



2012–13 COMPLIANCE REPORT

ENERGY RETAIL BUSINESSES

October 2014



An appropriate citation for this paper is:

Essential Services Commission 2014, *2012–13 Compliance Report Victorian Retail Energy Businesses*, October

C/14/10940

CONTENTS

FOREWORD	1
1 INTRODUCTION	3
1.1 THE PURPOSE OF THIS REPORT	3
1.2 THE POWERS OF THE COMMISSION	3
1.3 OUR APPROACH TO COMPLIANCE AND ENFORCEMENT	5
1.4 OUR RELATIONSHIPS WITH OTHER ORGANISATIONS	6
1.5 STRUCTURE OF THE REPORT	6
2 RETAILERS' COMPLIANCE REPORTS	9
2.1 OVERVIEW OF REPORTED BREACHES	9
2.2 RETAILERS' COMPLIANCE REPORTING	12
2.3 ANALYSIS OF 2012–13 COMPLIANCE REPORTS SUBMITTED BY RETAILERS	14
3 ENERGYAUSTRALIA	25
3.1 BACKGROUND	25
3.2 MONITORING AND ENFORCEMENT	26
3.3 TYPE 1 BREACHES	28
3.4 TYPE 2 BREACHES	30
4 WRONGFUL DISCONNECTION COMPENSATION	35
4.1 OVERVIEW	35
4.2 CASES REQUIRING COMMISSION INVOLVEMENT	36
4.3 DISCONNECTION NOTICES	37
4.4 CASES NOT REQUIRING COMMISSION INVOLVEMENT	38

APPENDIX A - OTHER COMPLIANCE INITIATIVES	41
SMART METERS	41
REGULATORY AUDITS	42
NECF AND HARMONISATION	43
APPENDIX B - RETAILERS' BREACH REPORTS	46
TYPE 1 BREACHES	46
TYPE 2 BREACHES	54
TYPE 3 BREACHES	60



FOREWORD

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 by retailers in 2012-13.

At the time, it was anticipated that from 1 July 2012 energy retailers supplying customers in Victoria would be operating under the National Energy Customer Framework (**NECF**). On 13 June 2012, the Victorian Government delayed the transfer which meant the existing Victorian regulatory framework remained in place.

In anticipation of the transition to the NECF, some retail energy businesses had implemented changes to their business systems to ensure that their activities would be compliant with the new regime. These changes took some time to unwind following the announcement of the deferral of the transition. This meant for a time these businesses may have undertaken activities that were not fully compliant with the Victorian customer protection framework. By operating under the NECF instead of the Victorian framework some retailers reported breaches regarding bill contents, smart meter requirements and disconnection processes.

Addressing these issues and managing the eventual transition to a retail framework that is harmonised with the NECF has contributed to our delay in completing the 2012–13 compliance report.¹

In light of this delay, this report also draws on information now available about relevant developments in the six months following the compliance year (that is, this report also provides information about compliance in the six months to 31 December 2013).

More generally, IT system problems and sales agent conduct have been the cause of many of the serious breaches reported by the energy retailers. Deficiencies in IT

¹ In July 2014 the Commission released the Energy Retail Code v11, which is harmonised to the best extent possible with the NECF. For information on the harmonisation project go to: www.esc.vic.gov.au/Energy/Harmonisation-of-Energy-Retail-Codes-and-Guideline



systems have, among other things, resulted in customers not receiving timely notification of the expiry of their contracts or incorrect notification of tariff changes.

A number of retailers also reported that their sales agents had breached the marketing code by misleading or deceiving customers during their marketing activities.

There was a significant increase in wrongful disconnection cases reported by retailers. In 2011-12, there were 215 of these cases and over 430 cases in 2012-13. In the six months to the end of December 2013, retailers reported over 460 cases of wrongful disconnection.

This report outlines the corrective actions taken by the affected retailers and the Commission's enforcement actions, where they were required.

The Commission intends to undertake an extensive risk-based audit program in 2014-15 to satisfy itself the retailers have taken appropriate corrective actions to prevent the recurrence of these systemic breaches. Particular attention will also be given to auditing retailers' hardship arrangements and disconnection procedures.

Dr Ron Ben-David

Chairperson



1 INTRODUCTION

1.1 THE PURPOSE OF THIS REPORT

The Essential Services Commission (**Commission**) licences businesses that generate, supply and sell energy in Victoria, and establishes codes and guidelines to regulate these businesses in the long term interests of Victorian consumers. This report provides an overview of our compliance activities and the energy retailers' level of compliance with their regulatory obligations during the financial year from 1 July 2012 to 30 June 2013.²

Victoria had 33 licensed electricity retailers, of which 23 were active in the market for residential and business customers in 2012–13.

Of these active retailers, eight either had fewer than 1000 customers at 30 June 2013 or sold mainly to large business customers.

Additionally, of the 16 retail gas licences in Victoria, 10 retailers were active in the market during 2012–13.³

1.2 THE POWERS OF THE COMMISSION

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**); and

² Other businesses engaged in generating, transmitting and distributing energy are licensed by the Commission, but are mainly regulated by a Commonwealth body, the Australian Energy Regulator (**AER**).

³ Essential Services Commission, 2013, Energy retailers comparative performance report — customer service 2012-13, revised January 2014.



- 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 for the conduct of retail 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 all their customers.

Further protection is extended to domestic and small business customers, mainly through the operation of the Commission's Energy Retail Code (**Retail Code**).⁴ This code sets out the terms and conditions of energy contracts that exist between retailers and any of their customers who have not actively sought out or accepted a market offer that their retailers have promoted or made available. 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 Code of Conduct for Marketing Retail Energy in Victoria (**Marketing Code**) sets out standards for door-to-door or other forms of marketing of energy contracts, and related training and record-keeping requirements.

The Commission has a range of enforcement measures available to respond to non-compliance with licence conditions. These measures range from less formal administrative undertakings to progressively more substantive statutory-based responses. We may proceed with more significant enforcement actions where required, and when other measures have proved ineffective.

⁴ During the 2012-13 reporting period the version of the Retail Code in operation was version 10, which came into operation in May 2012. Version 10a of the Retail Code was introduced in August 2013.



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

Such a program, if implemented effectively and resourced appropriately, 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.

Additionally, as a condition of their licence, retailers must monitor their compliance and report breaches. Periodic independent regulatory audits provide independent confirmation that retailers' compliance programs are indeed effective and that the Commission can rely on their breach reports.

The Commission monitors the retailers' compliance with the obligations in various ways, including through the following measures outlined in chapters of this report:

- We continue to audit retailers.
- Retailers report breaches of their regulatory obligations under our guidance and direction and we follow up those reports.
- We assess complaints of wrongful disconnection, where the retailer and the Energy and Water Ombudsman (Victoria) Limited (**EWOV**) are unable to agree on a resolution, and decide the outcome pursuant to the regulatory instruments.

Where appropriate, the Commission responds to instances of non-compliance by requiring retailers to correct the cause of the breach and remediate as required.

Where retailers' compliance reports, independent audits or other reports show the need, the Commission can sanction the retailers for breaches of their regulatory obligations.



1.4 OUR RELATIONSHIPS WITH OTHER ORGANISATIONS

The Commission has well-established relationships with other jurisdictional regulators and both government and community agencies, that assists us with compliance and monitoring activities.

In particular, EWOV monitors the conduct of the regulated energy businesses in the market. Where potentially significant and widespread non-compliance issues are identified, the Commission would consult with the relevant agency to ensure a consistent and effective response to addressing the non-compliance.

We also consult with the Australian Competition and Consumer Commission (**ACCC**) on marketing conduct matters. Additionally, in 2012–13 the Commission continued to engage with the Australian Energy Regulator and the Department of State Development, Business and Innovation (**DSDBI**).⁵

Furthermore, through frequent meetings and other interactions with staff of EWOV, the Commission identifies systemic breaches in retail operations and significant compliance breaches that require intervention and possible enforcement action.⁶

Consumer organisations also provide valuable information about customers' experiences, which helps the Commission identify potential compliance breaches.

1.5 STRUCTURE OF THE REPORT

The remainder of this report is structured as follows:

⁵ From 2013, DSDBI is the responsible Government department for energy policy; it was previously the Department of Primary Industries.

⁶ Systemic breaches are those which may affect a significant number of customers and are usually a result of an error in a system or process. Further information on the definitions of systemic and isolated breaches is included in section 2.2.1.



- Chapter 2 summarises the retailers' 2012–13 annual compliance reports by categorising the breaches and identifying the remedial actions taken by the retailers.
- Chapter 3 summarises compliance breaches by EnergyAustralia that required particular attention.
- Chapter 4 summarises the wrongful disconnection compensation cases identified by retailers, customers or EWOV.
- Appendix A - Other Compliance Initiatives summarises other compliance activities in 2012–13.
- Appendix B - Retailers' Breach Reports details the compliance breaches the retailers reported to the Commission.

As noted previously, this Report also contains the compliance trends for the subsequent six month reporting period, from 1 July 2013 to 31 December 2013.



2 RETAILERS' COMPLIANCE REPORTS

2.1 OVERVIEW OF REPORTED BREACHES

Based on the breaches reported during 2012–13, the notable issues for the year include:

- IT system problems resulting in breaches of billing requirements.
- Sales agents' conduct.
- Wrongful disconnections that breached the EI Act or the GI Act.

These breaches are consistent with the key findings of the previous 2011–12 Compliance Report for the energy retail businesses.

