



29 June 2007

Review of the Effectiveness of Competition in Gas
and Electricity Retail Markets in Victoria
Australian Energy Market Commission
PO Box H166
AUSTRALIA SQUARE NSW 1215

Email: submissions@aemc.gov.au

Dear Mr Sarawat

The Energy and Water Ombudsman (Victoria) (EWOV) thanks you for consulting with us about the Australian Energy Market Commission's (AEMC's) review of the effectiveness of competition in gas and electricity retail markets in Victoria. This letter and its appendices contain both the information the AEMC sought from us and our submission on the issues.

Background to EWOV

EWOV provides a free complaint-handling service to customers of Victorian energy and water providers, and others affected by the actions of those providers. A basic principle is that the provider must have the opportunity to resolve the matter directly with the customer before we take up the complaint and so, where the customer has had no contact with the provider, we refer him or her back to the relevant provider's call centre. If the customer has had one contact and that contact did not resolve the matter satisfactorily, we refer the customer to a higher level in the provider organisation. That is, we send details of the customer and the issue to the provider, and the provider is obliged to make contact within twenty-four hours. Where the customer has had two or more contacts with the provider, we accept the matter as a complaint for investigation. Where in this submission we have referred to 'cases' we mean referred complaints and complaints for investigation as well as enquiries.

In 2005-06, EWOV handled 17,763 cases, 5,347 of them complaints for investigation.

EWOV opened its complaint handling service in May 1996 as the Electricity Industry Ombudsman (Victoria). It was the first industry-based Ombudsman scheme in the world to cover the electricity industry.

In March 1999, the scheme expanded to include the natural gas industry and was

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renamed the Energy Industry Ombudsman (Victoria).

In April 2001, the scheme grew again to include the Victorian water industry and became the Energy and Water Ombudsman (Victoria).

In July 2005, the scheme's jurisdiction expanded to cover liquefied petroleum gas (LPG). EWOV has handled well over 100,000 cases in its eleven year history.

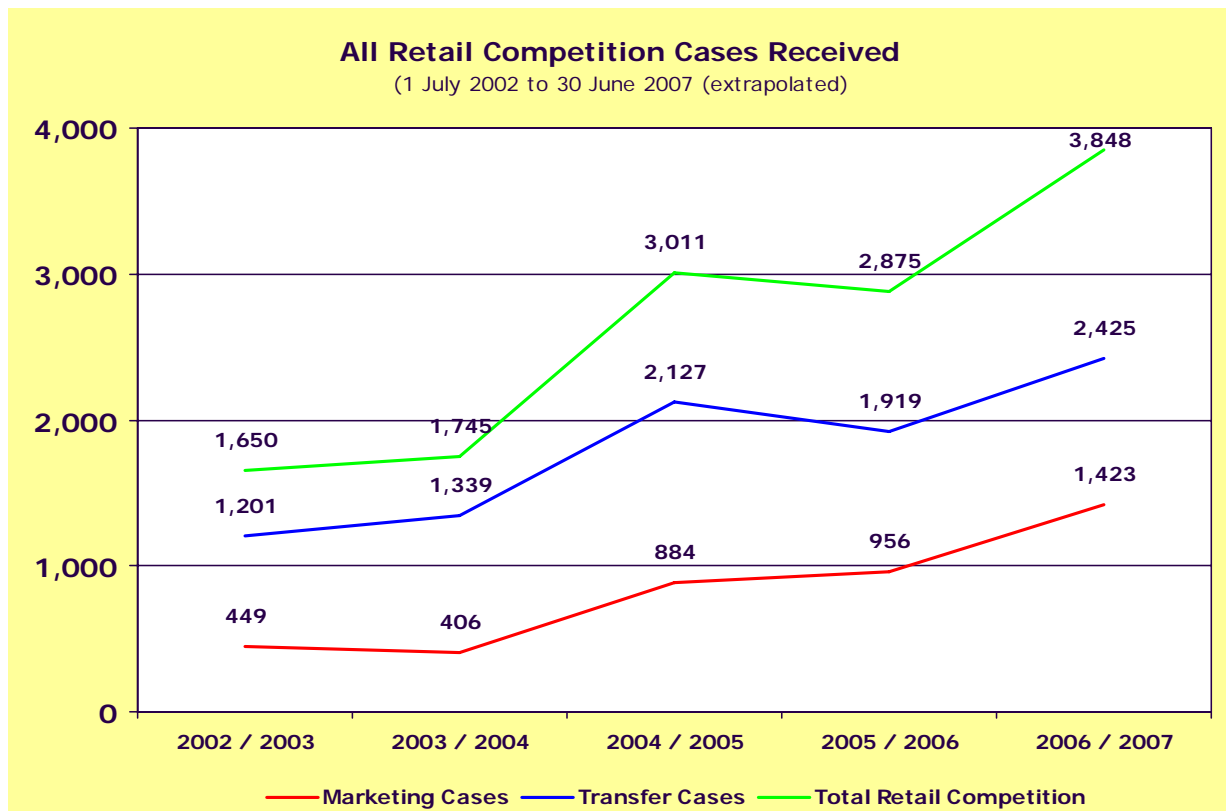
Currently, 67 energy and water providers participate in the EWOV scheme.

EWOV's experience of retail competition in Victoria

'Retail competition' is one of eight top level issues that EWOV uses to categorise the cases it receives. At the next level, retail competition issues are divided into marketing and transfer. This section of the submission contains high level quantitative information about retail competition cases received since 2002.

