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By email (sarah.mcdowell@esc.vic.gov.au)

Dear Sarah

TRUenergy comments: ESC Draft Decision Review of Regulatory Instruments – Stage 1

Thank you for the opportunity to comment on the Essential Services Commission of Victoria's (ESC's) Draft Decision on the Review of Regulatory Instruments, Stage 1.

TRUenergy supports the ESC's objectives in conducting the Review of Regulatory Instruments. We generally welcome the repealing of duplicate regulatory obligations and the removal of unnecessary obligations as a consequence of these obligations becoming redundant over time because of legislative change (such as, removal of price regulation for small businesses) or other factors (such as, the Victorian energy market becoming more competitive).

Appendix A contains specific comments on the proposed changes to the Energy Retail Code and the Marketing Code of Conduct.

As part of the Review the ESC has also proposed regulations that:

1. Maintain a higher regulatory burden on Victorian energy retailers than the proposed national framework for energy retail regulation (for example, obligations applying to undercharging and collection of acceptable ID); or
2. Introduce new regulatory obligations on retailers (for example, the proposed obligation to include distributors name on energy bills).

It is not clear from the Draft Decision how these proposals fit within the objectives of the Review.

The ESC should not introduce a new regulatory measure or set a higher regulatory obligation as part of the Regulatory Review until a case for action has been clearly established. In determining whether there is a case, TRUenergy

recommends that the ESC apply the Principles of Good Regulatory Process[1]. The principles require that regulation should only be introduced once the nature of the problem has been clearly identified and quantified, and why actions additional to existing measures are needed. We would be happy to assist the ESC in conducting this evaluation.

The ESC also proposes to repeal the Operating Procedure for Wrongful Disconnection and Compensation and move information contained in the Procedure to the Compliance Policy Statement. However, it is not clear from the Draft Decision how information in the Compliance Manual should be interpreted. TRUenergy is concerned that without a clear statement from the ESC that the information contained in the Compliance Manual will be interpreted as a statement of fact and that assessments of wrongful disconnection compensation cases will still be assessed directly against the procedures contained in the Compliance Manual to determine whether retailers have or have not met the requirements of the Energy Retail Code.

We recommend that the ESC clearly outline in the Final Decision that the information contained in the Compliance Manual is to provide guidance to retailers but that the information in the Manual does not become a rule that is taken as fact.

If you have any queries or would like to discuss our comments further you can contact me on (03) 8628 1185 or e-mail con.hristodoulidis@truenergy.com.au.

Yours Sincerely

(signed for e-mail)

Con Hristodoulidis
Regulatory Manager

[1] As identified by the Taskforce on Reducing Regulatory Burdens on Business (Regulation Taskforce 2006), http://www.regulationtaskforce.gov.au/