The section below provides a brief overview of these breaches, with additional detail provided later in the chapter.

One retailer, EnergyAustralia, experienced significant compliance problems during the 2012–13 reporting period. Its breaches are not included in this section but are reported separately in Chapter 3.

2.1.1 OVERVIEW - IT SYSTEM PROBLEMS

The retailer compliance breach reports show that problems in IT systems have adversely affected their ability to comply with their regulatory obligations in a number of circumstances, mostly relating to billing customers on time and correctly. These problems have mostly resulted in breaches affecting significant numbers of customers.

In particular, some retailers reported that errors in their systems resulted in customers being either overcharged or undercharged. In these cases, the



retailers reported that they had resolved these IT system errors and compensated the affected customers.

As in the previous reporting year, new customers continued to experience delays in receiving their contracts or 'welcome packs'. Errors in retailers' IT systems were cited as a key factor. To mitigate the issue, all retailers extended the cooling-off period to allow these customers the required time to consider their contracts.

The Commission has no specific powers to regulate licensees' IT related activities directly. Upcoming regulatory audits of the retailers will review the process by which licensees manage changes in regulatory requirements and in their related business systems, and ensure their continued compliance with licence conditions.

2.1.2 OVERVIEW - SALES AGENTS' CONDUCT

Breaches of the Marketing Code continue to feature as key areas of noncompliance in the 2012–13 reporting period.

Retailers continue to report that customers were transferred from their existing retailers without explicit informed consent. These breaches were most often reported as errors in data entry or processing customer details.

Of additional concern were breaches where sales agents misled customers, allegedly fabricated consent to contracts or pressed vulnerable customers to transfer from their existing retailers. Six retailers reported such breaches and described taking varying remedial actions, from instituting greater training and supervision to reducing or completely discontinuing the form of marketing activity that had led to the reported breaches.

In January 2012, an industry-based accreditation scheme and voluntary code of practice was established by Energy Assured Limited (**EAL**) and approved by the ACCC. Through its Code of Practice and Agency Registry, EAL aims to increase service standards in door-to-door sales of retail energy products. In this activity, EAL improved retailers' compliance with the Commission's Marketing Code, through processes that include improved identification, training, assessment and registration of individual sales agents, along with



sanctions extending to deregistration of agents as a result of misconduct. EAL also undertakes audits which assess compliance with training and complaint-handling and Commission staff review the audit scope and results.

During this reporting period, the ACCC advised energy retailers that it was closely monitoring their use of door-to-door selling practices and the conduct of their sales agents.

Over a 12 month period from September 2012, the ACCC also instituted proceedings against a number of retailers concerning the conduct of their sales agents.⁷

In the course of the 2012–13 reporting year, AGL, EnergyAustralia, Neighbourhood Energy and Origin Energy all announced that they would withdraw from door-to-door marketing activity. Origin Energy advised the Commission that it would remain registered with the EAL Scheme until June 2014.

At the start of the 2012–13 reporting period, the EAL Scheme had been in operation for over 12 months and during that time the number of breaches relating to sales agent conduct reported to the Commission has increased from 560 cases investigated in the 2011–12 reporting period to just over 750 cases in 2012–13.

It is important to acknowledge that this increased number relates to all breaches reported by all retailers relating to alleged misleading, deceptive or unconscionable conduct of its sales agents through door-to-door, telephone or any other form of marketing. The scope of the EAL Scheme only extended to door-to-door sales and not telesales during this reporting period.

For future reporting periods, the Commission will request that the form of marketing be identified in relevant breach reports.

⁷ ACCC (Australian Competition and Consumer Commission) 2013, 'ACCC targets door-to-door sales tactics', Media Release, no.48-13, March.



2.1.3 OVERVIEW - WRONGFUL DISCONNECTIONS

Breaches of the Retail Code leading to a wrongful disconnection may cause considerable hardship or inconvenience to the customers involved, as a result of not having access to an essential service. Because compliance breaches that result in the wrongful disconnection of a customer are very important, these are covered in more detail in Chapter 4. The remainder of this chapter deals with the other reported breaches.

2.2 RETAILERS' COMPLIANCE REPORTING

2.2.1 CLASSIFICATION — TYPE 1, TYPE 2, TYPE 3

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.⁸

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.

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

- non-compliance would seriously affect customers
- the obligation is 'new' or has not been complied with in previous years and/or
- the impact of that noncompliance 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 immediately, if the retailer identifies that the nature of the

⁸ 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).



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 only once a year. An example of a Type 3 breach would be non-compliance with clause 27.1 of the Retail Code, which requires a retailer to retain all historical billing data for a minimum of two years.

The Commission also assesses whether the reported breaches are systemic or isolated:

- 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.

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.

- 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.



2.2.2 THE RELIABILITY OF RETAILERS' COMPLIANCE REPORTING SYSTEMS

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 regularly assure the Commission that their compliance systems are effective and their reports of non-compliance are complete.

However, 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 that they send the Commission, are tested in the Commission's regulatory audit program.

During 2014-15, the Commission intends to audit most of the retailers' that are active in the domestic customer and small business market. The audits will assess how robust the retailers' compliance frameworks are — how well integrated they are with the policies, systems, management and practices of the businesses — and how well the retailers have complied with selected obligations in practice.

2.3 ANALYSIS OF 2012–13 COMPLIANCE REPORTS SUBMITTED BY RETAILERS

2.3.1 TYPE 1 BREACHES

This section summarises the Type 1 breaches of the Retail Code, Marketing Code or licence reported by retailers, other than breaches related to wrongful disconnection (which are presented in Chapter 4).

Details of all the Type 1 breaches are set out in Appendix B (Type 1 breaches).

RETAIL CODE

Since the 2008–09 reporting period, there continues to be minimal improvement in systemic breaches of the regulatory obligations to notify



customers of the impending expiry of their energy contract (clause 24.3(a)), or of any changes in the customers' tariffs (clause 26.4(b)).

Specifically, the recurring breaches include:

- *Contract expiry – information provided to a customer prior to the expiry of fixed contract, no later than 1 month before the expiration of the fixed term:*
 - Over 29,000 Origin Energy and over 9,000 AGL customers were not notified within the required time-frame that their contracts were due to expire. Origin Energy informed the Commission that given delays in confirming prices for some of its customers, the contract expiry notification was sent late to ensure that the correct pricing was included. All customers for both retailers were notified prior to the expiry of their contracts.
 - Origin Energy sent contract renewal notices containing the incorrect tariff to over 4,000 customers. When the retailer discovered the error, affected customers were notified and provided with an opportunity to terminate the renewed contract without penalty.
- *Price variations – a retailer must give notice to a customer as soon as practicable, and at least 20 business days in advance for smart meter customers, of any variation to the tariff that affects the customer:*
 - Over 16,000 Origin Energy smart meter and other customers did not receive the required notice of increases in their tariffs. Origin Energy advised that its breach of the obligation was due to billing system issues. Origin Energy reported that it would revise its communication protocols with its third party billing system service provider to ensure that this breach does not occur in future. The Commission notes that Origin Energy also breached this same requirement during the 2011–12 reporting period, and the Commission will consider including this obligation in the forthcoming regulatory audits.
 - Over 60,000 AGL customers did not receive notification of a price variation, which meant that these customers were overcharged until the required notification was provided. AGL advised that this breach was a result of a systems error. All affected customers received an apology letter outlining the issue and notifying them of the price variation. At the request of the Commission, AGL repaid the amounts overcharged, at a total cost to the business of over \$1.1 million.



Other systemic breaches of the Retail Code included Origin Energy's failure to comply with its obligations under clause 26.7, to take action at least once each year, to ensure that its life support records are accurate and complete. Origin Energy has informed the Commission that customers who require life support were not adversely affected.

Given the importance of records relating to life-support customers, the Commission intends to include this and other related obligations in the upcoming audits of retailers.

SUBSEQUENT TRENDS

In the next six months to December 2013, there was a significant improvement in the number and scale of the breaches of the regulatory obligations to notify customers of the impending expiry of their energy contract or of any changes in the customers' tariffs. Australian Power & Gas reported that a small number of customers were not notified within the required timeframe that their fixed term contract was about to expire.

Click Energy reported a breach of clause 26.4 (b), where over 200 customers were provided with incorrect information on their tariffs. The affected customers were notified of the error and the information was corrected.

An additional breach was identified in this period, where over 600 Australian Power & Gas customers were incorrectly charged additional retail costs on a standing offer. Australian Power & Gas advised the Commission, that customers who were overcharged in error were credited this amount on their next bill.

MARKETING CODE

There are eight Marketing Code obligations which, if breached, would be classified as a Type 1 breach.

The following three regulatory obligations have featured prominently in several retailers' reports of noncompliance since 2008:



- *Sales agent conduct - The retailer must ensure its third party sales agents do not mislead, deceive or place undue pressure on consumers.*
- *Provision of contractual information - Contractual information must be provided to customers within two business days of the customer agreeing to enter into a contract with the retailer.*
- *Transfer with Explicit Informed Consent - The retailer must obtain a consumer's explicit informed consent before transferring that customer from another retailer to itself.*

Ongoing breaches of these obligations highlight failures in retailers' IT processes and systems, or problems with training and supervision of third party sales staff or service providers.

Sales agent conduct

Retailers reported breaches of clauses 3.2 to 3.6 of the Marketing Code, including both systemic and isolated breaches of obligations surrounding sales agents' marketing behaviour.