Figure 1 is a graph of retail competition cases received since 2002:

Figure 1



This number of cases is of course a very small proportion of the total number of transfers taking place in Victoria. There is, however, a loose correlation of the retail competition cases EWOV receives and the total number of transfers. See figure 2:

Figure 2

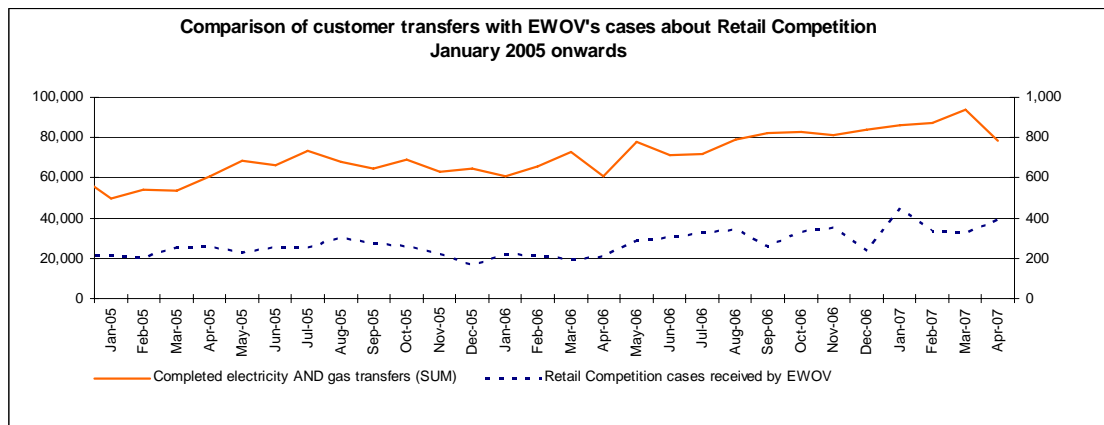
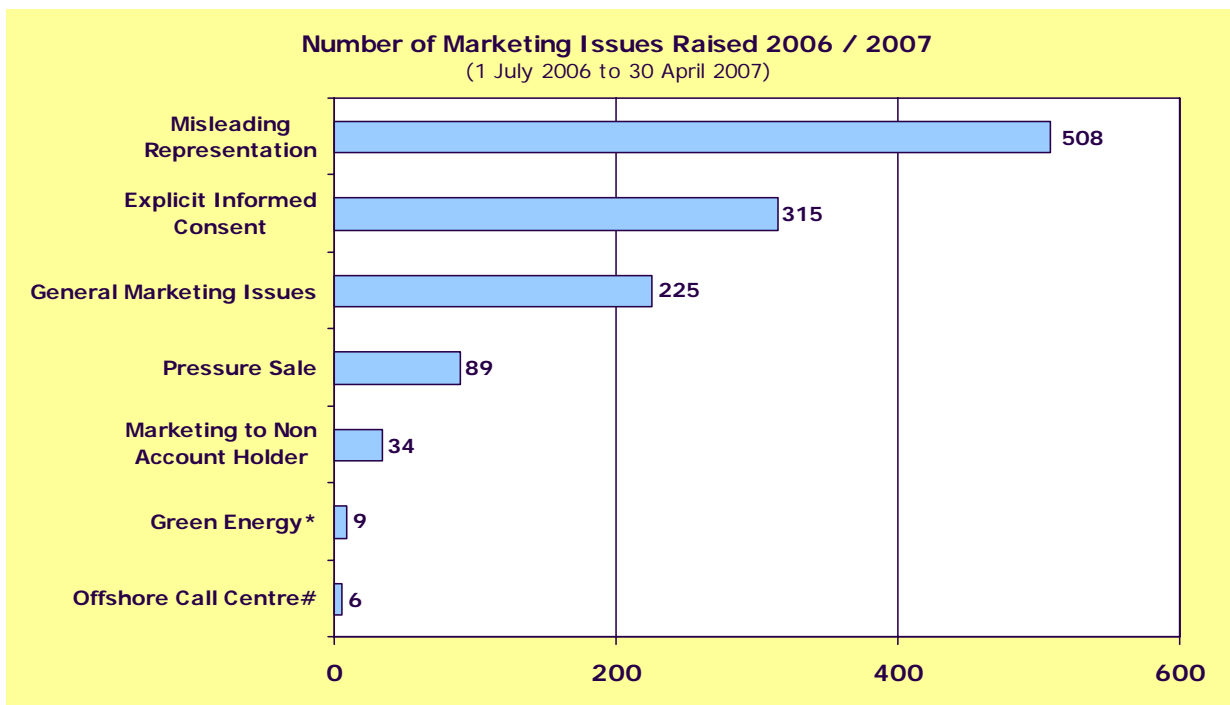


Figure 3 sets out the number of marketing cases, by issue, for the 2006/2007 year until 30 April 2007.

