they compiled their annual reports. The Commission will clarify to all retailers the immediate reporting requirements.

The Commission will continue to monitor retailers' compliance with all their obligations, and particularly in the areas where serious and systemic breaches have occurred and will undertake independent audits of all retailers in 2010.

⁴ See *Energy Retailers Comparative Performance Report – Customer Service 2008-09*, and *Energy Retailers Comparative Performance Report – Pricing and the Competitive Market 2008-09* at <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Performance+Reports/Energy+retailers+comparative+performance+report+-+customer+service+2008-2009>

⁵ The exception to this was AGL, which is reported as appropriately in this report.

⁶ See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Reports+and+Investigations/Respecting+customers+-+Regulating+market+conduct+2009-10/>

2.2 Retailers' reporting obligations

Classification – Type 1, Type 2, Type 3

The Compliance Reporting Manual summarises the regulatory obligations of the retailers, and classifies them according to the possible severity of any breach.

A Type 1 breach is considered to be a breach of a regulatory obligation where non-compliance would have a critical impact on customers and where the impact of that non-compliance increases over time if it is not rectified quickly. All actual or potential Type 1 breaches must be reported to the Commission immediately.

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

- non-compliance would seriously impact on customers; and/or
- the obligation is 'new' or has not been complied with in previous years; and/or
- the impact of that non-compliance increases over time.

Type 3 breaches are breaches of all other regulatory obligations. The retailers are required to report them only once a year.

To complete their reports, the retailers are required to confirm that they have an effective system for monitoring compliance and that they have not identified any breaches of obligations other than those that they have reported.

The Commission assesses whether the reported breaches are systemic or isolated, that is:

- Systemic breaches affect significant numbers of customers. For example, in computer-based processes, a retailer's IT processes fail to operate as intended, resulting in records that are wrongly selected or formatted, or calculations that are incorrect. In manual processes, incorrect instruction of staff, inadequate error-checking and supervision or similar factors may cause breaches.
- Isolated breaches affect fewer customers. Employees or agents may fail to follow established procedures or to process transactions correctly, but the impact is limited.

2.3 The reliability of retailers' reporting systems

The reliability of the reports received by the Commission is dependent on the retailers' capacity to detect non-compliance and report accurately. Most retailers have certified to the Commission that their compliance systems are reliable. The exception was AGL, which did not include a statement in its annual compliance report that it had an effective compliance program in place. This was confirmed in the independent audit.⁷ AGL's compliance system will again be independently audited in March 2010.

The other retailers have certified that they do have effective compliance systems in place. However, this can only be confirmed by an independent audit and the Commission will be requiring this confirmation in the 2010 audit program.

⁷ See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Audit+Reports/Summary+audit+report+-+AGL+Energy+Limited>

2.4 2008–09 compliance reporting

2.4.1 Type 1 breaches

This section summarises the Type 1 breaches of the licence, retail code and the marketing code reported by retailers.

Energy Retail Code

The main breaches of the retail code were reported by AGL and have been discussed at length in the independent audit report. There were a small number of systemic breaches reported by two other retailers:

- Australian Power & Gas did not provide the required notice of a tariff increase to 3000 customers. The customers' accounts were adjusted as necessary.
- Origin Energy did not provide the required information to 5,200 customers on expiring fixed-term contracts. The customers were billed at the lower rate until the system was upgraded.

Retailers also reported breaches of the disconnection regulatory obligations, as set out in chapter 3. Details of the Type 1 breaches are set out in the Appendix section A.1.

Marketing Code of Conduct

The retailers' reporting of Type 1 marketing conduct compliance shows that there were both systemic and isolated non-compliance with the following obligations:

- to provide accurate information to customers and to comply with fair trading laws, including cooling-off periods⁸
- to ensure that customers give their explicit informed consent to contracts.⁹

These breaches highlighted failures of retailers' IT processes and systems or problems with training and supervision of sales staff.

Systemic breaches arising from IT systems included:

- AGL sent incorrect or delayed information to approximately 5700 customers and did not advise a number of new and recontracting customers of possible charges for dishonoured payments. AGL advised that the errors were corrected, contract start dates were adjusted to allow for the delay in sending out the correct information and there was no financial impact on the customers.
- Origin Energy's new IT system did not send contractual information to 7000 customers within the required timeframe. Customers subsequently received the required contract documents with an explanation.
- Australian Power & Gas did not send contractual information to new customers within the specified timeframe. These customers were subsequently provided with all relevant information and their cooling-off period was extended.

These retailers all advised that their IT systems were subsequently corrected so that the errors did not continue.

A number of retailers reported both systemic and isolated incidents of sales agents' marketing behaviour:

- Neighbourhood Energy reported customer complaints that agents had made false claims to customers, for example, that 'they were from the government'. They also reported complaints from customers that they did not consent to the transfers. Neighbourhood

⁸ Clauses 3.2-3.6 of the Marketing Code of Conduct

⁹ Clauses 4.1-4.3 of the Marketing Code of Conduct

Energy reported taking corrective action including improved training and call monitoring, review of contracts with sales agencies and involvement in hiring of agency staff.

- Energy Australia reported that agents had given customers incomplete or inadequate information and acquired customers' accounts without explicit informed consent.
- Simply Energy reported complaints about sales agents' conduct, failure to provide adequate information to customers, and account transfers and contract changes without the required consent.

These retailers advised that all account transfers were cancelled or reversed at no charge as required. Sales agents were retrained, warned or dismissed as appropriate.

Retailers also reported a number of isolated marketing misconduct breaches which were quite serious, for example, one agent verbally abused a customer and other agents falsified customer contract particulars. Seven retailers were involved in a total of 68 cases. In all cases, customers were contacted and could exit their contracts without penalty if they chose. The sales agents were dismissed if fraud or other serious behaviour was involved, and required to undergo retraining if the marketing behaviour was not as serious or deliberate. In one case, criminal proceedings were instituted.

Given the remedial actions undertaken by retailers, the Commission did not take any further enforcement action in relation to the reported breaches. The Commission requires retailers to continuously monitor their sales agents' training and customer complaints to ensure that this behaviour does not continue.

The Commission consulted with CAV about two retailers' marketing conduct complaints, and provided supporting information for further investigation. CAV is to formally advise the Commission on the outcomes of its consideration of these cases.

The retailers' reports are tabulated in the Appendix section A.1.2.

Electricity Licence

The retailers are required under their licence to comply with all relevant laws.

Simply Energy advised that it sent some customers the details of other customers' energy contracts instead of their own. This is a breach of the Commonwealth *Privacy Act*.

Simply Energy advised that the correct information was later sent with a request to destroy the previous versions. The Commission is requiring Simply Energy to advise the measures it is taking to ensure such breaches of the *Privacy Act* will not recur.

2.4.2 Type 2 breaches

This section summarises the major Type 2 breaches of the licence, retail code and the marketing code reported by retailers.