ENERGY RETAIL CODE

Existing Obligations		Submissions	Draft Decision	TRUenergy comments
3.3 Bulk Hot Water charging	A retailer must issue bills to a customer for the charging of the energy used in the delivery of bulk hot water in accordance with the Commission's Energy Industry Guideline No 20 – Bulk Hot Water Charging.	AGL, Origin Energy and TRUenergy queried whether this clause is redundant given that pricing for small business customers has been deregulated.	Retain and redraft to reflect repeal of Guideline No.20. This clause deals with billing, not pricing.	Clause 3.3 is a duplication of Clause 2.3 of *Guideline No. 20: Bulk Hot Water Charging*. As the ESC is proposing to move clause 2.3 of Guideline 20 into the Retail Code, clause 3.3 of the Code can be repealed.
4.2 Information	A retailer must include at least the following information in a customer's bill: ▪ the customer's name and account number, each relevant supply address and any relevant mailing address; ▪ each relevant assigned meter identifier and checksum or, if any case there is no assigned meter identifier, the customer's meter number or another unique identifying mark assigned to the customer's metering installation; ▪ the period covered by the bill; ▪ the relevant tariff or tariffs applicable to the customer; ▪ whether the bill is based on a meter reading or is wholly an estimated bill; ▪ whether the bill is based on any substituted data (consistent with the retailer's obligations under clauses 17.2 and 23.2 of the Electricity Customer Metering Code); ▪ the total amount of electricity	Clause 4.2 Australian Power & Gas recommended that clauses 4.2 (b), (e), (h)[2], (n), (o) (p) & (q) are retained and the remaining clauses are repealed. Distributor's name. 4.2(o) requires the retailer to ensure the distributor's fault line number is on the bill. SP AusNet submitted that the distributor's name should also be included. Retailers have raised concern regarding cost implications of the proposed amendment.	Retain and amend clause 4.2(o). Refer consideration of clause 4.2(h) to stage 2 of the Review. All the existing Victorian obligations for information on the bill (with the exception of 4.2(h)) are included in the proposed draft national framework. Therefore, no changes will be made to the existing obligations, with the following exceptions: 4.2(h) – this obligation applies to customers with interval meters. This will be addressed in stage 2 of the Review. 4.2(o) -The Commission proposes to amend clause 4.2(o) to require retailers to include the distributors' names on bills	TRUenergy does not support the proposed introduction of clause 4.2(o) on the grounds that: 1. The clause is not consistent with the proposed national framework for information to be included on a bill; 2. It will generate unnecessary costs for retailers to make changes to their IT systems to comply with the clause 3. The bill is the retailer's primary form of customer communication. Adding the distributors name to the bill is very likely to confuse customers on who their retailer of choice is and therefore unnecessarily increase customer queries on this matter. 4. Under clause 9.1.2 of the Distribution Code, distributors are required to provide customers with a copy of their Customer Charter every five years. The Charter must contain the distributors contact information and the circumstances that customers should contact the distributor. As an alternative to SP Ausnet's proposal, we recommend that the ESC amend the Distribution Code to require distributors to circulate their Customer Charter once every 12 months. TRUenergy believes that this more appropriately addresses SP Ausnet's concerns as consumers will not be confused with receiving a bill with two businesses listed on the bill. Further, distributors will also have the opportunity to provide their own cover letter when sending out the Customer Charter that draws consumers' attention to any aspects distributors consider

[2] If under AMI, customer can reconcile consumption back to the meter.

Existing Obligations	Submissions	Draft Decision	TRUenergy comments
(in kWh) or of gas (in MJ) or of both consumed in each period or class of period in respect of which a relevant tariff applies to the customer and, if a customer's meter measures and records consumption data only on an accumulation basis, the dates and total amounts of the immediately previous and current meter readings, estimates or substitutes; ▪ if the retailer elects to include meter readings or accumulated energy usage from an interval meter on the bill, the meter readings or accumulated energy usage based on quantities read or collected from the corresponding meter accumulation register(s); ▪ if the retailer directly passes through a network charge to the customer, the separate amount of the network charge; ▪ for an electricity contract the amount payable for electricity and for a gas contract the amount payable for gas; ▪ the pay by date; ▪ the amount of arrears or credit and the amount of any refundable advance provided by the customer; ▪ *a summary of payment methods and payment arrangement options; ▪ if the customer is a domestic customer, details of the availability of concessions; ▪ a telephone number for billing			important, including when a customer should contact a distributor and/or a retailer.

Existing Obligations		Submissions	Draft Decision	TRUenergy comments
	and payment enquiries and a 24 hour contact telephone number for faults and emergencies; ▪ if the customer is a domestic customer, in relevant languages, details of interpreter services; and ▪ if the bill is a reminder notice, contact details for the retailer's complaint handling processes.			
5.3 Bill smoothing	Despite clause 5.1, in respect of any 12 month period a retailer may provide a customer with estimated bills under a bill smoothing arrangement if and only if: (a) the following requirements are met: • the amount payable under each bill is initially the same and is set on the basis of the retailer's initial estimate of the amount of energy the customer will consume over the 12 month period; • that initial estimate is based on the customer's historical billing data or, where the retailer does not have that data, average consumption at the relevant tariff calculated over the 12 month period; • in the sixth month: the retailer re-estimates the	Simply Energy considers that the six month re-estimation is an unnecessary administrative burden that fails to account for seasonal variations. Simply Energy believes accounts should be able to be reconciled at the end of 12 months. The draft national framework requires re-estimation at six months; however this may be varied by agreement.	Retain and simplify and enable variations for market contracts (*). The reconciliation period will be 9 months to be consistent with the existing obligation for retailers only be able to recover up to 9 months if undercharging is due to a retailer's error (refer to clause 6.2).	The emergence of bill smoothing contracts is a defining feature of a competitive retail market, promoting innovation and product differentiation, and driving a substantial proportion of customer transfer activity. Any regulation in this area should be avoided in the absence of demonstrated market failure. Hence, TRUenergy supports the simplification of the clause and removing the 6 monthly re-estimation requirement. However, it is not clear on the basis for changing the reconciliation period from 12 months to 9 months. The 9 month requirement of the undercharging clause relates to placing a cap on the timeframe that a retailer can recover any monies that have been undercharged as a consequence of a billing system error. Under the bill smoothing clause, reconciliation occurs to ensure that the customer's smoothed amount is aligned with the customer's consumption behaviour. The reconciliation for bill smoothing does not relate to an error in the retailer's billing system. Maintaining a 12 month reconciliation period provides for a more accurate picture of customers' consumption behaviour as it covers changes in consumption across all seasons.