Specifically, Neighbourhood Energy, Origin Energy, Red Energy, Simply Energy, Australian Power & Gas and Lumo Energy reported that there were approximately 750 allegations of their sales agents having misled or deceived consumers through inappropriate conduct. Australian Power & Gas accounted for almost 80 per cent of the cases reported.⁹ The other retailers reported small numbers of cases, such as Lumo Energy reporting four isolated incidents.¹⁰

Retailers investigated these complaints and have either dismissed the sales agents involved, ensured the door-to-door sales agents' deregistration with the EAL Scheme or required them to undertake further training. Where the consumer was coerced into signing a contract, the retailers have cancelled the contract, waived early termination fees and transferred the customer back to the previous retailer.

⁹ In July 2013, it was announced that AGL had purchased Australian Power & Gas. The customers of Australian Power & Gas were transferred to AGL in April 2014.

¹⁰ This number does not include the 265 specific breaches reported by EnergyAustralia on this same matter. These EnergyAustralia breaches are covered in more detail in Chapter 3.



As previously stated, retailers including AGL, EnergyAustralia, Origin Energy and Neighbourhood Energy, have decided to either reduce or completely cease residential door-to-door marketing during the 2012–13 reporting period.

SUBSEQUENT TRENDS

In the next six months to December 2013, there were only a small number of reports of sales agents either misleading, deceiving or harassing customers. Simply Energy, Alinta and Red Energy reported approximately 45 incidents relating to sales agent conduct. Simply Energy accounted for approximately 50 per cent of all reported cases.

Provision of contractual information

AGL, Lumo Energy, Origin Energy, Simply Energy, Australian Power & Gas and Click Energy failed to send the correct contractual information to new customers within two business days, affecting approximately 52,000 customers in total. AGL accounted for over 80 per cent of all the reported cases. Lumo Energy reported less than 1,000 affected customers and Simply Energy and Click Energy accounted for a small number of cases (less than 10 customers each).

This is an ongoing issue which has the potential to affect a large number of customers, and for the most part appears to result from third party contracted services.

In general, retailers extended the cooling-off period for affected customers. The Commission will ensure that the upcoming audits of retailers include this obligation and the adequacy of control of third party service providers.

SUBSEQUENT TRENDS

In the next six months to December 2013, retailers reported a significant decrease in breaches relating to the provision of contractual information. Approximately 2,000 new AGL, Simply Energy and Origin Energy customers did not receive their contracts within the required timeframes. The breaches all resulted from system errors and Simply Energy accounted for over 40 per cent of the total number of affected customers.



Transfer without Explicit Informed Consent

The 2012–13 retailer breach reports showed that data entry and systems errors resulted in over 2,200 customers being transferred without explicit informed consent (clauses 4.1 and 4.2). Whereas, only 60 non-compliant transfers were a result of fraudulent conduct of sales agents.

Origin Energy and Simply Energy reported breaches of clause 4.1 of the Marketing Code involving transfers without explicit informed consent due to inappropriate or allegedly fraudulent actions by their third party sales agents.

In all cases the retailer transferred these consumers back to their previous retailer and, if the transfer was a result of a sales agent's inappropriate actions, took disciplinary action and where relevant deregistered the sales agents from the EAL Scheme.

SUBSEQUENT TRENDS

In the next six months to December 2013, retailers again reported varying numbers of possible or confirmed account transfers without explicit informed consent. The Commission will investigate further the basis on which such breaches are reported, if retailers' records of consent are contradicted by customers' allegations of agents' misconduct.

2.3.2 TYPE 2 BREACHES

This section summarises the major Type 2 breaches reported by retailers. Details of all the Type 2 breaches are set out in Appendix B (Type 2 breaches).

RETAIL CODE

Three areas of systemic non-compliance continue to appear in retailers' annual compliance reports, and include:

- *Billing frequency – retailers' obligations in relation to the frequency of issuing bills to customers (electricity every three months; gas every two months):*
 - Australian Power & Gas, Momentum Energy, Red Energy, Origin Energy and Click Energy reported approximately 700 customers whose



billing cycles were changed without the required notification.

Momentum Energy accounted for over 80 per cent of the customers affected and most of these breaches stemmed from system errors (there were a small number that resulted from data entry errors). The retailers were able to issue the delayed bills and offer payment assistance where required. Of these retailers, Red Energy was the only business that reported honouring pay on time discounts. The Commission will clarify that other retailers are honouring these pay on time discounts.

- *Contents of bills – rules governing the minimum information to be included on a customer's bill:*

- Over 200,000 customers (mostly with smart meters) with Australian Power & Gas, Dodo Power & Gas, Origin Energy, Powerdirect, Neighbourhood Energy, Click Energy, Lumo Energy, AGL and Simply Energy received bills that did not contain all the required information. The majority of bills for smart meter customers were missing the consumption graphs or start and end index reads. Australian Power & Gas accounted for most of the incomplete bills. As reported in 2011–12, the retailers attributed this non-compliance to IT system issues.

All of the retailers reported that the system errors were rectified, aside from Powerdirect and Lumo Energy. These two retailers reported that the breach was being corrected or that an interim solution was put in place. The Commission will continue to monitor this issue.

- Regarding the provision of index reads to smart meter customers, the Commission noted that Australian Power & Gas had reported incorrectly that its bills complied with Retail Code requirements. In November 2012, the Commission gave notice that it would take enforcement action if the retailer did not comply with the requirement to provide start and end index reads by 4 January 2013. Australian Power & Gas reported meeting this deadline and enforcement action was not required for this breach.
- Origin Energy and Neighbourhood Energy also reported ongoing systemic problems preventing the provision of this information. Country



Energy had been acquired by Origin Energy; Neighbourhood Energy was an entity owned by Alinta Energy. Both Origin Energy and Alinta stated their intention to integrate the operations of their subsidiaries with their main businesses. The Commission agreed with both retailers that avoiding the cost of upgrading billing systems with limited useful lives was ultimately in the customers' interests. In March 2013, the Commission sought a formal administrative undertaking from Origin Energy, to comply fully with the information requirements by 4 January 2014. In June 2013, the Commission sought a similar undertaking from Neighbourhood Energy. Both retailers provided regular updates on progress, and complied fully with these requirements by January 2014.

- Additionally, all Origin Energy customers received invoices over a 12 month period which displayed a pay-by date that was less than the required 12 days. The issue arose because the 'issue date' displayed on the bill was the date the bill was printed, although the bill was issued the following day. Click Energy also reported this same breach, where over 1,900 customers received incorrect pay by dates on the bills. Both retailers resolved the systems error and notified the affected customers.
- *Incorrect charging* – undercharging and overcharging:
 - Over 32,000 Origin Energy, Simply Energy, Powerdirect, AGL, Click Energy and Momentum Energy customers were charged the incorrect tariff. These customers were notified and re-billed and Origin Energy and AGL each accounted for 40 per cent of the reported cases.

SUBSEQUENT TRENDS

In the next six months to December 2013, these three areas of systemic non-compliance were also reported.

- *Billing frequency*: There was an increase in changes to customers' billing cycles, with Alinta, Neighbourhood Energy, Momentum Energy and Red Energy reporting a total of approximately 6,800 customers who were affected. Momentum Energy accounted for over 70 per cent of the reported breaches, as a result of a system error. Momentum advised the Commission that it has scheduled a system fix to be in



place by December 2014 and the Commission will continue to monitor this matter in upcoming reporting periods.

- *Contents of bills:* Retailer compliance breach reports show a decrease in the number of incomplete bills being issued to customers. Neighbourhood Energy and Origin Energy reported approximately 38,000 bills not providing prescribed index reads, with Neighbourhood Energy reporting 60 per cent of the reported breaches.
- *Incorrect charging:* Approximately 900 Australian Power & Gas, Click Energy and Origin Energy customers were incorrectly charged mainly as a result of billing system errors. Origin Energy accounted for 90 per cent of these breaches.

RETAIL LICENCE

As a condition of their licence, retailers must provide information to customers concerning certain matters, including greenhouse gas emissions connected with the generation of electricity supplied to the customer.

Pacific Hydro did not include this information on a small number of commercial customer bills.

This issue has been resolved and all customers now receive this information.

MARKETING CODE

In 2012–13, the only Type 2 breach of the Marketing Code reported by retailers, related to isolated breaches of clauses 2.1 to 2.3 — which cover the conditions for contacting customers. Consistent with the last reporting period, sales agents working on behalf of both Australian Power & Gas and Lumo Energy ignored ‘Do Not Knock’ stickers. The pending transfers were cancelled and these agents’ contracts were terminated.

2.3.3 TYPE 3 BREACHES

As in previous years there were fewer systemic Type 3 breaches reported by retailers for 2012–13:



- *Clause 9.2 of the Retail Code:* Almost 48,000 Origin Energy and just over 1,900 Lumo Energy customers experienced changes to their billing cycle without the required minimum notice of 10 days.
- *Clause 3 of the Gas Retail Licence:* Approximately 100 premises were offered gas supply via Origin Energy's door-to-door marketing channel in areas where Origin Energy did not have supply agreements with the relevant distributors and therefore could not supply.
- *Clause 1.5 of the Guideline 13 - Greenhouse Gas Disclosure on Electricity Customers' Bills:* For approximately five months, Pacific Hydro did not include the Greenhouse Gas Guideline on its website.

See Appendix B (Type 3 breaches) - for further details on these breaches.