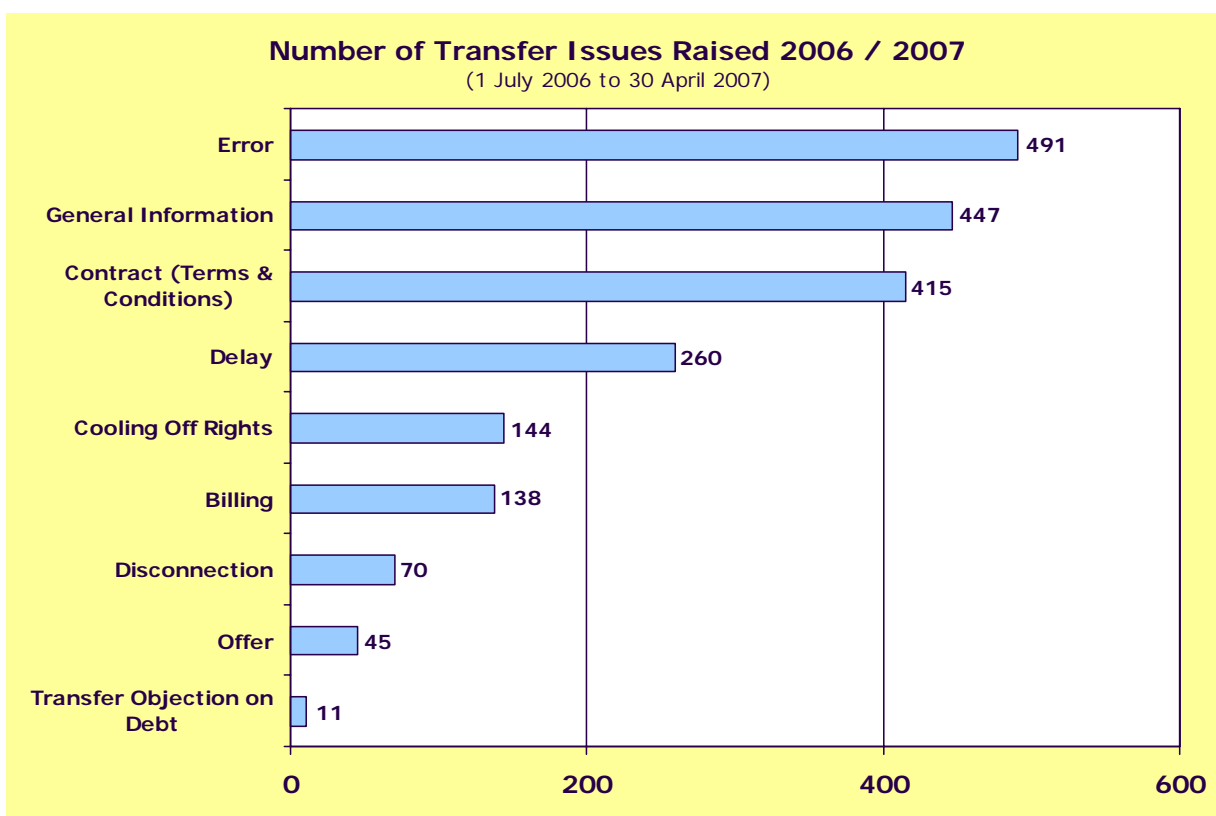
Figure 3



- * These cases relate to the marketing of green energy. For example, a customer may complain that he subsequently found out it was a non-accredited product or was misled about the proportion of green energy in a particular product.
- # In these cases the customer was complaining that the call centre was located outside Australia.

Figure 4 provides a similar table for transfer cases.

Figure 4:



EWOV's comments on issues raised in the AEMC's Issues Paper

EWOV's comments will be limited to those points on which we are able to contribute on the basis of our case-handling experience.

6. *What does the level and extent of marketing indicate about the level of competition?*

In EWOV's experience, a large majority of the retail competition cases that come to us are as a result of 'push' marketing, nearly always door-to-door or telephone marketing. The exception to that generalisation is where people are moving. Typically they contact the provider who was the retailer at their previous address, but that will amount to entering into a market contract. Another smaller exception may be those customers who have responded to non-price inducements, which they may have seen through advertising or because of their promotion to an organisation or community group to which the customer belongs. These cases are quite unusual.

It is not unusual for retailers to offer inducements to transfer, such as free DVD players, vouchers for Coles Myer, magazine subscriptions or contributions to organisations supported by customers.

These elements of competition in Victoria suggest that there is rivalrous conduct among retailers, but that perhaps the opportunities afforded by competition are not well understood or acted upon by Victorian consumers.

8. *Is there evidence of anti-competitive or misleading marketing activity?*

EWOV cases on marketing provide extensive evidence of misleading marketing activity at least on the part of some retailers. It seems reasonable to assume that complaints received are an indication of similar instances about which customers have not complained.

In making this statement EWOV is relying on the marketing reports it prepares for the Essential Services Commission (ESC), the Australian Competition and Consumer Commission (ACCC) and Consumer Affairs Victoria (CAV). These reports are provided under a Market Conduct Reporting Protocol which is an appendix to a Memorandum of Understanding between CAV and the ESC. The Protocol calls on EWOV to report particular kinds of issues to those organisations. Since the beginning of 2006, EWOV has provided 12 of these case-by-case reports, covering five retailers, all non-host retailers. The two most recent of these reports are provided in a de-identified form as Appendices 1 and 2.

In these two reports we arranged the cases by issues and these issues give an indication of why we say EWOV cases offer evidence of misleading marketing. Here is the list of issues from the most recent report. It should be remembered that these are the cases for one retailer (the retailer with the most marketing cases) for a two-month period. The report includes those cases which we considered gave rise to a potential compliance issue and 54 cases are covered by the list below, out of a total of 81 marketing cases for this retailer in the two months.:

- Cases where the customer reported that Retailer X led them to believe that the supplier or retailer would stay the same or misled them as to the status of another provider (9 cases).

A quite common assertion by salespeople is ‘your supplier won’t change’. While this assertion has an element of truth in that a change of retailer does not mean a change of distributor, it is a sales tactic that is taking advantage of the average customer’s lack of understanding of the roles of distributor and retailer.

- Cases where the customer was only seeking information from the retailer, or had agreed to have information sent out to them, but in the process was transferred to Retailer X (8 cases).