Energy Retail Code

The majority of systemic breaches reported by the retailers related to non-compliance with their billing obligations. AGL reported the most breaches, which are set out in more detail in the Audit Report.¹⁰

Other retailers' reports included the following:

¹⁰

See

<http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Audit+Reports/Summary+audit+report+-+AGL+Energy+Limited>

- Some Origin Energy customers (estimated at up to 3 per cent) did not receive their electricity bills every three months. Customers received an explanation for the significant delays and an offer of extended payment terms.
- Australian Power & Gas reported that 2500 customers' bills showed zero energy consumption, and up to 124 more customers were not credited with payments they had made. The IT system errors were corrected and the accounts adjusted.
- Up to 800 Neighbourhood Energy customers with manually read interval meters received manually processed bills until the process became infeasible and billing ceased for a period. The IT system has been enhanced and, where customers experience difficulty paying back-bills, they will be offered extended payment terms.
- Simply Energy did not review the accounts of 2800 customers on bill-smoothing plans every six months as required to eliminate significant credit or debit balances. Such plans are being withdrawn and alternative instalment plans provided.

There were a small number of isolated incidents reported, which are detailed in the Appendix section A.2

Marketing Code of Conduct

Only two retailers reported systemic breaches of clause 2 of the marketing code. Approximately 30,000 new AGL customers were not notified of a pending price increase. They received an apology and a credit for the period during which they had therefore been overcharged.

EnergyAustralia reported a small number of customers were dissatisfied that the sales agents did not properly identify themselves. The retailer reported that the agents involved were retrained.

Electricity Licence

Two retailers reported systemic breaches of clause 9 of their electricity licences, which requires them to provide certain information to customers:

- Country Energy sent 820 customers contract-renewal offers less than a month before the expiry of their contracts. The customers were billed at the previous contract rates for a further month.
- Momentum Energy did not provide terms and conditions of deemed contracts to approximately 100 customers who were accessing electricity supply without having contacted the retailer. The retailer advised customers about their deemed contracts and their options.

Country Energy reported that it breached clause 9 of its electricity licence by suspending all communication with customers affected by bushfires, including those who had lost their homes and their need for continued supply, and those whose contracts were due to expire. The Commission nevertheless recognises that Country Energy's actions were appropriate and intended for the benefit of the customers concerned.

2.5 Type 3 breaches

There were a small number of breaches reported.

Systemic breaches of the retail code:

- AGL reported that for six months, information provided to customers on its website or in other forms did not contain details of all fees and charges. Offer Summaries and other material were updated with the required information

- Momentum Energy did not send 100 customers the details of their contracts, terms and conditions within 2 business days, as required by clause 26 of the retail code. The processing of new accounts has now been accelerated to eliminate the delay.

Victoria Electricity reported a breach of Guideline 10, Confidentiality and Explicit Informed Consent.¹¹ Two employees discussed confidential information with a person who was not the account holder. The employees were given written warnings and all team members received further training.

¹¹ This has now been repealed but retailers have a continuing obligation to comply with National Privacy Principles under the federal Privacy Act 1988.

3.1 Overview

The Victorian Government introduced the wrongful disconnection payment (WDP) legislation in December 2004.¹² This requires a retailer to compensate a customer if it disconnects the energy supply and fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply can be disconnected.

The statutory provisions currently do not permit any discretion in limiting the amount or extent of the wrongful disconnection compensation payment if the disconnection is considered to be wrongful. The legislation sets a compensation rate of \$250 per day, which can be pro-rated for periods shorter than a full day.

In mid 2009, the Minister for Finance requested the Commission to review the operation and effectiveness of the WDP scheme. The Commission published a draft report in December 2009 analysing the appropriateness and application of the compensation payment, and canvassing options for the future.¹³

This chapter outlines cases that were referred to the Commission during 2008–09 and the number of cases that were settled by the retailers, with or without the involvement of the Energy Ombudsman.

3.2 Cases requiring Commission involvement

The Commission becomes involved in wrongful disconnection cases where a customer has made a complaint to the Energy Ombudsman, when the Ombudsman cannot get the customer and retailer to agree to a resolution.

In 2008–09, there were five requests for a formal decision by the Commission regarding wrongful disconnections by AGL (three cases), Origin Energy and Simply Energy (one case each).

One AGL case was formally withdrawn by the Energy Ombudsman as it was more appropriately dealt with through the Energy Ombudsman's normal dispute resolution procedures. In the Simply Energy case, after discussions with the Commission, the retailer agreed to make a wrongful disconnection payment of \$216, despite its concerns that ambiguity in the Energy Retail Code meant that the requirement to pay the compensation was not conclusive.

In two cases, it was decided that the terms of the energy contracts had been breached, as the retailers had not:

- used their best endeavours to ensure that all required communications (whether written or verbal) are provided to the customer prior to actual disconnection; and/or
- ensured that customers receive the correct reminder and disconnection notices; and/or
- ensured that customers suffering apparent financial hardship are advised of the availability of financial assistance, energy efficiency advice and independent counsellors; and/or

¹² Section 40B of the Electricity Industry Act 2000 and section 48A (1) of the Gas Industry Act 2001

¹³ See <http://www.esc.vic.gov.au/NR/exeres/F6AFB516-7786-4013-989F-B094C7BE5571.htm>

- ensured customers are offered a second instalment plan and that the details of such are provided in writing.

The Commission also found that the retailers may experience difficulty in making contact with the customer, despite numerous telephone calls and reminder and disconnection notices. The disconnection is brought about by the customer failing to make contact with the retailer, but is deemed wrongful because the retailer did not provide details of offers of assistance or instalment plans in writing. The Commission's draft WDP report sets out the Commission's intention to review the obligation to offer a second instalment plan prior to disconnection.

In the remaining case, the retailer wrongfully disconnected the customer by not advising him of his deemed terms and conditions of the contract. The three formal decisions resulted in compensation payments ranging from \$297 to \$3,750. The Commission publishes details of all cases on its website.¹⁴

3.3 Cases not requiring Commission involvement

The majority of wrongful disconnection cases are settled without the involvement of the Commission. Table 3.1 shows the regulatory obligation that was found to have been breached in the instances where retailers have made a wrongful disconnection payment.