Existing Obligations		Submissions	Draft Decision	TRUenergy comments
	amount of energy the customer will consume over the 12 month period, taking into account any meter readings and relevant seasonal factors; and ○ if there is a difference between the initial estimate and the re-estimate of greater than 10%, the amount payable under each of the remaining bills in the 12 month period is to be re-set to reflect that difference; and • at the end of the 12 month period, the meter is read and any undercharging or overcharging is adjusted for under clause 6.2 or 6.3; and (b) the retailer has obtained the customer's explicit informed consent to the retailer billing on that basis.			
6.2 Undercharging	If a retailer has undercharged or not charged a customer, whether this becomes evident as a result of a review under clause 6.1 or otherwise, the retailer may recover the amount undercharged from the customer but, in doing so, the retailer must: (a) limit the amount to be recovered as follows: if the undercharging results from a failure of the retailer's billing systems, the retailer may recover no more than	Undercharging – retailer/distributor fault Simply Energy stated that the recovery period should be extended from 9 to 12 months. EWOV considers the undercharging clause should be rewritten to read "… unless the undercharging arises as a result of meter access being repeatedly	Retain and redraft to reflect more directly the proposed national approach. • retain the 9 months obligation if the reason for the undercharging is directly related to the retailers' billing problems • apply a 12 month limitation for all other reasons • provide that no limitation	TRUenergy supports the re-drafting of the clause to reflect the proposed national framework. We recommend that the ESC adopt the wording of the proposed national framework, being: *A retailer may recover from a customer any amount undercharged during the previous 12 months (unless the undercharging arises as a result of the fault or unlawful action of the customer, in which case the 12 month limitation does not apply).* The ESC has not provided any evidence to show that Victorian consumers face more significant costs compared to other jurisdictions with respect to retailers undercharging consumers. Most, if not all, Victorian energy retailers are licensed to provide energy retail services across the National Electricity Market.

Existing Obligations		Submissions	Draft Decision	TRUenergy comments
	the amount undercharged in the 9 months prior to the date on which the retailer notifies the customer that undercharging has occurred. To avoid doubt, a retailer's billing system fails if the retailer does not receive relevant billing data from a distributor, no matter whether it is the retailer or the distributor at fault in respect of that failure; and otherwise, the retailer may recover no more than the amount undercharged in the 12 months prior to that date. To the extent necessary, the amount undercharged is to be calculated in proportion to relevant periods between dates on which the customer's meter has been read; list the amount to be recovered as a separate item in a special bill or in the customer's next bill together with an explanation of the amount; not charge the customer interest on the amount undercharged; and offer the customer time to pay the amount undercharged in a payment arrangement covering a period at least equal to the period over which the recoverable undercharging occurred.	blocked, or unlawful action, by the current account holder". The Queensland model provide for a maximum of 12 months. The draft National framework similarly provide for a recovery period of 12 months 'Failure of the retailer's billing systems' Simply Energy considers that a retailer's billing systems has not failed where incorrect meter data has been provided to it, or where no data has been provided to it.	applies, if the undercharging arises as a result of meter access being blocked, or unlawful action, by the customer.	Hence, a billing error is likely to impact customers across all jurisdictions in the same manner.
7.4 Late Payment Fees	Clause 7.4 details when a retailer may charge or waive a late	AGL, Origin Energy and TRUenergy consider regulation on	Repeal redundant regulation	TRUenergy supports the proposal. Further, we recommend that the ESC re-draft clause 7.4(a) to achieve consistency with the