It is EWOV’s experience that, when customers agree to receive information and provide personal details to enable that to happen, it is not uncommon for that information to be used to put in a request for transfer. From the salesperson’s perspective, if the sale is not closed at that point, it is a lost sale. The salesperson appears to rely on the ten-day cooling-off period to give the customer the opportunity to consider the contract. However, this sales tactic effectively denies the customer the opportunity to compare offers and to make an informed choice, something which, as stated in the AEMC’s issues paper, is necessary to facilitate the effective participation of household and small business customers in the competitive market (page 19).

- Cases where Retailer X entered into energy agreements with non-account holders (5 cases).

These cases are a point of contention for EWOV. The ESC’s *Code of Conduct for Marketing Retail Energy* says at clause 7.4 “the retailer will take reasonable steps to conduct contract negotiations with a person who has the authority to enter into a contract for electricity supplied to the actual site.” Retailers typically ask the person who answers the phone or the door ‘are you authorised?’ so the question is not a breach of regulation. However, EWOV finds it is a practice likely to lead to complaints where the account holder disagrees with the transfer. EWOV’s position is that the consent of the account holder should be obtained for a transfer to take place.

- Cases where the customer signed a document, unaware that they were signing a contract with Retailer X (4 cases).

In these instances, the customer typically says that he or she is not interested in transferring and the salesperson asks him or her to sign a document which says the salesperson has attended the house. The customer then signs without looking at the document in detail. This is a clear instance of misleading marketing.

- Cases where the customer reported the use of excessive marketing techniques (4 cases)

These are cases where the customer felt harassed or badgered, especially by repeat marketing where they had asked the retailer to desist.

- Cases where the customer reported to EWOV that Retailer X had represented itself as either another provider or not a retailer (3 cases)

It is not unusual for a customer to report a statement along the lines of “we’re working with retailer Y and nothing will change if you agree to this offer.” Customers may also gain the impression that the offer they are being told about is a special discount being offered to customers of the retailer the customer is with.

- Cases where the customer did not have the capacity to provide explicit informed consent (4 cases)

These are the cases which arguably give rise to allegations of unconscionable conduct. In these cases, elderly confused people, perhaps with dementia, agree to transfer, even though it should be evident that they do not have the capacity. Or they may be people whose English skills are not good so that they do not understand the sales pitch. Where sales like this take place over the phone, EWOV will usually ask for and listen to the recordings of the sale, and we often find that it is quite evident that there was no real understanding.

- Cases where the customer reported that the Retailer X representative said or implied a government connection (3 cases).

This has been a common theme in marketing cases that come to EWOV. Particularly where a retailer is government owned, or partly government-owned, its sales representatives are likely to say or imply that ‘we are from the government’. A practice we have had reported to us on a number of occasions is ‘we’re from the government and we are here to see you are not being overcharged’. Another similar practice is to say that there is to be a (government-backed) upgrade to the electricity in the area and the sales representative is there to see if the customer qualifies for a special discount.

- Cases relating to the marketing of green energy (2 cases)

Cases relating to the marketing of green energy can also raise allegations of government associations, because sales people may use government-produced material (such as Sustainability Victoria’s ‘black balloons’ campaign) to underline the message about green energy. Perhaps this is done with no intent to mislead, but some consumers are confused by it. They may also feel aggrieved if they agreed to buy green energy and subsequently discover that particular retailer does not have government accreditation for its green energy product.

- Twelve other cases

Some of these cases related to customers being transferred and having no memory of a marketing contact or of having agreed to a transfer. There are a couple where customers agreed to transfer on the basis of certain rates and then found they weren't charged at those rates or that the bills were higher than with their previous retailer.

The retailer to which this marketing report applies provided EWOV with a detailed response to the report. It pointed out that the cases covered in the report were a tiny percentage of both customers contacted through telemarketing (217,878 over the two months) and of those who had entered into contracts in that time (34,208). The retailer confirmed it was non-compliant in 13 of the cases covered in the report. Four of those cases related to cases in which customers thought they were getting information but had been transferred. The retailer said it had been compliant in those cases where callers to EWOV had said customers without the capacity for informed explicit consent had been signed up. It said it was not qualified to pass judgement on who has that capacity.

9. What evidence is there of customers seeking or obtaining market offers?

As stated previously, it is EWOV's view that very few customers seek market offers. Instead they are marketed to, either door-to-door or over the phone.

Although there are a few retailers in the market who are targetting particular sections of the community, it is not EWOV's experience that marketing is being directed to customers in particular socio-economic groups.

10. Are customers switching retailers to take advantage of competitive market offers?

As already mentioned, upfront inducements seem to be one factor influencing switching behaviour. Lower prices or discounts for on-time payment also seem to be influential, judging by the cases EWOV receives. However, we tend to see the cases in which the customer believes the factor that influenced the switch has not come to fruition, especially that promised rates have not been used or that bills are higher, not lower, than they were with the previous provider. Furthermore, because switches are usually in response to specific marketing, they are normally based on what the sales person has said rather than a comparison of offers in the marketplace.

11. Is there sufficient awareness about the existence of competition and market offers?

This is a question best answered by the AEMC's consumer survey.

12. Are customers able to effectively evaluate and search for market offer information such that they can make an informed choice?

EWOV staff who have worked on marketing reports say that they have not come across a case in which customers actually compared two offers before making a choice, although they may compare the offered rates with their current rates. As previously stated, EWOV

case experience suggests a heavy dependence on the information provided in the marketing contact. Door-to-door salespeople often ask to see a recent bill and use that information to inform what they tell the customer, which produces some tailoring of the information to suit a particular customer's circumstances.