Table 3.1 **Number of disconnections by stated reason**

Clause	Description	Number of breaches	Retailer(s)
Retail code cl. 11.2	Assessment and assistance to be provided to domestic customer with financial difficulties	14	AGL , Australian Power & Gas Origin Energy
Retail code cl. 13	When and how retailers can disconnect customers for non-payment of bills	16	AGL Powerdirect TRUenergy
Retail code cl. 13.1	Detailed procedures for disconnecting customers	24	AGL Australian Power & Gas Country Energy Origin Energy TRUenergy
Retail code cl. 13.2	Additional steps that must be taken before a retailer can disconnect a domestic customers without sufficient income	18	AGL Country Energy Origin Energy Victoria Electricity
Retail code cl. 13.4	Retailers' procedures for disconnecting customers who refuse to provide acceptable identification or refundable advance	3	Country Energy TRUenergy
Retail code cl. 13.5	A customer's right to request disconnection	18	Red Energy TRUenergy Victoria Electricity
Retail code cl. 14	Circumstances in which retailers cannot disconnect customers.	61	AGL Origin Energy TRUenergy
Guideline 21 cl. 2.2	Willingness and capacity to pay.	1	Country Energy

¹⁴ See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Decisions+and+Determinations/Compensation+for+Wrongful+Disconnection>

Table 3.2 shows the WDP cases reported by the retailers as performance indicators.

Table 3.2 **Wrongful disconnection cases for 2008–09**

Excluding the Energy Ombudsman's referral of WDP cases to the Commission

	Non-Ombudsman cases		Ombudsman cases		Compensation paid (\$)		
	Identified by Retailer	Identified by Customer	Complaint referred to retailer	Complaint investigated by Ombudsman			
Retailer¹⁵	(Resulting in compensation being paid)				Min	Max	Total
AGL (Electricity)	1	0	2	39	22	12,250	28,183
AGL (Gas)	0	0	1	15	30	9047	28,417
Australian Power & Gas (G)	0	0	0	2	263	1486	1,749
Country Energy	5	0	2	0	250	500	1,850
Origin (E)	0	1	7	16	41	2,828	10,017
Origin (G)	1	0	7	10	16	9,042	14,219
Powerdirect	0	1	0	0	302	302	302
Red Energy	0	3	0	0	71	89	240
Simply Energy	0	0	3	0	238	370	856
TRUenergy (E)	18	0	1	7	35	7,802	19,144
TRUenergy (G)	2	0	1	5	99	7,046	10,709
Victoria Electricity (E)	0	0	2	2	419	761	1,854
Victoria Electricity (G)	0	0	1	0	948	948	948
All Retailers	27	5	27	96	16	12,250	118,488
	Total number of cases compensated: 155						

'Non-Ombudsman cases' are those detected by the retailer or the customer and settled directly by them. 'Ombudsman cases' are those investigated and settled by the Energy Ombudsman, or referred by the Ombudsman to the retailer for settlement.

¹⁵ (E) and (G) refer to (E)lectricity and (G)as

4 OTHER COMPLIANCE MONITORING

This chapter outlines other compliance matters that have come to the Commission's attention through special initiatives and reviews that it has undertaken during the year, through compliance audits and through complaints made to the Commission.

4.1 Respecting Customers – Marketing Conduct

The Commission expects that the marketing practices of retailers operating under a Victorian licence will be respectful, polite and courteous; accurate and informative; and not bring the market into disrepute.

In April 2009, the Commission held workshops with the energy retailers that were actively marketing in Footscray, to discuss issues of concern to representatives and members of the community there. The Commission's report, *Working with Communities*, outlines commitments given by the retailers to ensure that their marketing, complaint-handling and product information is appropriate to the community and complies with regulatory obligations.

In June 2009, the Commission published *Respecting Customers*, the marketing conduct regulatory program for 2009–10, identifying the work that the Commission would undertake to regulate energy marketing

The Commission has undertaken reviews of retailers' complaint-handling processes and systems, their marketing material and their compliance with their regulatory obligations to provide Offer Summaries to customers. The retailers have provided the Commission with progress reports on meeting their commitments. Details of this work are included in the Commission's report: *Respecting Customers – Energy Retail Businesses – Status Report*.¹⁶

4.2 2008–09 Audits

4.2.1 Simply Energy

In June 2009, the Commission published a report of an independent audit of Simply Energy's compliance with a number of regulatory obligations for the 2007–08 and 2008–09 financial years.¹⁷ The audit found that Simply Energy had good compliance with most of its regulatory obligations, but that its performance indicator reporting was not in accordance with the required specifications.

The Commission required Simply Energy to undertake a follow-up audit to verify compliance with the performance-reporting obligations. The report of this audit has been published.¹⁷

¹⁶ See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Reports+and+Investigations/Respecting+customers+-+Regulating+market+conduct+2009-10>

¹⁷ See <http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Audit+Reports/Summary+Report+Regulatory+Audits+of+Energy+Retail+Businesses+2008-09>. This audit showed continuing non-compliance with the reporting requirements and a further audit has been required. The Commission will report these findings in May 2010.

4.2.2 AGL

In June 2009, the Commission received the independent auditor's report into AGL's compliance with certain regulatory obligations. The audit was performed in February to April 2009 and covered the calendar year 2008. The audit found significant non-compliance with regulatory obligations that have a material impact on customers. In particular, AGL did not meet its obligations to issue customer bills, follow proper procedures in requiring refundable advances or in relation to customers in hardship programs and handle complaints effectively and efficiently. AGL also lacked an effective process to monitor its compliance with these and other obligations.

Details of the audit findings were published in the Commission's summary report in August 2009.¹⁸ AGL has entered into commitments to remedy the non-compliance found in the audit and will undertake a further independent audit by March, 2010. The outcomes of this audit will be published.

4.3 Complaints

This section summarises key complaints that potentially raised systemic or serious compliance issues, as received by the Commission from customers or other stakeholders. Other complaints, where appropriate, were referred to the Energy Ombudsman for investigation and resolution.

4.3.1 AGL

The Consumer Action Law Centre advised the Commission of complaints that lawyers acting for AGL had breached the retail code and ACCC/ASIC guidelines on debt recovery of small amounts. After investigation, the Commission accepted AGL's undertaking to take action ensuring compliance in future.

A customer's complaints about errors in final bills and early termination fees were referred to AGL. AGL resolved the matter directly with this customer. The Commission continues to monitor AGL's compliance in billing customers, and will ensure this matter is reaudited in early 2010.

4.3.2 Australian Power & Gas

A customer complained that a door-to-door sales agent purported to be an employee of the Commission and misrepresented the purpose of his visit. This individual matter was referred to Australian Power & Gas who advised the Commission that the sales agent's employment was terminated, the sales agency was suspended, an audit was performed of other sales completed by the same agent, and other agents from the same agency were retrained.

The Commission has had no further complaints of this nature about Australian Power & Gas' marketing practices.

4.3.3 TRUenergy

From various sources, including customer complaints, the Commission was advised that, in late 2008, approximately 40,000 customers may have been reassigned to tariffs in breach of their contract. The Commission is continuing to investigate this matter with TRUenergy (further issues have arisen in late 2009) and is considering whether or not breaches of the

¹⁸ See

<http://www.esc.vic.gov.au/public/Energy/Regulation+and+Compliance/Audit+Reports/Summary+audit+report+-+AGL+Energy+Limited>

regulation have occurred. The Commission expects to publish outcomes of the investigation in March 2010.