Existing Obligations	Submissions	Draft Decision	TRUenergy comments
payment fee for a customer.	late payment fees for small business customers should be fair and reasonable.	Clauses 7.4(b) – (d) proscribe the imposition of late payment fees by retailers under certain circumstances. The Victorian Government legislated that late payment fees cannot be imposed on small retail customers, which are the customers the regulation was intended to protect. Therefore, the regulation is largely redundant. However, where late payment fees are allowed to be imposed, the requirement for fair and reasonable fees will be retained. Retain obligation that: 7.4. The amount of any late payment fee must be fair and reasonable having regard to related costs incurred by the retailer	national framework proposal. Clause 7.4(a) should state: *"A retailer must not impose a late payment fee on any customer unless the retailer publishes a late payment fee with the standing offer tariff. Where a customer is a hardship customer (whether that customer is taking supply under a standard or market retail contract) a retailer must waive late payment fees."*

Existing Obligations		Submissions	Draft Decision	TRUenergy comments
7.6 Vacating a supply address	*Clause 7.6 requires customers to notify their retailer of the date of their departure from their supply address. This clause seeks to ensure customers are not held liable for energy they did not consume.*	There were no stakeholder submissions on this regulation.	Retain and simplify The Commission considers the drafting of the obligation is cumbersome and therefore intends to simplify the regulation.	TRUenergy supports the principle of simplifying the clause. We recommend that the ESC provide a draft of the new wording to industry participants. This will allow industry participants to consider the proposed new wording for any unintended consequences.
8.2 Business customers	A retailer may only require a business customer to provide a refundable advance if the business customer does not have a satisfactory energy account payment record or the retailer decides the customer has an unsatisfactory credit rating.	Participants at the small business workshop discussed whether there should be regulation of refundable advances for small business customers and in particular, whether a fair and reasonable approach should be applied.	Redraft obligation to allow more flexibility for retailers, but that advances must be fair and reasonable	TRUenergy supports the principle of simplifying the clause. We recommend that the ESC provide a draft of the new wording to industry participants. This will allow industry participants to consider the proposed new wording for any unintended consequences.
12.3 Business customers (Instalment Plans)	A retailer must consider any reasonable request from a business customer for, and may impose an additional retail charge on the business customer if they enter into, an instalment plan.	VECCI submitted that access to flexible payment options is important for small business customers who can experience fluctuating cash-flow positions. AGL, Origin Energy and TRUenergy considered that the removal of this clause will not impact on the accessibility of plans.	Retain. The current Victorian approach is consistent with the proposed national approach (that is, that the obligation is discretionary). Therefore, retaining the clause for the present is proposed, particularly as it allows for retailers to charge a small business customer for such an arrangement on a default contract.	Removing the requirement will not impact on small businesses ability to request and be offered an instalment plan regardless of whether the small business customer is on a market or default contract. The clause does not provide any additional regulatory protection for small business customers and therefore repealing the clause is consistent with the ESC's review objective of removing regulatory provisions that may have become redundant over time regulation.
13.4 Refusal to provide acceptable ID or refundable advance	A retailer may disconnect a customer if the customer refuses when required to provide acceptable identification (if the customer	Australian Power & Gas submitted that the classification of a new customer should be	Retain. The proposed national approach is that the retailers do not have to connect a customer if they do not	TRUenergy recommends that the ESC adopt the proposed national framework approach for this clause. Under the current Victorian approach, a customer is connected but then subsequently fails to provide acceptable ID, the resulting disconnection would impose additional costs on the retailer and additional costs and potential