3 ENERGYAUSTRALIA

3.1 BACKGROUND

In March 2011, TRUenergy, an energy retailer licensed to operate in Victoria, acquired the retail operations of a NSW government-owned entity then known as EnergyAustralia, which later changed its name to Ausgrid.

As part of a project to replace its existing billing system and deal with several recurrent billing issues, TRUenergy undertook to correct a large number of its customer records. While this was an appropriate initiative at that stage of the project, there were significant delays in issuing bills as the correction and rebilling exercise progressed. The retailer introduced the new billing system, known as C1, at the start of September 2012.

In October 2012, TRUenergy started to operate under the name of EnergyAustralia.

As a result of problems occurring in implementing the new systems and delays requiring correction, EnergyAustralia experienced a significant number of systemic breaches through the 2012–13 compliance reporting period.

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.



3.2 MONITORING AND ENFORCEMENT

3.2.1 BILLING DELAYS

The Commission monitored EnergyAustralia's billing situation closely, meeting frequently with the retailer's management for explanations of current issues and its remedial action plans.

The Commission required frequent reports from EnergyAustralia on the number of significantly delayed bills — those that were late-billed (beyond 30 days of the due date) or unbilled — with explanations of the billing problems being encountered and proposed solutions. The number of reported cases fell by more than 30 per cent between early July and the end of September 2012.

However, the number of late-billed and unbilled accounts then increased sharply with the introduction of the new billing system and the implementation problems that were encountered. The number of late bills tripled by the end of 2012 and peaked in January 2013.

From that point, EnergyAustralia was required to report to the Commission every two weeks on the late and unbilled accounts. The number of late or unbilled accounts had halved by the end of June 2013.

Subsequent to the 2012–13 period covered by this report, in August 2013 and again in November 2013, the Commission required EnergyAustralia to give formal undertakings to halve the then-reported number of late bills. The retailer reported meeting both these undertakings: the first, in September 2013 and the second in February 2014.

During the period under review, in March – May 2013 the Commission developed, in consultation with EnergyAustralia, the scope of a special compliance audit of the retailer's customer billing operations and compliance with relevant regulatory obligations. The audit was conducted in two stages. During June – August 2013, the auditor found that EnergyAustralia could not demonstrate that the reports of late-billed and unbilled accounts previously provided to the Commission were accurate. During a follow-up stage, the auditor was able to confirm that EnergyAustralia's report of meeting the first undertaking in September 2013 to the required standard.



The specific details of the reported breach and subsequent trends are outlined in section 3.4.3 Billing frequency.

3.2.2 SMART METER INFORMATION

Between July–September 2012, the retailer then operating as TRUenergy was one of several licensees whose billing systems did not comply with Retail Code requirements for information to be printed on the bills of electricity customers with smart meters. The required information includes index reads at the start and end of the billing period, graphs of monthly consumption, average daily costs and an indication of substituted or estimated readings.

These requirements were not met by the former TRUenergy billing system that operated until September 2012. Nor had these requirements been designed into the new C1 system that the retailer, operating as EnergyAustralia, used thereafter. The Retail Code requirements had been in force for more than a year and the Commission was concerned by the lack of progress.

EnergyAustralia was given notice that the Commission would take enforcement action if the retailer did not comply with the requirement to provide start and end index reads by 13 December 2012. EnergyAustralia reported meeting this deadline and enforcement action was not required.

EnergyAustralia also offered an administrative undertaking in March 2013 to comply with the other smart meter billing requirements by 30 June 2013, and again EnergyAustralia reported meeting this deadline.

The compliance audit of EnergyAustralia's billing, described above, reported that bills from the C1 system showed the required information, according to the undertakings given.

Meanwhile, by taking over the Victorian customers of the NSW-based EnergyAustralia and choosing to continue billing them on the same systems as before (now processed by Ausgrid), the retailer became responsible for more smart meter customers whose bills did not comply with Retail Code requirements. This situation, which is outlined in section 3.4.4, is not yet fully resolved and the Commission continues to monitor progress.



3.3 TYPE 1 BREACHES

3.3.1 TRANSFER WITHOUT EXPLICIT INFORMED CONSENT

EnergyAustralia accounted for over 80 per cent of breaches of clause 4.1 of the Retail Code, reported by all retailers. More than 250 customers were transferred without explicit informed consent through the actions of agents in one of its sales channels.

Additionally, over 2,700 customers were transferred to EnergyAustralia without explicit informed consent due to a variety of reasons, some of which relate to the energy market operator's transfer system and accuracy of industry data. EnergyAustralia considers that the number of cases reported is an overstatement of the scale of the matter, on the basis that it has limited reporting capability regarding this matter. The Commission will continue to monitor this issue.

SUBSEQUENT TRENDS

In the next six months to December 2013, the Commission monitored the retailer's progress in attempting contact with all customers engaged through that channel, and reversing the transfers of fewer than two per cent who did not confirm their consent. Action was completed by June 2014.

3.3.2 PROVISION OF CONTRACTUAL INFORMATION

EnergyAustralia's implementation of its new IT (C1) system caused errors that meant almost 3,000 new customers did not receive their contractual information or 'welcome packs' within the required timeframes. The number reported by EnergyAustralia accounts for less than one per cent of the number reported by all retailers for this particular breach.

To address this breach of the Marketing Code (clauses 3.2 to 3.6), EnergyAustralia ensured that affected customers were provided with the required 10 day cooling-off period in full after the receipt of the contractual information.



In January 2013, EnergyAustralia became compliant with this obligation, with a long-term solution proposed for later in 2013, which the Commission will monitor in the upcoming compliance reporting period.

SUBSEQUENT TRENDS

In the next six months to December 2013, EnergyAustralia did not report a similar breach.

3.3.3 NON-COMPLIANT DISCONNECTION PROCESS AND NOTICES

EnergyAustralia was non-compliant with the Retail Code (clause 13) relating to disconnecting customers. The non-compliance included customers not receiving reminder notices and disconnection warnings in the required timeframe. This affected over 3,000 EnergyAustralia customers across all jurisdictions.

These compliance breaches resulted from delays in sending reminder notices and disconnection warnings during the implementation period of the C1 system. EnergyAustralia addressed this non-compliance by notifying the affected customers of the delay and providing them with additional time to pay the outstanding amount.

The Commission is monitoring this breach through compliance reporting and will include it in EnergyAustralia's upcoming retail audit.

Furthermore, through the 2012–13 reporting period EnergyAustralia identified an increase in the occurrence of wrongful disconnections.

The reasons provided by EnergyAustralia for the 104 reported wrongful disconnections included:

- insufficient notice provided;
- failure to identify customer hardship;
- insufficient review of customer accounts including financial and payment history and customer contact notes;
- inability to retrieve customer correspondence due to system errors; and



- failure to identify pending accounts before processing move out disconnections.

In its 2012-13 compliance breach report, EnergyAustralia reported that it had ceased disconnecting customers for non-payment and would not restart until its procedures were validated and considered robust.

SUBSEQUENT TRENDS

In the next six months to December 2013, EnergyAustralia's reported a similar trend in wrongful disconnections, with over 70 wrongful disconnections reported over the six month period. However, this was attributed to two specific systemic problems involving duplicate records and an error in the move in-move out process.

3.3.4 CHANGE OF BILLING CYCLE

EnergyAustralia breached the Retail Code (clause 20) by changing customers' billing cycles from quarterly to monthly without notice or agreement obtained from the customer. This affected over 4,400 Victorian customers and was both a result of the IT 'C1' system implementation, along with the relevant distribution business changing the meter reading cycle without notification.

SUBSEQUENT TRENDS

In the next six months to December 2013, EnergyAustralia reported that corrective action was implemented in November 2012 to address the matter and there have been no further reports of a similar breach to the Commission.

3.4 TYPE 2 BREACHES

3.4.1 INCORRECT CHARGING

EnergyAustralia had a number of billing system problems that resulted in breaches of the Retail Code (clauses 6.2 and 6.3).



Approximately 10,000 customers, including some from other states, were undercharged due to system errors resulting from incorrect consumption rates and pay-on-time discounts.¹¹ Where applicable, EnergyAustralia honoured the additional discounts given in error, and notified and rebilled the customers.

SUBSEQUENT TRENDS

In the next six months to December 2013, EnergyAustralia reported that almost 200,000 customers were incorrectly charged, mostly by small amounts, due to pay-on-time discounts not being applied where eligible. All affected customers were notified and revised bills, with the correct discounts applied, were re-issued. A system change was implemented in October 2013 to address the matter.

3.4.2 NO ACTUAL METER READING

EnergyAustralia reported a breach of clause 5.1 of the Retail Code, where approximately 25,000 customers did not receive an actual read within 12 months as required and their bills were based only on estimated data.

EnergyAustralia stated that the reason for no reads being obtained was either the customer restricting access to the meter or the distributor's inability to receive actual meter reading data. EnergyAustralia plans to increase its best endeavours to obtain actual meter reading data. This will include reviewing the meter reading procedure as well as providing improved messaging to customers on this matter. These measures are scheduled to commence in November 2013.

SUBSEQUENT TRENDS

In the next six months to December 2013, EnergyAustralia reported a significant decrease to around 3,800 customers being billed only on estimated data.

¹¹ EnergyAustralia reported one breach which affected over 7,800 customers across all states. EnergyAustralia's reports have not provided a breakdown of the number of Victorian specific cases resulting from this breach.