4.3.4 Victoria Electricity

The Commission received a complaint from one customer alleging that a sales agent was deceptive and aggressive in his sales approach. Victoria Electricity was asked to investigate and provide a report to the Commission. Victoria Electricity advised that it had temporarily suspended the sales' agent during the investigation. Twenty customers who had been signed up by the same agent were contacted and the large majority of these customers did not have any complaints about the offer or the sales agent's behaviour. Victoria Electricity subsequently reinstated the sales agent.

Given that no other complaints were received, the Commission has taken no further action.

The Commission received three other individual complaints about Victoria Electricity. These did not raise systemic issues and were referred to the Energy Ombudsman.

4.3.5 Network Tariff Reassignment

The Energy Ombudsman advised the Commission of a number of customers across Victorian who had lost their off peak electricity rates when an interval meter was installed at their premises to replace their accumulation meter, or an interval meter installed in conjunction with solar photovoltaic cells (PVs). Approximately 150 complaints were received to December 2008 and 85 customer complaints from January to September 2009. The Commission and the Department of Primary Industries (DPI) have also received complaints from customers and Members of Parliament.

The majority of these complaints are against two distributors, Jemena and United Energy, and one retailer, AGL. However, it is understood that customers have similar issues with other distributors and retailers. The Commission is currently completing an investigation of the complaints and expects to publish a report of its findings in March 2010.

APPENDIX – DETAIL OF REPORTED BREACHES

The tables below summarise the reports of noncompliance made by individual retailers in their annual reports for the period July 2008 to June 2009. The Commission has analysed the breaches to assess whether they appear to be systemic or isolated.

A.1 Breach type 1

A.1.1 Energy Retail Code

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

Clause 11.2 & 11.4(b) – Payment difficulties

Outlines the process of assessment and assistance to domestic customers experiencing financial difficulties, and invoking legal proceedings in relation to debt collection.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	23 customers were not offered instalment plans prior to disconnection.	AGL has changed the disconnection process. Any customer who was also disconnected received compensation as required.	Systemic
Red Energy	A customer experiencing hardship was not initially assessed and offered financial assistance.	The customer was later assessed and given assistance.	Isolated

Clause 13 (except 13.5) – Grounds for disconnection

The process which must be followed prior to disconnecting a customer:

- a retailer's obligations to customers prior to being able to disconnect their services under certain circumstances
- instances where the retailer may not disconnect a customer's service under any circumstances; and
- a retailer's obligations to reconnect customers that it has disconnected.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	In breaches affecting 50 customers, AGL disconnected the wrong property for up to 8 days, through failure to obtain, record or act upon the correct address, or to cancel a disconnection properly.	All customers were subsequently reconnected, given an apology and explanation, compensated in accordance with the wrongful disconnection obligations and given a goodwill payment.	Isolated
Country Energy	In two cases, Country Energy took action to stop a disconnection request after the customer had set up a payment plan (and, in one of the cases, joined the hardship program).	The distributor's employees had completed the disconnection. The retailer updated its disconnection process to prevent a recurrence of the non-compliance. The customers received wrongful disconnection payments.	Isolated
Country Energy	Three customers made arrangements to prevent disconnection, but Country Energy failed to check the accounts on the scheduled day and prevent disconnection.	The customers received wrongful disconnection payments.	Isolated
Country Energy	A new occupant moved into vacant premises previously supplied by Country Energy and selected a different retailer. This retailer did not submit a change request so the distributor was unaware that new occupant had moved in. The distributor asked Country Energy to submit a de-energisation request.	Country Energy (a temporary employee) disconnected the premises without giving notice to the occupant. The customer received a wrongful a disconnection payment and compensation for loss of earnings.	Isolated
Country Energy	Country Energy requested de-energisation of premises before a new occupant moved in and requested supply.	Country Energy failed to stop the de-energisation request. The customer received a wrongful a disconnection payment	Isolated
Powerdirect	A third-party service provider sent a disconnection order with the wrong meter number and customer address.	Powerdirect reconnected the customer within two hours of notification and compensated the customer.	Isolated
Powerdirect	Powerdirect processed a disconnection for the wrong meter number in a block of serviced apartments.	The customer was reconnected the same day and Powerdirect compensated the customer.	Isolated
Red Energy	Red Energy processed a disconnection with the wrong meter number and address details because the industry MSATS system did not contain the correct details.	The customer was reconnected and received an apology and compensation.	Isolated
TRUenergy	TRUenergy disconnected a gas customer on the planned date, although the customer had by then made a partial payment of the amount owing.	An employee did not check for recent payments before the disconnection was completed. Staff were reminded of the importance of making the necessary checks. The customer was compensated.	Isolated

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
TRUenergy	A new gas customer who cancelled the contract during the cooling-off period was disconnected from non-payment. Through further errors, after reconnection the customer was disconnected a second time.	Notes on the customer record were overlooked. Staff were reminded to read all notes on customer records and not to process as 'unknown consumers' those customers whose accounts have been won back by their previous retailers.	Isolated
TRUenergy	A gas customer received a reminder notice with a payment date less than 20 business days from the dispatch of the bill. The customer was disconnected, and reconnected after 28 days.	The customer received compensation. An IT system change was initiated to provide the required notice in payment reminders. Staff were instructed to check that reminder notice dates are compliant before starting the disconnection process.	Both
TRUenergy	A gas customer was disconnected while an application for financial assistance was pending.	An employee cancelled the disconnection request but did not notify the distributor directly. Staff were reminded of the correct process and instructed to contact distributors directly if a disconnection is to be cancelled.	Isolated
TRUenergy	A customer was disconnected as an unknown consumer with another retailer.	The gas customer gave the wrong address for a connection. Later, TRUenergy used an approximate match to this address, obtained the wrong meter number and recorded it for the customer's account at TRUenergy. Staff were reminded to ensure an exact match on the address when transferring customers.	Isolated
TRUenergy	A disconnection order was raised for non-payment but the gas customer previously at the same address, now elsewhere, was disconnected.	The disconnection instructions identified the wrong meter number. The customer record has now been updated with the correct information. Staff were retrained.	Isolated
TRUenergy	An existing gas customer who moved to a new address and opened an account did not receive bills and was eventually disconnected.	On updating the customer record, the old address was recorded by default as the current mailing address. The customer's record was corrected. Staff were reminded to check mailing addresses always and given further training.	Systemic
TRUenergy	The wrong customer's premises were disconnected.	TRUenergy set up a customer record with the wrong meter number. When the customer requested a final reading, the meter with that number, at a different property, was read and disconnected. Staff received further training and supervision.	Isolated
TRUenergy	An electricity customer whose name was not recorded was disconnected.	Letters to an 'unknown consumer' were incorrectly addressed, using the lot number of the premises. They were not delivered by Australia Post and therefore not answered, and disconnection ensued.	Systemic
TRUenergy	An electricity customer was considered an 'unknown consumer' and letters sent to the address remained unanswered. After the customer had made contact, the premises were disconnected. A further three-month delay in reconnection was the fault of the distributor.	When the customer contacted TRUenergy, the disconnection request had already been raised and it was carried out without staff checking the customer's record. Processes were changed to require more effective checking of incoming correspondence from 'unknown consumers'.	Both