In those instances where a customer sets out to search the products available, rather than responding to marketing, there is an important tool available: the Essential Services Commission's energy comparator, an on-line tool that enables a consumer to compare their current arrangement with a new offer or to compare two offers. While the information from the ESC suggests that usage of the comparator is quite low, it is an important and useful tool available to consumers who choose to use it and who have the appropriate hardware and software to do so. (*Awaiting more information from the ESC*)

A further initiative of the ESC was to require providers to supply on request offer summary documents. These documents, which are also available on providers' websites, set out rates and non-price offers in a format that allows for easy comparison.

The ESC also published data that compared standing offers to market offers based on the experience of 'mystery shoppers' in its *Energy Retail Businesses: Comparative Performance Report for the 2005-06 Financial Year* and plans to expand this comparison further in future performance reports.

EWOV notes that it has had contact with two companies planning to introduce comparative websites to enable customers to compare offers and sign up from that website. This development may enable more adequate searching and comparison, at least by customer segments with the skills and resources to use the internet.

In summary, there are excellent comparative tools available, but few consumers seem to be using them because most switching is in response to specific marketing.

15. *Does the option of receiving dual fuel supply from a retailer influence customer choice?*

EWOV introduced a case type of dual fuel in January 2003. Case numbers have been as follows:

2003 – 04:	238
2004 – 05:	529
2005 – 06:	296
2006 – mid-June 2007:	412

Based on these numbers, it is arguable that the dual fuel product is not well established in the market. Of the 296 dual fuel cases received for the 2005-06 year, 73% related to one retailer, the only retailer who appears to have made a significant selling point of dual fuel supply. Cases related to five retailers.

17. What impact do non-price offers have on customer switching behaviour?

EWOV is not in a position to make quantitative statements in answer to this question but there are some case studies provided in Appendix 3 which involved complaints about the non-provision of non-price inducements. EWOV's impression is that the non-price inducements are important to those customers who switch on the basis of them.

18. What is the relationship between customer switching and marketing activity

EWOV's experience is that there is a very close relationship between customer switching and marketing activity in that the overwhelming majority of transfers take place in response to a marketing contact.

20. What types of competitive offerings are being made available to customers, and is there evidence of new types of offers being made to customers over a range of customer classes?

On the basis of the nature of complaints received, EWOV can point to four kinds of offerings, not including non-price inducements. These are:

- Dual fuel offers, discussed above in response to question 15
- On-time payment discounts,
- Rebates or credits after staying with the company for a specified time, or on signing up, and
- Monthly billing.

We are not aware of any offers made to particular classes of customers, except for non-price inducements related to membership of football clubs or school communities etc.

In our experience monthly billing can be problematic for customers. At the time of the offer, they may not understand that monthly billing means two out of three accounts are estimated and that the billing can be quite complicated.

Some providers also offer contracts without termination fees which means in effect that they are making it easy for a customer to transfer away if dissatisfied with the service or product.

Non-price inducements have taken many forms, from give-aways such as DVDs or magazine subscriptions, loyalty cards or vouchers, to benefits to organisations with which the customer has a link.

21. Do retailers clearly and accurately communicate information to customers about their market offers?

Clearly in many of the marketing complaints, there has not been good communication about the details of market offers. For example, the customer may report that he or she was not told about termination fees. However, it is not possible to be sure whether the

customer was not told or did not take it in, given the amount of information that is required to be conveyed before entering into a contract.

We have had some complaints where customers have switched on the basis of particular tariffs and those tariffs are not available to the customer who lives in a different distribution area than the salesperson was assuming.

We have had occasional complaints from customers who thought that their debt with their previous provider would be transferred to their current provider and are upset to find that they must pay two providers.

Another area of complaint is loss of off-peak billing on transfer. This is particularly likely to happen with one particular host retailer which has more sophisticated methods of billing off-peak than other retailers. A customer transferring away from that host retailer may be upset to find that the new retailer is not able to offer off-peak billing with the particular metering set-up the customer has.

At the same time we are aware of some providers who use a checklist that the customer signs to ensure that the major points are covered off – a good practice but one that is only applicable to door-to-door sales.

22. Have the consumer safety net arrangements been effective in ensuring access to supply in Victoria?

The regulated tariffs are of value in protecting the interests of some specific consumer groups, that is low income consumers generally and also residents of caravan parks and boarding houses who are charged for electricity by their landlord rather than a retailer. Currently, such customers are not to be charged more than the regulated tariffs. EWOV believes that if regulated tariffs were abolished, alternative arrangements would need to be made for this vulnerable group of consumers.

Another aspect of the consumer safety net is the *Energy Retail Code* and other codes and guidelines of the ESC. These have been effective in helping to ensure access to supply in Victoria. Section 11 of the Code, *Payment Difficulties*, has assisted in ensuring that providers deal with customers who have capacity to pay issues in a non-punitive and helpful way. This effect has been enhanced by legislation passed by the Parliament, relating to the Wrongful Disconnection Payment and to Hardship Programs.

There are other arrangements in Victoria that have been effective in ensuring access to supply in Victoria, especially concessions, grants and rebates administered by the Department of Human Services (DHS). The Utility Relief Grant Scheme (URGS) is of particular importance. Available to concession card holders and (since last year) to low income households, it offers substantial assistance with unexpectedly high bills. EWOV has found that an URG can assist low income customers to bring their arrears down to a manageable size. In 2005-06, DHS processed 3,417 applications, approving 91% of them

and making average grants of \$322.¹ Figures for 2006-07 are not available yet, but early indications suggest that the number of applications has increased because of the relaxation in eligibility criteria.