3.4.3 BILLING FREQUENCY

As at 30 June 2013, over 53,000 EnergyAustralia gas and electricity customers were affected by delayed bills due to a system error. More than half of these bills were greater than 90 days late.

As detailed in section 3.2.1, throughout the reporting year EnergyAustralia experienced several billing related breaches, some of which were due to errors in its business-to-business systems, along with managing third party service providers.

Additionally, due to incompatible systems, EnergyAustralia's third party mail vendor was unable to send bills within the required timeframe. Over 165,000 EnergyAustralia customers received a delayed bill.

SUBSEQUENT TRENDS

In the next six months to December 2013, there was a significant improvement where EnergyAustralia reported approximately 14,000 customers were affected by delayed billing through system upgrade errors (almost 50 per cent of them for more than 90 days).

There was also a marked improvement in the number of bills delayed by system incompatibilities. Over 1,000 customers received delayed bills resulting from EnergyAustralia's third party mail vendor.

3.4.4 CONTENTS OF BILL

As with other retailers listed in Chapter 2, EnergyAustralia reported non-compliance with the Retail Code in relation to information provided on a customer's bill.

Specifically, EnergyAustralia was unable to provide the following information on a smart meter customer's bill:

- 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; and
- a graphical representation of annual monthly consumption.

This non-compliance was also reported in the 2011-12 compliance report and continues to be a result of EnergyAustralia postponing the implementation of the smart meter information requirements until the implementation of a new billing system.

EnergyAustralia advised the Commission that it informed customers that this information was available on request.

SUBSEQUENT TRENDS

In the next six months to December 2013, EnergyAustralia reported that it has an 'Integration Project' that would see the breach rectified by the end of 2014. The Commission will continue to monitor the outcome of this project.



4 WRONGFUL DISCONNECTION COMPENSATION

4.1 OVERVIEW

Victoria's wrongful disconnection payment regime came into force in December 2004.¹² Under this regime, a retailer must make a payment to its customers if it breaches the terms and conditions of its contract when it disconnects. The statutory payment was fixed at \$250 for each fuel and for each day or part of a day that supply is disconnected from the customer's premises.

A cap was placed on the wrongful disconnection payment on 1 January 2012; a wrongful disconnection payment is now capped at \$3500 if the customer does not notify the retailer of the disconnection within 14 days of the disconnection.¹³ This change does not affect disconnections that occurred before that date, for which the payment is unlimited.

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.

This chapter outlines cases that were referred to the Commission by EWOV during 2012–13. It also outlines cases that were settled by the retailers, but involved EWOV. Individual cases are outlined as Type 1 compliance breaches in the appendix.

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

¹³ *Energy Legislation Amendment (Bushfire Mitigation and Other Matters) Act 2011*.



4.2 CASES REQUIRING COMMISSION INVOLVEMENT

Fourteen cases of alleged wrongful disconnection were referred to the Commission in the 2012–13 reporting period. The Commission reached a decision in eight of these cases; in the other six, the retailer accepted that it had wrongfully disconnected the customer and withdrew the case from consideration.

In eight of the cases where the Commission made a decision in 2012–13, six involved AGL and two involved TRUenergy. The Commission found that all eight cases represented wrongful disconnections for which compensation was payable to the customer.

4.2.1 AGL

The Commission found that six of the seven disconnections by AGL were wrongful for the following reasons:

- 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; or
- AGL did not use reasonable endeavours to cancel a disconnection for premises into which a new resident (who was not its customer) had moved; or
- AGL did not appropriately assess the customer's capacity to pay and offer an instalment plan, in accordance with clauses 13.2 and 11.2 of the Retail Code, despite the customer having shown sufficient signs that their failure to pay may have been due to a lack of sufficient income.

4.2.2 TRUENERGY

In both of the TRUenergy cases where the Commission proceeded to a decision, the Commission found that TRUenergy was required to make a wrongful disconnection payment to the customer.

In the first case, TRUenergy did not appropriately assess the customer's capacity to pay and offer an instalment plan in accordance with clauses 13.2



and 11.2 of the Retail Code, despite the customer having shown sufficient signs that their failure to pay may have been due to a lack of sufficient income.

In the second case, TRUenergy did not dispute the wrongfulness of the disconnection but sought a decision on the period of time in respect of which the wrongful disconnection compensation was payable, as the date of reconnection was unclear. The Commission found that the compensation was payable for the whole period from the date of disconnection to the date on which the distributor confirmed the reconnection.

4.3 DISCONNECTION NOTICES

The Commission continues to receive notification from retailers of non-compliant disconnection notices. These non-compliant disconnection notices do not necessarily indicate the number of customers wrongfully disconnected.

Specifically, over 60,000 AGL and approximately 10,000 Powerdirect non-compliant disconnection warning notices were provided to customers — both businesses incorrectly calculated the timeframes resulting in disconnection warning period ending in less than the 7 days required by the Retail Code. Both retailers advised the Commission that they corrected this problem and that their disconnection notices are now compliant.

Both retailers informed the Commission that a number of customers were disconnected after receiving non-compliant notices, however these customers were still provided the required time to pay as outlined in the Retail Code. The Commission continues to explore this matter.

EnergyAustralia also reported errors with its disconnection notices, which was detailed in section 3.3.3.



4.4 CASES NOT REQUIRING COMMISSION INVOLVEMENT

As part of their compliance reports, the retailers also report the number of wrongful disconnection cases investigated and settled by compensation payment without involving the Commission.

There was an increase from the 215 cases reported in the 2011–12 period, to over 430 such cases in 2012–13 and included customers of Australian Power & Gas, AGL, Lumo Energy, Simply Energy, Red Energy, EnergyAustralia, Momentum Energy and Origin Energy.

AGL, EnergyAustralia and Origin Energy accounted for approximately 30, 25 and 20 per cent of the total number of wrongful disconnection reports, respectively.

AGL reported a total of 140 instances of wrongful disconnection between July 2012 and June 2013. The Commission will continue to investigate the causes and the adequacy of corrective action taken.¹⁴

The information provided by the retailers reveals:

- Almost 50 per cent of reported wrongful disconnections resulted from data entry errors. This was a significant increase from the 2011–12 reporting period, which saw just 15 per cent of wrongful disconnections relate to this matter.
- Approximately 10 per cent of cases were a result of the retailer failing to comply with its obligations towards customers experiencing financial difficulties. This was a significant decrease compared with the previous 75 per cent of all cases in 2011–12.

The retailers' obligations for customers experiencing financial difficulties include:

- responding as required with information, assistance or an instalment plan or other payment arrangement for a customer in financial hardship;
- assessing adequately the customers' capacity to pay; or
- processing a payment made by the customer.

¹⁴ The breakdown of causes for the wrongful disconnections does not include AGL's reported cases, as the causes were not been provided to the Commission before finalising this report.



- Approximately 5 per cent of wrongful disconnection cases arose because the retailer's disconnection warning notices were either:
 - not compliant with specific requirements such as the time allowed for payment;
 - not sent to the correct address, so the customer did not receive the notice before disconnection; or
 - not provided to the customer within the required timeframe and then the customer was subsequently disconnected.

In 2011–12, approximately 10 per cent of cases related to this cause.

- Just over 30 per cent of the wrongful disconnections reported were by Origin Energy and the cause was unspecified.

SUBSEQUENT TRENDS

The next six months to December 2013 showed an increase in wrongful disconnections, with over 460 reported for this period by AGL, Australian Power & Gas, Simply Energy, Neighbourhood Energy, Lumo Energy, Momentum Energy, Origin Energy, Red Energy, Click Energy Powerdirect and EnergyAustralia.

The retailers reported:

- A slight decrease in disconnections occurring through data entry and procedural errors, accounting for 30 per cent of incidents.
- The trend continued with decreasing numbers of wrongful disconnections occurring as a result of the retailer failing to comply with its obligations towards customers experiencing financial difficulties, with less than 5 per cent of cases reported.
- Consistent with the annual trend, 40 per cent of wrongful disconnections occurred due to unspecified reasons.



APPENDIX A - OTHER COMPLIANCE INITIATIVES

This appendix outlines other compliance initiatives and reviews that the Commission has undertaken or had scheduled to undertake during the reporting period, July 2012 – June 2013.

SMART METERS

In accordance with the Victorian Government's mandate, from 2009 the electricity distributors have been required to use their best endeavours to replace existing accumulation meters with smart meters. The objective of this smart meter rollout was to have a smart meter installed at every residential and small business customer premises existing on 31 December 2013.

In order to facilitate customer access to benefits enabled by smart meters and ensure that existing regulations were sufficient to protect customers, the Commission completed a number of activities that are detailed below.

START AND END METER READS

As part of the smart meter rollout, the Commission required retailers to include a start index read on smart meter bills from 1 July 2012.

To assist with the introduction of this requirement, in January 2012 the Commission required distributors to confirm that they were able to provide the relevant information to enable the retailers to comply with the new obligations. Distributors' responses indicated that they did comply with this requirement.



The Commission also wrote to all major retailers in January 2012, and again in July 2012, to ensure that they would be able to comply with this new regulatory obligation.

As outlined in section 2.3.2, in the July 2012 – June 2013 reporting period a number of retailers reported non-compliance with this obligation.

However, through the actions of the Commission, which included administrative undertakings along with issuing two notices of intent to serve final enforcement orders, all retailers reported that they complied fully with the requirements by January 2014 — with the exception of EnergyAustralia, as noted in section 3.2.2.