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
TRUenergy	A customer's reconnection request overlapped in time with a pending disconnection request. It was rejected by the distributor and the customer was disconnected.	TRUenergy staff did not process the rejection correctly and deal with the service orders properly. Staff were given further instructions to follow the existing procedure.	Isolated
TRUenergy	The wrong customer's premises were disconnected.	One customer's meter number was incorrectly linked to another customer's account at a different address. When the second customer advised TRUenergy, staff incorrectly raised a disconnection order. Staff were instructed to match addresses exactly and raise the correct service orders.	Isolated
TRUenergy	The new occupant of premises did not open an account with any retailer and was disconnected.	The previous customer did not advise TRUenergy. The new occupant returned only one piece of mail. Staff assumed the occupant was an 'unknown consumer' and initiated disconnection. TRUenergy will review disconnection processes and strengthen if required.	Isolated

Clause 20(a) – Variations require customers consent

Variations in tariffs and terms and conditions of an energy contract may only be varied by agreement in writing, unless it is a gazetted term or condition.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	Late in 2008, 16,000 new customers did not receive the required notice of a price change.	An error in the IT system meant that their records were not included in the notification process. AGL reported that it would put processes in place to minimise the impact when contracts are signed just before a price increase. These customers later received a letter of explanation and a credit to reverse the price increase up to the time they received notification on the increase.	Systemic
AGL	Security lighting customers' billing cycle was changed from quarterly to monthly without explicit informed consent.	AGL advised that it was still investigating	Systemic
Australian Power & Gas	Approximately 3000 customers were not notified of a tariff increase because of an information system error.	The customers were credited with the amount overcharged (\$5 – \$15) until they received notification of the increase.	Systemic

Clause 23.1(a), 23.3 & 23.4 – Cooling-off

The customer's right to cancel an energy contract.

Rules governing the cancellation of a contract that is neither a door-to-door nor a non-contact agreement.

Obligations when documenting contracts and customers' cancellation rights (now removed from the Retail Code and replaced by provisions of the Fair Trading Act).

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Jackgreen	Two customers said they cancelled their contracts within the cooling-off period (although customer contact records do not support this), and the cancellations had not been actioned.	One transfer had not been completed and the customer remained with the previous retailer. The other was reversed with no termination fee. A quality controller has been employed to monitor customer calls and the contact logs to ensure that customer contacts are properly recorded.	Isolated

Clause 24.1(d), 24.2(a) & 24.3(a) – Termination and expiry

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 prior to the expiry of fixed term contract.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	29 customers were incorrectly charged a termination fee.	There was a systems failure and incorrect processes were followed. AGL offered an explanation, apology and refund to all customers and a goodwill payment to some of them.	Systemic
Origin Energy	In breach that continued into the reporting period, Origin Energy did not provide required information prior to the expiry of 5200 customers' fixed term contracts.	A new customer relationship management system was implemented and then enhanced. Customers stayed on their existing (lower) rates until then. The necessary functions were implemented in August 2008 and Origin Energy reported that it was fully compliant with the clause by December 2008.	Systemic

Clause 26.4(b), 26.7(a) & 26.7(b) – Information

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, if supplied by the customer.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	56 small business customers were incorrectly given notice of a price decrease when in fact the price was increasing.	Letters were sent to all the customers affected and their accounts credited with the amount overcharged.	Systemic
AGL	More than 19 000 customers did not receive notice of a price increase in January 2009.	An error in the IT system meant that their records were not included in the notification process. AGL has offered these customers an apology and credit to reverse the price increase up to the time they received notification on the increase.	Systemic

Clause 28.3 – Energy and Water Ombudsman Victoria

The Energy Ombudsman's phone number must be shown on any disconnection notices.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	AGL's disconnection notices did not provide the telephone number of the Energy Ombudsman.	An IT system change was scheduled then brought forward to correct the error. AGL advised that it was unable to quantify the number of customers involved.	Systemic

A.1.2 Marketing Code of Conduct (MCC)

This code specifies standards and conditions for the marketing of energy including cooling off and explicit informed consent.

The code was revised in January 2009. The requirements of clauses 3 and 4 below are substantially similar to the requirements of clauses 6 and 7 of the previous version.

Clause 3.2 – 3.6 – Information & Conduct

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

The retailer's obligations in relation to the conduct of marketing representatives and the provision of offer Information to consumers.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	AGL sent some customers incorrect details of the offer that they had accepted and then delayed sending details to other customers for a period of 7–13 days until the details were correct. Around 5,700 customers were involved.	Through a typographical error, a tariff was wrongly identified. Contract start dates were adjusted to allow for the delay in sending out the correct information. There was no financial impact.	Systemic
AGL	AGL sent up to 21 business customers the details of an offer they had accepted, four days late.	Contract needed to be processed manually and this caused the delay.	Isolated
AGL	For 17 months, AGL did not advise all new and re-contracting customers of possible charges for dishonoured payments in their offer summaries.	The information was added to door-to-door sales agents' offer summaries by December 2008, and to directly mailed offer summaries by April 2009 after an IT system change. No customers incurred such charges.	Systemic
Australian Power & Gas	A total of 132 new customers did not receive information on their contracts within the required timeframe.	Delays were caused by data processing problems that have now been corrected. Customers were given the required information, an apology and an extended cooling-off period.	Systemic
Australian Power & Gas	Two sales agents falsified details on a total of 41 customer contracts.	The agents were dismissed immediately, and the contracts were investigated and cancelled or reversed as necessary.	Isolated
Australian Power & Gas	An agent improperly sold a capped-price green energy product to 4 customers.	The sales agent was dismissed immediately and the customers were transferred back to their previous retailer.	Isolated