There are also a range of concessions available to eligible account holders, generally those with a Centrelink concession card. These include the Winter Energy Concession (17.5% off electricity and gas bills between May and November) and a variety of concessions for people in specific circumstances such as the concession for users of Life Support Machines or the concession for people with multiple sclerosis or similar medical conditions.²

Although not formally part of the consumer safety net, legislation passed by the Victorian Parliament has also assisted in ensuring access to supply. This legislation includes the Wrongful Disconnection Payment which came into effect on 8 December 2004 and the requirement placed on all licensed energy retailers to have Hardship Programs. Interim Hardship Programs were approved for the three host retailers late in 2006, while the ESC has just approved 12 more programs.³ The rate of disconnections dropped significantly after the WDP came into effect, going from 0.84% in 2003-04 to 0.54% in 2004-05 and 0.22% in 2005-06.⁴ This suggests that retailers' responses to the WDP initiative have been successful in ensuring continued access to supply for around 6000 electricity and 6000 gas customers who may have been disconnected if rates of disconnection had not gone down.⁵

27. Which customers are likely to be considered vulnerable customers?

Vulnerable customers are those who have 'capacity to pay' issues. Terms such as 'vulnerability' and 'hardship' are difficult to define, but as the Committee for Melbourne's *Utility Debt Spiral Study* points out,⁶ regardless of approach there are some consistent findings about who is likely to be vulnerable or in hardship. These include:

- People who are unemployed
- Sole parents
- People living alone
- Couples with large numbers of dependent children.

The research also notes that a higher proportion of children live in disadvantaged households than do adults, and that living in rental accommodation is associated with a higher chance of being disadvantaged. Indigenous people are very likely to be

¹ ESC, *Energy Retail Businesses: Comparative Performance Report for the 2005-06 Financial Year* (November 2006) p. 18

² DHS, *A guide to concessions in Victoria: assistance for people on low incomes* (August 2006)

³ ESC, Media Release 2/2007, 21 June 2007

⁴ ESC, *Energy Retail Businesses: Comparative Performance Report 2005-06*, p 50

⁵ *Ibid*, p. 24 for the figures on which this estimate is based

⁶ *Utility Debt Spiral Study: A joint community government and business initiative designed to explore the relationship between utility debt and poverty, and to identify social and regulatory frameworks and policies to assist people at risk* (Committee for Melbourne, 2004).

disadvantaged, as are people who are homeless. Generally people living outside of major cities are at greater risk of being disadvantaged.⁷

A further source of information on vulnerable customers or customers in hardship can be found in the affordability and access sections of the ESC's reports on the performance of energy retail businesses. Graphs in that report report on

- the rates of disconnected customers who were concession card holders (about 0.06% of all domestic customers, or 31% of disconnected customers)
- disconnections of customers who had previously been on a budget instalment plan, about 0.05% of all domestic customers, or 25% of disconnected customers. This is of concern because it suggests there is a group of people for whom budget instalment plans have not worked as a way of meeting their utility debt
- the comparison of the rates of disconnection of host retailers compared with newer entrants. The rate for newer entrants is twice that of host retailers (0.42% compared with just under 0.20%).⁸

There is also EWOV's own data on vulnerability or customers in hardship. A small survey of recent customers was undertaken for this submission. This survey was of cases in January 2007 where the text included the phrase 'capacity to pay', 38 cases in all. This is not the total number of cases received which may have included issues of vulnerability: they are just the ones where that specific phrase was used.

Of the 38 cases, 24 involved women, in nine cases the customer was male and in five cases it was evident that the customer was part of a couple. It is EWOV's strong impression that, within the group of vulnerable customers, women outnumber men by at least two to one, if not more. Where customers with capacity to pay issues are men, they appear to be men living on their own, sometimes on disability pensions. Vulnerable customers are generally recipients of government benefits. In a number of the 38 cases, vulnerability was also contributed to by health problems. EWOV does not ask about the nature of those. Similarly it is not possible to know how many children were included in these vulnerable households. 32% of the cases came from outside Melbourne or Geelong.

In six of those cases (16%), a financial counsellor was involved, either because EWOV encouraged the customer to make an appointment with one or because the customer already had a financial counsellor.

Here are two examples from those 38 cases:

C/2007/38 The customer moved into the property in approximately 2001 and connected her electricity with Retailer Z. Due to difficult personal circumstances and health concerns, she was unaware she had not received a bill. In December 2005 she received a back bill for \$4,500. On 22 December 2006 she received a disconnection imminent notice for arrears of \$5,294. Her most recent quarterly bill was \$752. Her representative

⁷ Ibid, p 21

⁸ ESC, *Energy Retail Businesses: Comparative Performance Report 2005-06*, pp 25-27

contacted the retailer on 2 January 2007 to discuss the backbill as he believed the bills were very high and he wished to discuss a payment arrangement for the arrears. Retailer Z advised it would require \$300 per fortnight. The customer has capacity to pay issues and could afford \$20 per fortnight toward the arrears.

By way of resolution, Retailer Z confirmed the billing and the accuracy of the meter. It made available an on-site energy audit to the customer on 13 February 2007. It also confirmed that the customer had been sent a form to apply for a Utility Relief Grant (URG), as administered by Victoria's Department of Human Services. Retailer Z also agreed to place the customer on its Hardship Program and to accept \$50.00 per fortnight payment plan via Centrepay, starting in May 2007. Retailer Z confirms it will review the customer's account and usage in six months, on 11 October 2007. If her payments can cover her consumption based on the previous six months of usage, Retailer Z will place her on its Hardship Program and implement a 1:1 incentive payment plan. The account balance of \$5,056.70 is at 11 April 2007.