FLEXIBLE PRICING

During 2013, the Victorian Government introduced flexible pricing as part of the rollout of smart meters.¹⁵ The Advanced Metering Infrastructure Tariffs Order in Council was published on 19 June 2013 to enable this introduction.

The Order included a provision which directed the Commission to amend the Energy Retail Code for consistency with the Order. As part of this process, the Commission released a draft decision paper on 26 June 2013 and a final decision paper on 5 August 2013.¹⁶

With the introduction of flexible pricing DSDBI also launched its price comparison website, My Power Planner, in September 2013.

REGULATORY AUDITS

In 2013, the Commission commenced a review of electricity distributors' compliance with obligations related to the rollout of smart meters across Victoria. The results will be published in due course. We shall also undertake a program of independent audits of retailers in 2014–15, covering compliance

¹⁵ Flexible Pricing is a form of time of use electricity pricing with additional consumer protections introduced on 1 July 2013.

¹⁶ Proposed changes to regulatory instruments relating to flexible pricing of electricity - www.esc.vic.gov.au/Energy/Proposed-changes-to-regulatory-instruments-relatin



with a variety of obligations, including those related to the operation of smart meters, along with hardship and disconnection arrangements.

In response to continuing problems, as reported in Chapter 3, the Commission directed EnergyAustralia to conduct two independent audits of billing issues. Both audits were performed by an external auditor and were completed in late 2013 and early 2014.

In 2013, the Commission also undertook a review of its audit framework, to address known problems and ensure that the Commission has an effective audit methodology for both retail and distribution businesses. In April 2013, the Commission initiated a consultation on its revised Regulatory Audit Framework.¹⁷

NECF AND HARMONISATION

The National Energy Customer Framework (NECF) is a regulatory regime applying to the sale and supply of energy to retail customers. The NECF was established to provide a single framework to regulate retailers across Australia. It was anticipated that Victoria would transition to the NECF in July 2012.

On 13 June 2012 the Victorian Government announced that it would defer Victoria's transition.

Anticipating the transition, however, some retailers had implemented changes that would have been needed for compliance with the NECF, and could not readily halt or reverse those changes. The changes included alterations to the form and content of customer bills, new customer contracts, and procedures and training to support new policies. Some retailers had deferred making changes that were needed to comply fully with the Commission's existing codes and guidelines.

The Commission took steps to establish the impact that the delay in transition would have on Victorian energy consumers and the licensed retailers. We

¹⁷ Additional information on the Regulatory Audit Framework can be found on the Commission's website- www.esc.vic.gov.au/Energy/Energy-Industry-Guideline-22-Regulatory-Audits



reminded the businesses that, under their Victorian licences, they were still required to comply with the licence conditions and with codes and guidelines issued under the relevant Industry Acts (collectively, 'the Victorian framework'). Further, they were required to monitor their compliance and to promptly report material breaches to the Commission.

Energy retailers were therefore required to notify the Commission, of any Victorian regulatory obligations with which they could no longer comply after 1 July 2012. The Commission followed its normal process of assessing the significance and the circumstances of any compliance breach, when determining whether enforcement action was warranted.

As required by the *Essential Services Commission Act 2001*, the Commission had regard to the benefits and costs of regulation for licensees and their customers, and consistency in regulation between jurisdictions. The Commission decided to permit AGL, EnergyAustralia, Origin Energy and Simply Energy to continue making Standing Offers to consumers, based on their NECF-compliant Standard Retail Contracts with suitable explanatory notes for Victorian customers.

Additionally, in July 2012, the then Minister for Energy and Resources requested that the Commission consider harmonising the regulations contained in its codes and guidelines to the extent possible with the NECF.

In December 2012, the Commission released a draft the Retail Code version 11 for public consultation, along with an Initial Consultation Paper.

Following the Commission's consideration of submissions on the Paper, we held workshops in April and May 2013 with energy retailers, consumer groups and other stakeholders.

On 18 July 2013, the Commission released the 'Harmonisation of the Energy Retail Code and Guidelines with the NECF – Draft Decision Consultation Paper' (the Harmonisation Draft Decision).

In July 2014, the Commission released its final decision and announced that the Retail Code v11 will commence on 13 October 2014.



Between 15 July 2014 and 12 October 2014 (the transitional period), retailers may comply with either the Retail Code v11 or v10a. During the transitional period, the Commission will assess compliance against the relevant provisions under both codes to ensure a retailer is compliant with one code.¹⁸

¹⁸Additional information on NECF and harmonisation can be found on the Commission's website - www.esc.vic.gov.au/Energy/Harmonisation-of-Energy-Retail-Codes-and-Guideline

APPENDIX B - RETAILERS' BREACH REPORTS

TYPE 1 BREACHES

TABLE 1.1 ENERGY RETAIL CODE

This 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

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
APG	6 customers in financial hardship were not identified and provided with the necessary information.	Customers were not identified as being in hardship. The customers were reconnected and received a wrongful disconnection payment.	Isolated
Lumo	11 customers were not assessed for financial hardship and provided with the necessary information.	Customers were not identified as being in hardship. The customers were reconnected and received a wrongful disconnection payment.	Isolated
Lumo	2 customers with payment difficulties were wrongfully disconnected.	Capacity to pay was not assessed for 2nd instalment plan. Wrongful disconnection payment to customer, but no specific remediation actions listed.	Isolated
Red	A customer was not assessed for capacity to pay and was wrongfully disconnected.	The retailer undertook an assessment and the customer was admitted to the retailer's hardship program.	Isolated
Simply	6 customers in financial hardship were not identified and provided with the necessary information, resulting in the customer being wrongfully disconnected for non-payment.	Customers were not identified as being in hardship. The customers were reconnected and received a wrongful disconnection payment.	Isolated



Simply	11 customers with payment difficulties were wrongfully disconnected.	Capacity to pay was not assessed for 2nd instalment plan. Simply made wrongful disconnection payments to customer. No specific remediation actions listed	Isolated
--------	--	---	----------

Clause 13 (except 13.5) – Grounds for disconnection

The process that must be followed before disconnecting a customer:

- A retailer's obligations to customers before disconnecting their supply under certain circumstances
- Instances where the retailer may not disconnect a customer's supply under any circumstances
- A retailer's obligations to reconnect customers that it has disconnected

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
AGL	61584 disconnection notices were sent that were not compliant with the Retail Code.	The retailer advised that the disconnection notices did not include prescribed content. No indication of whether customers were disconnected based on the notices.	Systemic
APG	2 customers were disconnected without warning.	The retailer sent the disconnection warning notices to the incorrect address. The customers received wrongful disconnection payments.	Isolated
APG	A data entry error resulted in two customers being disconnected.	Due to human data entry error customers were disconnected. The customers were reconnected and received wrongful disconnection payment.	Isolated
APG	A customer was disconnected even though they had provided reasonable assurances to make payment.	The customer made assurances to pay in arrears. The customer was reconnected and received a wrongful disconnection payment.	Isolated
APG	The retailer failed to use best endeavours to contact a customer about their outstanding bill before disconnecting them.	The retailer failed to comply with the processes prior to disconnecting. The customer received wrongful disconnection payment.	Isolated
APG	1 gas customer disconnected without warning.	Due to data entry error customer did not receive disconnection notices. A wrongful disconnection payment was made to the customer.	Isolated
EA ¹⁹	3304 customers (including deemed) received disconnection notices that	Due to delays in notices being sent the dates provided to customers were	Systemic

¹⁹ EnergyAustralia (EA).



	were not compliant.	incorrect. No indication of whether customers were disconnected based on the notices.	
EA	104 customers were wrongfully disconnected due to technical, data entry and procedural errors.	The customers were reconnected and received a wrongful disconnection payment from the retailer. EA ceased disconnecting customers for non-payment.	Systemic
Lumo	Data entry errors resulted in 14 customers with incorrect address details or service orders raised.	Due to data entry error customers were disconnected. The customers were reconnected and received a wrongful disconnection payment from the retailer.	Isolated
Lumo	Due to records not being updated 10 customers were wrongfully disconnected.	Customers disconnected even though they had contacted the retailer or made a payment. The customers were reconnected and received a wrongful disconnection payment.	Isolated
Lumo	2 customer were disconnected outside the required timeframes.	Due to procedural errors customers were disconnected. The customers were reconnected and received a wrongful disconnection payment.	Isolated
Lumo	1 customer was disconnected even though there was an active EWOV dispute.	The customer was reconnected and received a wrongful disconnection payment.	Isolated
Momentum	2 customers were disconnected without receiving correct disconnection notices.	Disconnection notices did not include prescribed content and correct dates. Customers received wrongful disconnection payments.	Isolated
Origin	92 gas and electricity customers wrongfully disconnected.	No cause specified. The customers were reconnected and received wrongful disconnection payment.	Systemic
Powerdirect	10126 disconnection notices were sent that were not compliant with the Energy Retail Code.	The error was corrected. No indication of whether customers were disconnected based on the notices.	Systemic
Red	3 customers were disconnected sooner than requested.	Due to data entry error customers were disconnected on the wrong date. The customers were reconnected and received wrongful disconnection payment.	Isolated
Red	1 customer was disconnected even though they had entered into a payment plan.	Due to procedural error a customer was wrongfully disconnected. The customer was reconnected and received wrongful disconnection payment.	Isolated
Simply	8 customers were not disconnected within the required timeframe.	Disconnected prior to 10 day requirement. Staff were retrained.	Systemic
Simply	2 electricity and gas customers were disconnected due to an incorrect service order.	Due to internal and business –to – business (B2B) administration error customers had incorrect service orders which resulted in disconnection.	Isolated