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Country Energy	Three sales agents misled customers by saying that: <ul style="list-style-type: none"> the customer would not incur an early termination fee the agent wanted to check the meter for risk of electric shock the customer's existing retailer was not Australian-owned. 	The sales agents were given formal warnings and the customers were transferred back to their previous retailers.	Isolated
Country Energy	A customer complained of not having understood or given consent to the contract.	The sales agents were given formal warnings and the customers were transferred back to their previous retailers.	Isolated
EnergyAustralia	New telemarketing customers did not receive the required information, including terms and conditions: <ul style="list-style-type: none"> 44 customers, for some weeks, through a technical error 30 customers, on one day, through an employee's error. 	EnergyAustralia attempted to contact the customers involved and sent them a goodwill payment.	Both
EnergyAustralia	EnergyAustralia estimated that half of the 280 customers who complained about marketing conduct had a legitimate concern and, therefore, 140 breaches of the code had occurred.	EnergyAustralia reported that generally, agents had given customers incomplete information or inadequate explanations. The customers were offered a transfer back to their previous retailer. The sales agents were retrained or their employment terminated, as appropriate.	Systemic
Jackgreen	Verification calls identified that 3 customers, contacted through a single sales agency, were unaware they were entering a supply contract for electricity.	Jackgreen did not complete the contract and no transfer occurred. The contract with the marketing service was terminated.	Isolated
Jackgreen	A door-to-door sales agent denied working for an energy retailer.	The customer did not complete the contract. The sales agent involved was dismissed.	Isolated
Jackgreen	Two customers were provided with the incorrect tariff by door-to-door sales agents.	The customer was transferred back to the previous retailer.	Isolated
Jackgreen	A customer was not informed of the termination fee.	The customer was transferred to another retailer and no termination fee was applied.	Isolated
Jackgreen	Verification calls, or feedback from a customer's advocate, established that 3 customers may not have had the capacity to give consent.	The contracts were not completed and no transfer occurred. The sales agents were retrained.	Isolated
Jackgreen	Three customers said that sales agents had used undue pressure or been offensive.	Two customers were transferred to another retailer without a termination fee, and another received a goodwill payment. One sales agent was dismissed immediately and the others were retrained.	Isolated

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Neighbourhood Energy	A sales agent telephoned a potential customer repeatedly, and verbally abused a member of the customer's family.	The sales agent was dismissed and the supervisor was cautioned, retrained and moved to other duties. Other agents were warned about their behaviour and further training has been planned. Neighbourhood Energy is also introducing tighter monitoring of all sales agents, removing unacceptable agents and imposing monetary penalties as needed.	Isolated
Neighbourhood Energy	Based on complaints received from customers, Neighbourhood Energy reported 324 other breaches, such agents claiming that nothing would change, or that they are from the government or the existing retailer. Other customers said that they did not consent to transfer.	The customers transferred away with no penalty and the sales channels incurred financial penalties. Neighbourhood Energy has also taken a number of actions to deal with marketing complaints in general, including the following: new complaint-handling processes; a more understandable Voice Recording Script; improved training; new contracts with sales agencies emphasising compliance; call monitoring; updated contact lists; cancelling or not renewing telemarketing contracts; greater involvement with sales agencies' hiring decisions	Systemic
Origin Energy	Origin Energy reported a breach of clause 6 following the introduction of a new IT system. The breach affected 7000 customers who may not have received the required written confirmation of their contracts within the required timeframe.	A new IT system did not correctly recognise customer's addresses when there slightly different variants of the same address for gas and electricity accounts. The system was enhanced and customers received an explanation with all the required contract documents.	Systemic
Red Energy	Three cases (each affecting a single customer) involved door-to-door sales agents who may not have introduced themselves or who may have given the customer misleading information. In one case, the customer stated that the sales agent appeared confused. In another case, the sales agent, although wearing a uniform, did not produce identification.	In all cases, the agent was given further training and supervision. The customers concerned did not agree to transfer to Red Energy.	Isolated
Red Energy	Two telephone sales agents provided incomplete or false information to a customer.	The agents were advised of a serious complaint, and given further supervision. The transfers of the customers were cancelled before completion.	Isolated
Red Energy	A customer may not have had the capacity to give explicit informed consent to the contract, and also said that the agent did not tell the customer he was from another retailer.	The agent was given further training and supervision. The transfer of the customer was cancelled at the verification stage.	Isolated
Red Energy	A sales agent used mail items on the ground outside the premises to learn some of the customer's details.	The customer was given an apology. The agent was warned of the seriousness of the breach and given training in privacy issues and further monitoring. The customer concerned did not agree to transfer to Red Energy.	Isolated

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	Based on a review of complaints, Simply Energy reported an unstated number of Type 1 breaches that it could not reliably estimate, relating mainly to sales agents' conduct and the provision of correct and complete information to customers.	Customers were offered a return to their previous retailer at no charge. Feedback and complaints were monitored and investigated, and action taken daily. Sales agents received robust training when recruited and on an ongoing basis.	Systemic
Simply Energy	Simply Energy reported that 170 customers who entered into contracts online on Simply Energy's own website, between December 2008 and February 2009, received the details of other customers' energy contracts, rather than their own.	Simply Energy corrected a data-processing error, provided the customers with the correct information (although later than required by the code), and asked them to destroy the information they had previously received.	Systemic
Victoria Electricity	A pushy door-to-door sales agent would not leave a customer's premises when asked and claimed that all customers in the area had been overcharged.	The customer cancelled the contract. Two other customers of the same agent said they had also been misled and chose to cancel their contracts without penalty. The agent was dismissed and other team members were warned.	Isolated
Victoria Electricity	An agent admitted stealing a laptop computer and iPod from a customer's premises.	The items were recovered and returned to the customer almost immediately. The agent was dismissed and charged with the offence. Victoria Electricity apologised to the customer concerned and contacted other customers of the same agent, none of whom complained.	Isolated
Victoria Electricity	A customer complained to the Energy Ombudsman of pushy and unprofessional conduct of Victoria Electricity agents. The customer said the agent had shown a list of other residents who had signed contracts, to convince this customer to join.	The agent in question admitted unprofessional conduct and was suspended, retrained and placed under closer supervision. Other customers whom the agent had approached had no complaint about his conduct.	Isolated
Victoria Electricity	A sales agent had no identification badge or uniform, and an incomplete information pack.	Other customers of the same sales agent were allowed to end their contracts without penalty. Following a similar non-compliance by a member of another team, the whole sales agency was suspended and retrained. Full information packs were provide to customers where needed.	Isolated
Victoria Electricity	A door-to-door sales agent misled a customer by claiming to represent the Victorian government, and to be checking whether the customer's current retailer was complying with legislation.	The customer did not agree to the transfer. The agent was dismissed and the entire sales channel was warned.	Isolated

Clause 4.1 & 4.3 – Consumer consent

Retailer must obtain explicit informed consent (EIC) of 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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	The retailer transferred 8 customers without their consent to AGL contracts.	AGL staff or customers made errors. Customers received an apology and were transferred back if they wished. Staff were retrained as necessary.	Isolated
EnergyAustralia	Two door-to-door sales agents forged the customer's signature on a contract and made a verification call pretending to be a customer.	The contracts were cancelled and the customer returned to the previous retailer. Other contracts involving the two agents were investigated and no other irregularities were found. The sales agents were dismissed.	Isolated
EnergyAustralia	There were 370 instances where customers' accounts were transferred to the retailer without consent.	More than half were caused by errors made when entering meter numbers into the MSATS market system. Another 120 were caused by processing a change request after a customer had cancelled the contract during the cooling-off period. In the remaining 90 cases, EnergyAustralia accepted that the customer did not give informed consent. The transfers were reversed and any EnergyAustralia bills were cancelled.	Systemic
Simply Energy	Simply Energy reported an unstated number of breaches relating to obtaining customers' explicit informed consent to account transfers and contract changes.	Customers were offered a return to their previous retailer at no charge. Feedback and complaints were monitored and investigated, and action taken daily. Sales agents received robust training when recruited and on an ongoing basis.	Systemic
Victoria Electricity	Two sales agents made verification calls back to Victoria Electricity, pretending to be the customers confirming their consent to the contracts.	The retailer cancelled contracts for lack of consent, and terminated the supervisor for inadequate monitoring of team members. Other staff were retrained. The customers remained with their previous retailers.	Isolated

A.2 Breach type 2

Type 2 breaches are breaches of regulatory obligations where:

- non-compliance would seriously impact on customers; and/or
- the obligation is 'new' or has not been complied with in previous years; and/or
- the impact of that non-compliance increases over time.