Existing Obligations		Submissions	Draft Decision	TRUenergy comments
	is a new customer of the retailer) or a refundable advance but only if: (a) the retailer has given the customer a disconnection warning including a statement that the retailer may disconnect the customer on a day no sooner than 10 business days after the date of receipt of the notice; and (b) the customer has continued not to provide the acceptable identification or the refundable advance.	clarified.	provide acceptable identification. This is significantly different to the current Victorian regulation, which requires retailers to connect and then disconnect if acceptable identification is not provided. In light of this, it is proposed to retain the obligation in the Victorian jurisdiction.	hardship upon the customer than would have incurred had the connection been refused in the first instance. The ID acceptable requirements to set up an account are not overly onerous (being one of a driver's licence, current passport or other form of photographic identification, a Pensioner Concession Card or other current entitlement card issued by the Commonwealth or a birth certificate). It would be extremely unlikely that a consumer would be unable to produce one of these forms of ID at the time of setting up an account. Customers with eligible concession cards will have their concession details processed quicker and therefore gain access to eligible concessions by providing this information at the time they set up an account. At the very least, any subsequent connection should be contingent upon the provision of acceptable ID to prevent ending a cycle of connection-disconnection-reconnection.
20. Variation requirements customer's agreement	(a) The tariff and any terms and conditions of an energy contract between a customer and a retailer may only be varied by agreement in writing between the customer and the retailer.[3] (b) For the avoidance of doubt, if the amount of the tariff changes in accordance with some term or condition of an energy contract previously agreed between the customer and the retailer, no further agreement is required.	CALC considered that this clause provided for unfair contract terms. Simply Energy considered a price variation would not be unfair where the customer is given sufficient notice and is entitled to terminate without penalty.	Redraft to increase clarity of obligation.	TRUenergy believes that the ESC should defer any decision on this clause until Stage 2 of the Review. It would be more appropriate to consider re-drafting this clause once the Victorian Government has announced the new legislative package on retail price disclosure from 2009. Further, clause 2.4(c) *Guideline 19, Energy Product Disclosure*, currently requires retailers to provide information in the Product Information Statement / Offer document "*an explanation of how the tariff and other fees and charges can change*". Hence, customers are clearly provided with relevant information on how prices can vary and therefore are making an informed choice prior to entering into the contract. Clause 2.4(c) Guideline 19 alleviates CALC's unfair contract term concerns.

[3] In the case of the variation of some terms and conditions of an ***energy contract***, the ***customer's explicit informed consent*** may also be required if an agreement between the ***customer*** and the ***retailer*** to vary the term or condition is to be effective. See clauses 5.1 and 10.1 and the list of asterisked (*) terms and conditions in appendix 1.

ENERGY RETAIL CODE			
Existing Obligations	**Submissions**	**Draft Decision**	**TRUenergy comments**
23.1 Customer's right to cancel an energy contract (a) Beyond any right a customer may have to cancel an energy contract under the FT Act, the customer may cancel the energy contract if the energy contract is a market contract or arises from the acceptance of a standing offer. (b) Unless the customer has a longer cancellation period under the FT Act, to cancel an energy contract a customer must give a cancellation notice to the retailer within: • if the energy contract is for electricity and it is an energisation contract or it is for gas and is in respect of a supply point which requires only unplugging or installation of a meter to allow the flow of gas, 5 business days from and including the relevant date; and • otherwise, 10 business days from and including the relevant date.	Simply Energy believes clause 23 is duplicated by the Fair Trading Act 1999. Australian Power & Gas asserted that this clause is duplicated by the Marketing Code.	Repeal from ERC and refer to Marketing Code. The *Fair Trading Act 1999* does not provide coverage for all contracts.	Section 63 of the FTA provides that customers may cancel a "contact sales agreement" (ie, a door to door sales agreement within 10 days from the day the agreement was made). Section 67H (1) provides the same right for a telephone marketing agreement. We are unsure which contracts the ESC is concerned are not covered by the provisions of the FTA as the FTA covers both door-to door sales contracts and contracts made through telemarketing. TRUenergy believes the rights in the FTA are sufficient to ensure that a customer receives the appropriate 10 day cooling off period and believes this clause could be deleted from the ERC without being replicated in the Marketing Code. In any event, a customer is not prohibited from cancelling a contract if they wish to and change retailers.