EA	EA deemed consumers did not receive the full 10 business day notice of the pending disconnection.	This procedural error was corrected. No indication of whether customers were disconnected based on the notice.	Systemic
----	---	--	----------

Clause 14 – No disconnection

The circumstances in which a retailer may not disconnect a customer.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Lumo	2 customers were disconnected due to data entry error with move-in/move-out requests.	Due to data entry error customers were incorrectly disconnected. The customers were reconnected and received a wrongful disconnection payment.	Isolated
Simply	The retailer disconnected 1 customer whose outstanding debt was less than \$120.	The retailer failed to comply with the processes prior to disconnecting the customer. The customers received wrongful disconnection payments. The retailer will continue to educate staff and external providers about the disconnection process.	Isolated

Clause 20(a) – Variations requiring customer 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.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
EA	4422 customers were moved from quarterly to monthly billing without EIC.	As a result of B2B and billing system errors, customers' billing cycles were altered without notification or consent. The system error was fixed and customers were notified.	Systemic

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
Origin	29544 customers were not notified of expiry of fixed term contract within the required timeframes.	This was due to delays in finalisation of pricing arrangements. Impacted customers were sent renewal letters.	Isolated
Origin	4114 customers received contract renewal notices that contained	Due to an undefined error, customers were advised of incorrect pricing.	Systemic



	incorrect tariffs.	Customers were contacted and advised of the error and given the opportunity to exit renewed contracts without penalty.	
AGL	9393 customers did not receive notification of expiry of contract within required timeframe.	Due to system error AGL did not advise customers of their contract expiry.	Systemic

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
AGL	57442 customers did not receive notification of tariff variation within the required timeframe.	The technical issue causing this problem was rectified. All impacted customers were notified. At the request of the ESC, AGL repaid impacted customers the amounts overcharged. This is a Type 1 breach - AGL incorrectly classified this breach as a Type 2 breach.	Systemic
AGL	2667 standing offer customers did not receive a bill message advising of price variations as required.	The technical issue causing this problem was rectified. All impacted customers were notified. At the request of the ESC, AGL repaid impacted customers the amounts overcharged. This is a Type 1 breach - AGL incorrectly classified this breach as a Type 2 breach.	Systemic
EA	An undefined number of smart meter customers did not receive 20 day notice of tariff price/structure changes.	Due to delays of DBs in finalising prices, smart meter customers did not receive correct notification of tariff changes. EA sent notification to impacted customers.	Systemic
Origin	8391 gas and electricity customers did not receive required bill notice of tariff increase.	The required next bill did not have a message on price increases. A bill message was included in the customer's next bill.	Systemic
Origin	2526 gas and electricity customers received incorrect notification of tariff changes.	Due to a system error customers were advised of incorrect pricing changes. Customers were notified, and next bill included a credit.	Systemic
Origin	241 smart meter customers did not receive 20 day notice of tariff price/structure changes.	Impacted customers received inadequate notice of the change in prices. Customers were notified.	Systemic
Origin	The retailer advised that it had not	Origin will validate its customer supply	Systemic



undertaken the required annual validation of life support customer records.

addresses identified as requiring life support by end of December 2013.

Origin	5000 smart meter customers did not receive notice of tariff price/structure changes.	Delays were due to difficulties in isolating the necessary customer group in the billing system. Customers were notified.	Systemic
--------	--	---	----------

TABLE 1.2 MARKETING CODE

This 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
AGL	44351 new customers did not receive correct contractual information.	The incorrect contractual information was sent due to a procedural error. The retailer has resolved this error and extended the cooling-off period for impacted customer.	Systemic
AGL	213 new customers did not receive their contract within the required timeframe.	The retailer has resolved this error and extended the cooling-off period for impacted customer.	Systemic
AGL	43 customers were incorrectly transferred to AGL after a cancellation request had been made during the cooling off period.	Customers were incorrectly transferred to AGL due to a system error. Customers were transferred back to their chosen retailer.	Systemic
APG	3755 new gas and electricity customers did not receive their contract within the required timeframe.	The delay in sending out the contracts was due to an ordering error with mail vendor. The retailer extended the cooling-off period for impacted customer.	Systemic
APG	361 customer contracts were fabricated.	The retailer was able to identify the fabricated contracts and cancel them before the transfer occurred. The sales agents were deregistered.	Isolated
APG	225 customer contracts were fabricated by sales agent.	The retailer was able to identify the fabricated contracts and cancel them before some of the transfers occurred. The sales agents were deregistered - contracts were cancelled without penalty.	Isolated
APG	11 customers were incorrectly transferred due to data entry error.	Due to data entry error customers were transferred to APG - transfers	Isolated



were cancelled without penalty.

EA	3981 gas and electricity customers made complaints on door-to-door (D2D) sales agent marketing conduct.	Some of the cases may be a complaints rather than a breach. EA stopped D2D on 31 March 2013.	Systemic
EA	3060 new customers did not receive their contract within the required timeframe.	The delay in sending out the contracts was due to a system error. The retailer has resolved this error and extended the cooling-off period for impacted customers.	Systemic
Lumo	854 new customers did not receive their contract within the required timeframe.	The delay in sending out the contracts was due to a system error. The retailer has resolved this error and extended the cooling-off period for impacted customers.	Systemic
Neighbourhood	40 customer contracts were fabricated.	The retailer was able to identify the fabricated contracts and cancel them before the transfer occurred. The sales agents were deregistered.	Isolated
Origin	248 gas and electricity customers made complaints on D2D sales agent marketing conduct.	Some of the numbers may be a complaint rather than a breach. Origin will investigate each complaint.	Isolated
Red	9 individual breaches relating to conduct of D2D and telesales agents.	Due to human error, unconscionable, misleading and deceptive conduct of sales agents, customers were incorrectly registered to transfer. No specific actions to rectify the incidents were listed.	Isolated
Simply	27 individual breaches relating to conduct of D2D and telesales agents.	Due to human error, unconscionable, misleading and deceptive conduct of sales agent, customers were incorrectly registered to transfer. No specific actions to rectify the incidents were listed.	Isolated
Click	6 customers did not receive welcome pack within the required timeframes.	Some customers did not receive a welcome pack prior to transfer of supply. Customers were sent the delayed information. This breach was incorrectly classified by Click.	Isolated
Lumo	4 customers were incorrectly marketed to by sales agents.	Due to human errors, unconscionable, misleading and deceptive conduct of sales agents, customers were incorrectly registered to transfer. Lumo investigated each complaint.	Isolated
Simply	87 individual breaches relating to conduct of D2D and telesales agents.	Due to human error, unconscionable, misleading and deceptive conduct of sales agent, customers were incorrectly registered to transfer. No specific actions to rectify the incidents were listed.	Isolated
Origin	3189 new customers did not receive their contract within the required timeframe.	The delay in sending out the contracts was due to a system error. The retailer has resolved this error and extended	Systemic



the cooling-off period for impacted customers.

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
APG	27 customers were transferred to the retailer without explicit informed consent.	Due to either a system or administration error customers were incorrectly transferred to APG. Customers' contract cancelled without penalty and permitted to transfer to preferred retailer.	Isolated
EA	2731 customers were transferred to the retailer due to system or human errors and without providing their explicit informed consent.	Causes for the transfers in error include system and data entry.	Systemic
EA	265 gas and electricity customers transferred to EA through marketing practices and without their consent.	The retailer's telesales agents failed to obtain explicit informed consent. Terminated contracts of sales agents and terminated the customer contracts.	Isolated
Origin	2173 customers were transferred without EIC due to system and data entry errors.	Causes for the transfers in error include B2B systems and data entry errors.	Systemic
Origin	48 gas and electricity customers transferred without EIC.	The retailer's sales agents failed to obtain consent . The sales agent received a warning and has undertaken further training and will continue to be monitored.	Isolated
Simply	2 customers did not receive contractual information from sales agent.	Welcome packs were not provided to customers who signed up with a D2D agent. No specific actions to rectify the incidents were listed.	Isolated
Simply	4 customers did not receive contractual information from sales agent.	No specific actions to rectify or to outline the cause of the incidents were listed.	Isolated
Simply	14 gas and electricity customers were transferred without EIC.	Due to human error, misleading and deceptive conduct of sales agents, customers were transferred without EIC. No specific actions to rectify the incidents were listed.	Isolated