C/2007/997 The customer who is in severe hardship and has ongoing health issues, has been unable to negotiate a payment plan with Retailer A. She has had payment plans before and has been unable to adhere to them. She has also been on the retailer's Hardship Program but her participation was discontinued because she did not stick to the payment plans. She has recently offered \$20 per fortnight but the retailer would not accept that. She now has arrears for the property she is leaving of about \$1,500 and does not want to have to file for bankruptcy. She is particularly upset that Retailer A did not tell her about the URG Scheme before she was disconnected: you have to be connected to be eligible. She feels she has been honest about her circumstances and that nobody has been taking her concerns seriously. EWOV suggested various options to the customer: financial counselling, an energy audit, welfare agencies, using direct debit but the customer declined them, saying she had tried them all.

The case was resolved when Retailer A and the customer agreed to a \$20 per fortnight payment plan.

The findings of this small survey are supported by demographic analysis of a representative sample of EWOV's customers, undertaken for a recent customer satisfaction survey. This survey showed that 31% of respondents were holders of a concession card (this is a minimum figure because 22% did not disclose on this point) and 25% were on a household income of less than \$40,000. 20% were unemployed and 14% were retired.

EWOV's accessibility to vulnerable customers is attested to by these results.

28. What factors contribute to customer vulnerability?

Obviously there is a range of socio-economic factors that help to create vulnerability, and there is considerable literature on this, including, in the Victorian context, *Utility Debt*

Spiral Study: A joint community government and business initiative designed to explore the relationship between utility debt and poverty, and to identify social and regulatory frameworks and policies to assist people at risk (Committee for Melbourne, 2004).

This study analyses responses to a question in the Australian Bureau of Statistics Household Expenditure Study of 1998-90, the question being whether in the past year the household could not pay electricity, gas or telephone bills on time because of a shortage of money. 16.1% of Australian households answered yes to this question; the figure for Victoria was 14.7%. The report refers to a positive response to this question as 'utilities stress'. The characteristics of people suffering utilities stress include:

- Being young. Over 40% of households where the respondent was aged 15 to 22 reported utilities stress, compared to 2.25 for households where the respondent was aged over 75;
- Having a low income, although this effect was not as large as one might expect, with just under 25% of respondents in the lowest quintile of income reporting utilities stress
- Being unemployed or not in the labour force. Households in these categories are three times more likely to report utilities stress than those households where the respondent was employed
- Being a sole parent. 41% of respondents who were sole parents reported utilities stress
- Having four or more children. About half of households in this category report utilities stress, roughly twice the percentage of households with one to three children, and
- Renting their accommodation. Around 30% of renters reported utilities stress, slightly higher for those in public housing.⁹

29. Does the structure and operation of the market contribute to customer vulnerability?

Among the 38 cases cited above, seven involved backbills, generally due to retailer error such as an operator failing to set up the account properly or the accounts being sent to the wrong address. A backbill can be disastrous for a low income household and seven instances in 38 is a high proportion (18%). The provision in the *Energy Retail Code* that confines backbilling to nine months in cases where there has been some failure of the retailer's (or distributor's) billing system can help to mitigate the effects, but backbilling can contribute to customer vulnerability.

30. How does a customer's vulnerability affect their participation in the market?

Where a customer is socio-economically vulnerable, it may be that they are likely to be influenced by lower prices, so that EWOV would not necessarily expect that vulnerable customers participated in the market less than did non-vulnerable customers. Among the 38 cases cited above, five were with non-host retailers and 33 were with host retailers, but

⁹ Ibid, pp 45-55.

it is not possible to tell if they were on standing or market contracts with the host retailers. Where the customer has moved in recent years, he or she is more likely to be on a market contract.

31. How effectively do retailers identify vulnerable customers and assist them?

Once retailers have identified vulnerable customers, they are generally helpful. For example, one host retailer who had 12 of the 38 cases from January 2007 discussed above offered four incentive plans, including one in the cited case C/2007/38. Two of those were conditional on the customer making payments for six months. These were the only incentive plans in the 38 cases. This particular retailer also accepted a payment plan of \$5 per fortnight in one case. The next lowest payment plan was for \$17 per fortnight, accepted by another host retailer.

Do retailers effectively identify vulnerable customers in the first place? This is a harder question to answer. Twenty-eight of the 38 cases were complaints for investigation, indicating that the customer had already made two efforts to resolve the matter with the provider before coming to EWOV. That suggests that in those 28 cases, the retailer had not identified that fact that this was a customer in hardship.

Another indication is the percentage of customers on budget instalment plans, as reported in the ESC's *Energy Retail Businesses: Comparative Performance Report for the 2005-06 Financial Year* (November 2006). It reports 4.66% of electricity customers are on such plans, and 4.87 of gas customers. The data from the *Utility Debt Spiral Study*, cited above, indicates that about 14% of Victorians might suffer at least occasional utilities stress. Taking payment plans as a proxy for providers having identified hardship, this suggests that there may be many more people who have not been taken into hardship programs who would qualify.

That impression is further strengthened by the fact that many of EWOV's cases involving credit arrears or high bills are resolved by the retailer accepting the payment plan the customer had offered in the initial discussion with an EWOV staff member. Similarly, EWOV has undertaken a limited analysis of 77 cases in which payment plans were negotiated for customers who had been disconnected. In 33 cases the negotiated amount was the same amount as the customer said they could afford to pay when they first contacted EWOV, suggesting that EWOV intervention had been necessary to obtain for the customer that which he or she had asked for directly from the retailer.

33. Are the existing government and retailer initiatives effective in managing vulnerable customers in a competitive market environment?