Existing Obligations		Submissions	Draft Decision	TRUenergy comments
23. 4 Documenting energy contracts and customers' cancellation rights	On or before the second business day after the relevant date in respect of their energy contract, a retailer must give a customer: • a copy of the energy contract or other document evidencing the energy contract which sets out the tariff and all of the terms and conditions of the energy contract including: • the total consideration to be paid or provided by the customer under the energy contract or, if the total consideration is not ascertainable at the time the energy contract is entered into, the manner in which it is to be calculated; and • any additional retail charges or other charges or fees to be paid by the customer or which the customer may become liable to pay, including any payable on cancellation. The retailer must comply with any relevant guideline in preparing this document; and • if the customer has a right to cancel the energy contract, a notice advising the customer of the customer's right to cancel the energy contract, accompanied by a further form of notice which sets out the name and address of the retailer and the date and details of the energy contract	Australian Power & Gas stated that this clause duplicated provisions in the Marketing Code.	Repeal from ERC and refer to Marketing Code. The Fair Trading Act 1999 does not provide coverage for all contracts.	A clause of this nature appears in section 6.3 of the Marketing Code. It does not need to be further replicated in the Marketing Code. Furthermore, the requirement to provide the contract documentation within 2 days is more stringent than the requirement to provide the documentation within 5 days for telephone sales under clause 67E of the FTA. TRUenergy submits that there is nothing inherently different in the provision of energy retail services compared to other services that should require energy retailers to provide contractual information to customers in a shorter timeframe. The ESC has not provided any evidence that consumers are worse off by receiving contractual information within by 5 days rather than 2. Therefore, we contend that it is not appropriate that energy retailers to be held to a higher standard than other retailers and therefore this requirement could be removed from both the Marketing Code and the ERC.

ENERGY RETAIL CODE			
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which may be used by the customer to cancel the energy contract. A retailer will be taken to have given the document and notices required by clause 23.4(a) on the second business day after the relevant date if by then the retailer has posted the document and notices to the energy customer.			

CODE OF CONDUCT FOR MARKETING RETAIL ENERGY IN VICTORIA			
Existing Obligations	**Submissions**	**Draft Decision**	**TRUenergy comments**
Code in general Marketing Code of Conduct	AGL, Origin Energy, TRUenergy and the ERAA asserted that the MCC duplicates legislation including the *Fair Trading Act 1999* and *Trade Practices Act 1974.* The consumer groups disagreed.	**Retain.** The Marketing Code is a necessary consumer protection which will benefit from review and simplification, but repeal is not warranted.	TRUenergy contends that the ESC has not provided evidence to support its position to maintain the Marketing Code of Conduct. In 2004, the ESC found that the Victorian energy market was competitive to the level that it felt confident to recommend repealing the Marketing Code of Conduct from 2005: *"The Commission considers that greater reliance should be placed on the general customer protection arrangements under the Fair Trading Act 1999 (Vic) and the Trade Practices Act 1974 (Cwlth) as energy retail competition becomes increasingly effective. It recommends, therefore, that the Market Code of Conduct should cease to apply, and that the relevant provisions of the Fair Trading Act should be relied on instead" (page 9)*[4]. In responding to the ESC's recommendation, the Consumer Law Centre of Victoria did not oppose the removal of the Marketing Code of Conduct, stating that general law protections and the memorandum of understanding between relevant regulatory bodies to deal with misleading and deceptive marketing behaviour provides consumers with appropriate protection: *The Consumer Law Centre (Victoria), in its submission to the public draft report, noted further that although they strongly support the Market Code of Conduct, they did not oppose its removal given the efficacy of current arrangements between the authorities and the protections against misleading and deceptive conduct provided by fair trading laws (page 70)*[5]. Subsequently, the Australian Energy Market Commission's (AEMC) *Effectiveness of Retail Competition in Victoria* report in 2007 supported the ESC's finding that the Victoria's retail market is fully competitive. TRUenergy also showed in its submission to the

[4] SPECIAL INVESTIGATION: REVIEW OF EFFECTIVENESS OF RETAIL COMPETITION AND CONSUMER SAFETY NET IN GAS AND ELECTRICITY Overview report, 22 June 2004.

[5] SPECIAL INVESTIGATION: REVIEW OF EFFECTIVENESS OF RETAIL COMPETITION AND CONSUMER SAFETY NET IN GAS AND ELECTRICITY BACKGROUND REPORT, 22 June 2004.