TYPE 2 BREACHES

TABLE 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.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Red	A customer's connection request was not met within the required timeframe.	Due to data entry error the retailer was unable to contact the customer to arrange access. The retailer apologised and connection occurred at no cost	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
EA	43 customers received duplicate bills for the one quarterly billing period.	This was a result of a system error, which caused duplicate bills to be issued. Customers were notified and duplicate bills were cancelled. Implemented a system fix.	Systemic
Red	A customer received delayed bills.	Due to data entry error an incorrect address was registered. Correction of postal address. Waived the amount of \$153.27 and applied a \$20.00 credit to customer's gas account.	Isolated
Momentum	594 customers have not been billed within the prescribed timeframes.	This was a result of meter data quality issues, Momentum commenced a project to ensure exception reports are generated daily and customers are billed at least quarterly.	Isolated
Red	2 customers received delayed bills due to network issues.	Due to meter data not being available customers received delayed bills. Offered equal time to pay and	Isolated



		honoured pay on time discounts.	
Red	3 solar customers received delayed bills.	Due to the solar installation, customers received delayed bills. Offered equal time to pay and honoured pay on time discounts.	Isolated
Red	A smart meter customer received delayed bills.	Due to meter exchange, customers received delayed bills. Offered equal time to pay and honoured pay on time discounts.	Isolated
Click	84 customers with smart meters received invoices daily.	Invoices were issued to some customers daily due to a system processing issue. The system issue was fixed and customers notified.	Systemic
EA	As at 30 June 53344 customers received delayed bills.	Implemented a number of system changes to address system issue.	Systemic
EA	166681 customers did not receive their gas/electricity bills within the prescribed timeframe.	Due to a change in bill format, mail vendor was unable to provide bills within the required timeframes. This also resulted in customers being issued with reminder notices or payments being withdrawn from their bank accounts without actually having received an invoice/bill.	Systemic
APG	3 customers were not billed within the prescribed timeframes.	Customers received a bill covering periods over 3 months. Bills were issued and payment assistance provided.	Isolated
Origin	An undefined number of customers received delayed bills.	No numbers provided. Impacted customers were offered extra time to pay, or hardship assistance.	Systemic

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 all bills.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Click	17090 customers received bills without index reads.	The invoices were fixed and customers notified.	Systemic
APG	70000 smart meter customers received bills without consumption history.	Customers were advised to contact the retailer should they want access to the missing information. The issue was resolved 14 March 2013	Systemic
APG	70000 smart meter customers received bills without index reads.	Customers were advised to contact the retailer should they want access to the missing information. The issue was resolved on 24 December 2012.	Systemic
Dodo	8292 smart meter customers received bills without consumption	Customers were advised to contact the retailer should they want access to the	Systemic



	history.	missing information. The issue was resolved on 12 December 2013.	
Origin	15000 smart meter customers received bills without index reads.	Customers were advised to contact the retailer should they want access to the missing information. The issue was resolved in April 2012.	Systemic
Simply	An unquantified number of smart meter customers received bills without consumption history.	The expected completion of this remediation is 30 September 2013. This compliance breach has been rectified.	Systemic
Neighbourhood	An unquantified number of smart meter customers received bills without consumption history.	Completion date for the customer migration program is October 2013.	Systemic
Neighbourhood	An unquantified number of smart meter customers received bills without index reads.	Billing system changes are being conducted and NE has entered into and administrative undertaking with the Commission.	Systemic
Lumo	13812 solar smart meter customers were not receiving index reads.	This is isolated to solar customers with smart meters installed.	Systemic
EA	All smart meter customers did not receive the required information on their bills.	This is a result of EA postponing the implementation of the smart meter requirements as EA was awaiting the implementation of the C1 system in 2012.	Systemic

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

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
EA	25655 customers did not receive an actual read in a 12 month period.	The reason is due to 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

Clause 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
AGL	10599 multi-site customers were overcharged.	Due to a systems error in applying the carbon price, customers were overcharged. Customers were notified	Systemic



		and reimbursed.	
Origin	9000 customers were incorrectly classified as a commercial premises and allocated a corresponding tariff and possibly overcharged.	A system fix was implemented on 29 June 2013 and customers were notified.	Systemic
EA	7805 customers were undercharged.	A billing system error caused pay on time discounts to be calculated incorrectly, and customers undercharged. The increased discounts were honoured.	Systemic
Origin	Incorrect information on the website regarding late payment fees.	Due to system error, incorrect information was on the website. The website was amended.	Systemic
Origin	Due to data entry errors, customers were advised incorrect pricing details.	A system fix was implemented on 29 June 2013 to ensure validation of the meter type occurs for all new energy contracts. Customers were notified and reimbursed.	Systemic
EA	2067 customers were undercharged.	A result of a manual billing error customers were incorrectly charged with zero consumption usage. Re-issued bills with an accompanying letter.	isolated
Origin	2157 customers were charged and provided incorrect tariff information.	Due to system error, customers were incorrectly charged. Customers were notified and reimbursed.	Systemic
Powerdirect	1958 customers were incorrectly charged.	The billing system was unable to identify interval meter data. Powerdirect will not seek to recover the undercharged amounts, but corrected the bills.	Systemic
Origin	1712 customers were overcharged.	System errors have been corrected. Customers have received an adjustment on their next bill.	Systemic
AGL	1366 customers did not receive discounts.	Customers were reimbursed and notified.	Systemic
Simply	Approximately 1178 customers received incorrect bills which didn't have undercharged amount listed as a separate line item.	Original invoices were withdrawn and corrected, with accompanying letter.	Systemic
EA	722 customers were overcharged.	This non-compliance occurred as a result of a data migration issue during the implementation of EA's C1 system. Customers were notified and refunded.	Systemic
AGL	624 customers were overcharged for solar installations.	Due to B2B system errors, customers were overcharged for solar service orders. Customers were reimbursed and notified.	Systemic
Click	300 customers were overcharged due to duplicate retailer charges being applied to their bill.	Invoices displayed a duplicate charge item. All incorrect charges were reversed and new invoices were issued	Systemic



		to all affected customers.	
EA	173 life support customers were overcharged.	The concession daily rate was entered as a debit rather than a credit amount. Customers were reimbursed and notified.	isolated
EA	82 dual fuel customers with direct debit payment plan were charged multiple times.	This was a result of a data migration issue during the implementation of EA's C1 system. Customers were notified and refunded.	Systemic
EA	34 customers were charged rather than credited for their solar generation.	This was a result of a billing system errors. Manually cancelled and rebilled the affected customers, implemented a system fix to ensure that solar generation is correctly identified and billed and notified customers.	Systemic
Origin	A customer was back billed beyond 9 months.	This was a result of systems error. The customer was not charged and this was through a manual generation of the bill.	Isolated
EA	All customers with off-peak tariffs were billed incorrectly.	Due to a billing system error, off-peak was billed at peak prices. Customers were notified and reimbursed.	Systemic
Momentum	4000 customers had incorrectly calculated concessions.	Momentum has currently scheduled IT improvements to ensure any inconsistencies are resolved.	Systemic

Clause 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
Origin	700 electricity and gas customers did not receive the direct debit information within the required timeframes.	A system error caused a failure in sending the direct debit confirmation letter. System fix was implemented and letter sent with new commencement date.	Systemic
Origin	Origin invoices displayed an incorrect pay by date.	The issue arose because the 'issue date' displayed on the bill was the date the bill was printed, although the bill was actually issued the following day.	Systemic
Click	1920 customers received incorrect pay by date on the bills.	Invoices were issued with a due date equal to the issue date. This breach was incorrectly classified by Click.	Isolated

TABLE 2.2 MARKETING CODE



Clause 2.1 to 2.3 – Contact with consumers

Times at which retailers may contact consumers, information to be provided to consumers, requirements to keep 'no contact lists' and observe them, requirement to observe 'no canvassing' signs.

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
APG	The retailer's sales agent/s ignored 2 'Do Not Knock' stickers and proceeded to transfer the customer to the retailer.	On 2 separate occasions the sales agent did not comply with the regulations. The retailer has updated its do not contact register.	Isolated
Lumo	The retailer's sales agent ignored a 'Do Not Knock' sticker and registered to transfer the customer.	The retailer has updated its do not contact register. The sale was cancelled with no penalty to the customer. A full investigation was completed into the behaviour of the sales agent.	Isolated

TABLE 2.3 ELECTRICITY RETAIL LICENCE

Clauses 9.1 to 9.3 & 9.5 (Pacific Hydro clause 11) – 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;
- Notify customers of expiry of fixed term contracts

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
EA	No numbers provided - deemed customers on C1 system did not receive contractual information in the required timeframes.	This was due to a process error. The retailer is now reviewing the processes applying to deemed customers and amending correspondence templates	Systemic
Pacific Hydro	3 Commercial & Industrial customers did not receive complete billing information.	Due to a procedural error information on offsetting carbon emissions was not provided. This issue has been resolved and all customers now receive this information.	Systemic



TYPE 3 BREACHES

Type 3 breaches are all other breaches of regulatory obligations.

TABLE 3.1 ENERGY RETAIL CODE

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
EA	<u>Clause 4.5 to 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
Lumo	<u>Clause 9.2</u> – 1912 customers on standard contracts had their billing cycles changed from quarterly to monthly after the installation of a smart meter.	The retailer committed to notifying customers and exploring a number of system improvements.	Systemic
Origin	<u>Clause 9.2</u> – 47936 customers were placed on a shortened collection cycle without notification.	A system error resulted in customers not receiving the notice. All impacted customers were placed on a disconnection exclusion list and returned to the standard billing. The system error was fixed in December 2012.	Systemic

TABLE 3.2 GAS RETAIL LICENCE

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Origin	<u>Clause 3</u> – Approximately 100 premises were offered gas supply via Origin's door-to-door marketing channel in areas where Origin did not have supply agreements with the relevant distribution network.	None of these premises actually received supply as the error was picked up during the account set up process. These premises were notified.	Systemic

TABLE 3.3 GUIDELINE 13 – GREENHOUSE GAS DISCLOSURE

RETAILER	INCIDENT	CAUSE AND RESPONSE	NATURE
Pacific Hydro	<u>Clause 1.5</u> – The ESC's Greenhouse Gas Guideline was not published on the retailer's website.	This was an oversight, which the retailer rectified upon discovering the non-compliance.	Isolated