A breach of a Type 2 regulatory obligation is to be reported on a six monthly basis.

A.2.1 Energy Retail Code

This 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.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Red Energy	One customer's gas supply had been plugged at the request of the previous retailer, and there was a delay in arranging for it to be reconnected.	The reconnection was carried out at the expense of Red Energy and the customer received a goodwill payment.	Isolated
Red Energy	Another customer's reconnection was delayed because the request was not raised correctly.	The reconnection was carried out at the expense of Red Energy and the customer received an apology.	Isolated

Clause 3.1 – Billing cycles

Retailer obligations to issue bills to customers:

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

This corresponds to clause 3.2 of the version of the retail code in force until January 2009.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	AGL overcharged a small number of customers (approximately 30 or fewer) based on a distributor's withdrawn peak and off-peak tariff, after they had changed to interval meters.	AGL advised that it was still correcting the problem.	Unknown
AGL	AGL has offered peak and off-peak rates to an unstated number of customers, but overcharged some at the wrong rate and not charged others for their off-peak consumption.	The accounts have been set up with incorrect metering information. AGL advised that it was still investigating the problem.	Systemic
AGL	AGL has not billed a large but variable number of customers every three months as required.	Records in the billing system that have been flagged as exceptions have not been checked and corrected quickly enough to prevent a billing backlog. Additional resources have been allocated to the task, processes have been improved to reduce the backlog, and the position is being monitored.	Systemic
AGL	An unstated number of electricity customers have received bills over an unknown period of time that do not show whether the bills are based on meter readings or estimates.	The problem has been resolved by moving the customers' account to the newer SAP IT system.	Systemic
AGL	For a period of five weeks, a price increase was incorrectly backdated and applied to the accounts of 8500 gas customers. Overcharges of up to \$159 have been identified.	Customers were advised that the amounts would appear as credits on their next bills, or they might ask for an alternative form of payment.	Systemic
AGL	Discounts included in the contracts of almost 12,000 customers were not shown on their bills or credited to their accounts.	The problem has been addressed through a temporary block on billing the customers, and by updating their records. AGL advised that it was still correcting the problem.	Systemic

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	35 gas customers were overcharged an average of \$350.	Overcharging caused by a data-entry error made when updating a tariff.	Systemic
Australian Power & Gas	One customer's bills excluded his off-peak consumption. Although he brought the issue to the retailer's attention and attempts were made to correct it, errors persisted for over a year.	The problem was due to incorrect metering data. The customer was re-billed and offered extra time to pay.	Unknown
Australian Power & Gas	2500 customers' bills brought forward their previous meter reading instead of the present one, resulting in bill for zero energy consumption.	The IT system was corrected and the customers were re-billed with an explanation.	Systemic
Australian Power & Gas	There were delays of up to 12 days for sending out warning letters to 110 customers.	An IT system error affected processing dates. Collection was suspended until the letters were dispatched and payment periods were extended. Customer records were checked for correctness.	Systemic
Australian Power & Gas	Up to 52 dual-fuel customers with inconsistencies in their records were potentially billed incorrectly.	Billing for these customers was suspended. Processes were reviewed and the IT system corrected. Accounts were adjusted appropriately.	Systemic
Australian Power & Gas	Up to 124 customers were not credited with payments they had made.	The IT system error was identified within one day and corrected. Affected customers' accounts were adjusted appropriately and a letter of explanation was sent with the next bill.	Systemic
Australian Power & Gas	One customer experienced billing errors, including a back-bill, for over a year and who had not been credited with the full 10 per cent discount applicable to her account.	The customer was moved to one of the retailer's other offers that provides the 10 per cent discount and compensated.	Isolated
EnergyAustralia	50 customers' bills were delayed at some point during the 12-month period.	Most of the reasons for delay relate to meter-reading and data issues outside the retailer's control. Internal performance measures and promotion of alternative payment methods are expected to improve the level of compliance.	Isolated
Neighbourhood Energy	Up to 800 customers have not received bills as required.	Customers with manually read interval meters have received manual bills, and the increasing number of such customers has made the process unmanageable. Customers were advised that automated billing would start at the end of August 2009.	Systemic
Origin Energy	Up to 3 per cent of electricity customers did not receive their electricity bills every three months as required by clause 3 of the code (also reported in the previous year).	A number of factors outside the retailer's control contributed to the delay. Tighter monitoring has improved performance. Customers whose bill was delayed by more than 17 days received an explanation and an offer of extended payment arrangements.	Systemic
Red Energy	Two customers did not receive bills for three billing cycles, because of errors in metering data from the distributor.	The customers received apologies, goodwill payments, extended time to pay and other considerations	Isolated

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	Less than one per cent of electricity and gas customers did not receive a bill every 2 or 3 months as required.	The causes, such as lack of access to meters, were largely outside the retailer's control. Simply Energy monitored and acted on reports of unbilled customers where caused by its own systems.	Both
TRUenergy	In a case first reported last year, TRUenergy breached clause 3 of the Code when 1500 customers were quoted on a product rate incompatible to the premise meter type.	The mismatch caused either no bills to be generated for the account or a zero balance bill to be generated. The Commission has subsequently been advised by TRUenergy that up to 40,000 customers were affected by this billing system error. The Commission has sought further information from TRUenergy and is continuing its investigations.	Systemic

Clause 4.2 – Information & Clause a4.4 – Graphs

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

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	An unstated number of customers with credit balances or paying by direct debit have not been offered all the available payment options.	There appears to have been an error in the system design. The system is being corrected to provide the information. AGL advised that it was still correcting the problem.	Systemic
Origin Energy	Up to 9 per cent of electricity customers did not receive the graph of energy consumption on their bills (this was first reported in the previous year).	The necessary IT system changes to track consumption data correctly have been completed.	Systemic
TRUenergy	42 gas customers did not receive the correct rate of discount on their bills. For some customers, this was a higher discount (lower price) than agreed.	Through operator error, TRUenergy had assigned to each customer's account a discount rate other than the one in their contract. Where customers had paid a more than agreed, TRUenergy refunded the difference. All customers were offered an explanation and an opportunity to end their contracts without penalty. For those who did not do so, the correct discounts were applied thereafter. Staff have been reminded of the importance of accurate data entry.	Isolated

Clause 5.1 to 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. Estimated bills may be applied under a bill smoothing arrangement.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	AGL did not send a bill based on an actual meter reading at least once in 12 months to 24 customers whose meter could not be accessed.	Bills based on actual readings were sent when meter access was eventually obtained.	Isolated

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Simply Energy	The accounts of 2800 customers on bill-smoothing plans were not reviewed every six months as required, although always reviewed on request, and some customers may have had credit or debit balances at the end of the plan period.	Simply Energy reported that it proposed to cancel all such plans and stop offering them to customers.	Systemic

Clause 7.1 (b) & (c) & 7.2 – Payment of a bill

The pay-by-date is not less than 12 days from date of despatch which is the date of the bill unless specified.