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				current ESC review that energy retailers have made some 13.5 million customer contacts in Victoria since the start of FRC and consumers raised 1.8 EWOV marketing cases for every 10,000 customer contacts over this period. TRUenergy recommends that the ESC clearly demonstrate how the removal of the Marketing Code of Conduct and the reliance of general consumer protection provisions offered to consumers through the FTA and TPA would lessen consumer protection given the findings that the Victorian energy market is competitive and the low level of customer marketing complaints.
4.1 Training	Clauses 4.1 provides for the training of retailers' marketing representatives.	There were no stakeholder submissions received.	**Retain and simplify.** This clause will be retained because it is not included in the *Fair Trading Act 1999.*	Regarding Marketing Code clauses 4.1 to 4.3, while these clauses are not specifically replicated in the FTA, they specifically regulate inputs rather than outcomes and are not consistent with regulatory best practice as outlined by the Taskforce on Reducing Regulatory Burdens on Business. Further, the requirement to comply with general conduct standards renders redundant obligations 4.1 – 4.3. In TRUenergy's view, training requirements should not be prescribed for the following reasons: • Retailers have an incentive to train their sales people properly as, if they fail to do so, there is a real risk that sales staff could breach the TPA or FTA by engaging in misleading or deceptive conduct, false and misleading representations, and unconscionable conduct. • If an alleged breach occurred and an investigation launched into a retailer's conduct by CAV or the ACCC, any consequences for the retailer are likely to be less severe if it can demonstrate the completion of training by its sales staff, conducted on a regular basis. • In addition, retailers are aware that, should they breach the TPA, the ACCC has the power to accept a count enforceable undertaking to resolve the matter which, in many instances, imposes a independently audited compliance program on the retailer. The likelihood of such an outcome in the event of a breach provides retailers with a further a strong incentive to provide a

Existing Obligations		Submissions	Draft Decision	TRUenergy comments
				comprehensive training program to its staff. TRUenergy submits that, on the basis of the above, prescriptive requirements for training of staff in the Marketing Code are not necessary and should be repealed.
4.2 Product and Code knowledge	Clause 4.2 prescribes what retailers should include as part of their training and testing of their marketing representatives.	Some stakeholders considered the regulation should be focussed on outcomes, not inputs.	**Remove duplication.** Remove clauses which duplicate the *Fair Trading Act 1999* and *Trade Practices Act 1974.*	See the comments above in relation to clause 4.1 – Training.
4.3 Training Records	Clause 4.3 requires retailers to maintain and make accessible training manuals and records. Further, that they shall be made available for independent audit as required.	There were no stakeholder submissions received.	**Retain and simplify.** This clause will be retained because it is not included in the *Fair Trading Act 1999.*	See the comments above in relation to clause 4.1 – Training.
5.3 Telephone contact	Clause 5.3 provides what a marketing representative must do when they are conducting negotiations with a consumer on the telephone which may lead to a consumer entering a contract or for a related purpose.	The competitive market workshop considered whether this clause should be retained. As part of this discussion, participants considered the scope of this regulation and in particular, door knocking.	**Repeal bullet point 1.** Duplicated in s 67B of the *Fair Trading Act 1999*. **Repeal the fourth sub-bullet point of bullet point 2** Requires what is usual business practice. **Retain remaining clauses.** These clauses provide a higher level of protection to consumers than the *Fair Trading Act 1999* and are	These requirements are unnecessarily prescriptive in the light of the prohibitions in the FTA and TPA on misleading or deceptive conduct, false and misleading representations and unconscionable conduct and should be repealed.

Existing Obligations		Submissions	Draft Decision	TRUenergy comments
			considered necessary to retain	
6.3 Contract Information	Clause 6.3 prescribes the information that a retailer must give the consumers before the consumer enters into a contract.	At the competitive market workshop, participants discussed whether this clause should be retained.	**Rename clause to 'Pre-contractual information'.** Clause to be renamed to reflect more appropriately reflect the purpose of clause. **Repeal bullet points 2 to 4** These are addressed by the *Fair Trading Act 1999.* **Retain remaining bullet points** These issues are not addressed by the *Fair Trading Act 1999* and are considered necessary to retain in this market	These requirements are unnecessarily prescriptive in the light of the prohibitions in the FTA and TPA on misleading or deceptive conduct, false and misleading representations and unconscionable conduct and should be repealed. With regard to the second set of bullet points in clause 6.3, see comments in relation to clause 23.4 of the ERC.