Payment methods to be accepted, requirements for direct debits.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Origin Energy	The form which customers could use to set up a direct debit payment did not provide all the details needed for cancelling the arrangement.	Origin Energy reviewed its standard documentation and provided the necessary information.	Systemic
Simply Energy	Until 1 January 2009, Simply Energy accepted verbal (rather than written) requests from customer for direct-debit facilities.	The code has now been amended and verbal requests are now allowed, and Simply Energy plans no further action.	Systemic

Clause 8.1, 8.2 & 8.3 – Refundable advances

The conditions under which a retailer may require a refundable advance from a customer, apply shortened collection cycles and deal with a customer who is having difficulty paying.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	An undetermined number of new customers contracted through door-to-door sales were requested to pay a refundable deposit with their first bill, without being given the option of paying their bills on an instalment plan.	AGL has stopped taking refundable deposits and refunded those taken earlier.	Systemic

Clause 28.1 – Complaint handling

All complaints must be handled according to prescribed Australian Standard or otherwise. Information on the process must be included in the charter.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	A small number of customers were not kept informed of the progress of their complaints, which were not actioned promptly.	AGL apologised to the customers affected.	Isolated

A.2.2 Electricity Licence

Electricity and gas Licences are issued under the relevant Industry Act and require licensees to comply with specific obligations set out in the licence, as well as general obligations to comply with designated codes and guidelines.

Clause 9.3 – Information to customers

A Licensee is obliged to provide information to customers:

- include certain information on bills issued to customers
- notify customers of changes to terms and conditions
- give notice to a customer who becomes a party to a deemed contract

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Country Energy	820 customers were sent Contract renewal offers less than one month before the expiry of their contracts during February 2009	Country Energy kept the customers on their existing contracts for a further month at the lower rates before moving them to new contacts.	Systemic
Country Energy	In response to the Victorian bushfires, Country Energy suspended all communication with the customers affected, until a more convenient time. This affected customers whose fixed term energy supply contracts expired in April and May 2009, and delayed billing to customers identified as being in the affected area.	Customers had their contracts finalised with no renewal offer and no money owing, or had an offer of renewal sent after the normal expiry of their contracts, depending on their circumstances.	Isolated
Momentum Energy	Momentum Energy as Financially Responsible Market Participant (FRMP) did not provide the terms and conditions of deemed contracts to approximately 100 customers who were unknown to the retailer but drawing electricity supply.	The problem was caused by a breakdown of the process for dealing with deemed customers. The retailer has since advised customers about their deemed contracts and their options.	Systemic

A.2.3 Marketing Code of Conduct (MCC)

This code specifies standards and conditions for the marketing of energy including cooling off and explicit informed consent.

The requirements of clause 2 below are substantially similar to the requirements of clause 5 of the previous version.

Clause 2.1 – 2.3 – Contact with Consumers

Times at which retailers may contact consumers, information to be provided to consumers, requirements to keep 'no contact lists', requirements to maintain visit and telephone records.

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	Almost 30,000 new customers did not receive prior notification of a price increase.	Through delays caused by data errors and other factors, their details were excluded in error from the notification process.	Systemic

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
EnergyAustralia	EnergyAustralia contacted a customer whose details were on the 'do not contact' register previously used by the partnership EnergyAustralia-International Power Retail (EA-IPR)	EnergyAustralia no longer has access to the register since the partnership was dissolved. EnergyAustralia offered to put the customer on its own register and gave information on the national register.	Systemic
EnergyAustralia	EnergyAustralia also reported breaching clause 2 of the code since it had received 14 complaints from customers that door-to-door sales agents had not shown their identification badges at the start of a visit, or had not readily done so when specifically asked to do so.	The agents were retrained.	Isolated

A.3 Breach type 3

Type 3 breaches are all other breaches of regulatory obligations.

Energy Retail Code

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
AGL	Clause 9: For six months the information available on AGL's website and provided to customers in other forms did not contain details of all fees and charges.	Manual offer summaries and AGL's website now provide the required information.	Systemic
Red Energy	Clause 13: Two customers who requested disconnection were billed for a period beyond the requested disconnection date.	The bills were adjusted.	Isolated
EnergyAustralia	Clause 26: EnergyAustralia's billing system does not allocate a customer's partial payment in proportion to the balance owing for each fuel, as required.	The payment is allocated differently but the customer can change the allocation later. EnergyAustralia noted that each jurisdiction has different requirements for payment allocations.	Systemic
EnergyAustralia	Clause 26: For more than a month, EnergyAustralia did not provide its customer charter to 100 customers on Deemed Contracts or Standing Offers	EnergyAustralia advised that the information was to be sent.	Systemic
Momentum Energy	Clause 26: Momentum Energy did not send 100 customers the details of their contracts, terms and conditions within 2 business days.	Other processing priorities (fully checking contracts that new sales agencies had recorded) initially caused delays. Momentum Energy reported contacting customers to inform them of their options.	Isolated

Retail Licence

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Powerdirect	Clause 9: After a change in terms and tariffs, Powerdirect did not display current prices for residential and business customers.	Powerdirect corrected the prices on its website for business customers and will correct its published Standing Offer terms and tariffs.	Systemic

Guideline 10 – Confidentiality and informed consent

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Victoria Electricity	Clause 2: Two employees discussed confidential information (outstanding bills, credit card details) with a person other than the account holder.	The employees were given a written warning and the credit team given retraining	Isolated

Guideline 21 – Financial hardship policy

<i>Retailer</i>	<i>Incident</i>	<i>Cause and response</i>	<i>Nature</i>
Jackgreen	Clause 2: There were no clearly documented processes and procedures to ensure that participation in the Hardship program could be maintained, and there was no standard letter that would be sent to customers who would be excluded from the program for noncompliance.	Jackgreen has now developed a Hardship Assessment Procedure to ensure compliance with this obligation, and standard letters to communicate with customers on related matters.	Systemic