There can be no doubt that the existing government and retailer initiatives are effective in providing strategies by which vulnerable customers can stay connected and in productive contact with their retailer. Many of the 38 cases were resolved by the negotiation of payment plans that, on the face of things, were affordable: of the 28 complaints for investigation in the group of 38 cases,

- In one case, the provider accepted that the customer had no capacity to pay
- There were nine cases in which providers accepted \$30 per fortnight or less (including one of \$5 and one of \$17)
- There were eight cases in which providers accepted between \$35 and \$50 per fortnight. In one of these cases the customer had arrears of over \$5000
- Two cases where the amounts were more than this, \$60 and \$80 per fortnight respectively, and
- Eight cases in which a payment plan was not mentioned as part of the resolution.

By accepting payment plans, even sometimes at levels that do not cover usage, retailers are at least ensuring some cash flow from this group of customers and saving on debt collection costs. However, we are starting to see cases where customers have not adhered to payment plans and retailers are discontinuing their participation in Hardship Programs. We are likely to see increasing difficulty in finding strategies to work productively with this sub-group of vulnerable customers.

Conclusion

EWOV hopes the information and data in this submission and its appendices are of assistance to the Australian Energy Market Commission in its review of the effectiveness of competition in Victoria's gas and electricity retail markets. We are happy to make ourselves available to discuss the information further. If you have any queries or comments, please contact Frances Wood, Acting Manager Public Affairs and Policy on (03) 9649 7599.

Yours sincerely



Fiona McLeod
Energy and Water Ombudsman (Victoria)

Appendices:

- 1: Report on Marketing Cases by Retailer X
- 2: Report on Marketing Cases by Retailer Y
- 3: Case Studies on marketing and transfers published in EWOV's *Annual Reports or Resolution* newsletters
- 4: Marketing and Transfer Case Numbers by Retailer (CONFIDENTIAL and supplied in hard copy only)
- 5: Overview of the results of EWOV's Consumer Awareness Survey 2007

**Retailer X Marketing Cases
 received by EWOV in February and March 2007 and raising potential compliance issues**

An **enquiry** is a request from a customer for general information (for example, about relevant codes or guidelines) (PGI outcome) or a matter that is referred to another agency (for example if it's outside EWOV's jurisdiction) (OOJ outcome).

A **complaint** is an expression of dissatisfaction regarding a policy, practice or customer service performance of an energy or water provider which is part of the EWOV scheme, where a response or resolution is explicitly or implicitly expected. If a customer has not yet spoken with the energy or water provider about their complaint, EWOV generally refers them back to the provider's call centre (complaint – RTP). If the customer has spoken once with someone at the call centre but it remains unresolved, EWOV usually refers them to a higher-level contact at the provider (complaint- RHL). EWOV fully investigates complaints which remain unresolved following two or more contacts between the customer and energy or water provider (complaint – investigation). Where a customer does not wish to be contacted by the company but wants to report the matter to EWOV, EWOV records the customer's complaint and takes appropriate action where the matter may be a regulatory and/or systemic issue (complaint – REP).

Please note that the term “OBO” refers to a person contacting EWOV on behalf of a customer

SECTION 1

Cases (9) where the customer reported to EWOV that Retailer X led them to believe the supplier or retailer would stay the same, or misled them as to the status of another provider.

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
F/2007/38	Referred Complaint	8 Feb 2007	The customer was dissatisfied with the information provided by a marketing representative of Retailer X. She advised that she transferred her gas and electricity to Retailer X in October 2006. The representative advised her that her current retailer would still be supplying her, but Retailer X would be billing her. Based on that information she transferred to Retailer X. She advised that she read the contract after the cooling-off period and did not want to transfer to Retailer X as the contract was for 24 months, but she was aware of the \$75 termination fee. She contacted Retailer X and was advised that she would be charged the termination fee if she terminated the contract prior to its completion. She believed that she was misled in the information provided by the Retailer X representative. (RHL) Potential compliance issue: Misleading and deceptive conduct

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/1566	Referred Complaint	12 Feb 2007	<p>The customer was called by a sales representative from Retailer X on 6 February 2007. He advised that she would receive a 7% discount off her electricity account if she paid on time. He further advised that she would remain with her current provider and receive the 7% discount through Retailer X. She was advised that there is a 10 day cooling off period. It is now seven days into the cooling off period and she has not received an information pack from Retailer X. She is concerned that her account will be transferred over to Retailer X without her having read through the details of the offer. (RHL)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/1642	Referred complaint	13 Feb 2007	<p>The customer advised that she received a call from Retailer X advising that it would be taking over her account. The customer reported that the Retailer X salesperson advised her that the customer's billing would not change and would still come from her chosen retailer. The customer advised Retailer X that she would contact Retailer X if she wanted to transfer to them. The customer advised that she just wanted to report the matter to EWOV. (REP)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
F/2007/70	Referred complaint	5 Mar 2007	<p>The customer was dissatisfied with the information provided by a Retailer X marketing representative. He advised that a marketing representative contacted him on 5 March 2007. The Retailer X representative advised that it was acting on behalf of a local retailer and that it was offering him a discount. The representative then asked him for his details which he provided. He became concerned when the representative advised that he had a ten day cooling-off period. The representative advised that Retailer X and the local retailer were the same company. He was very dissatisfied with the 'misleading information' provided to him. In order to resolve the matter he would like 1) to terminate the contract with Retailer X; and 2) an explanation of the misleading information provided by the representative. (RHL)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/2609	Referred complaint	15 Mar 2007	<p>The customer has both her gas and electricity with her preferred retailer. She has received two phone calls from Retailer X in the last month. Both times she was advised by the telemarketer that if she changed to Retailer X, her preferred retailer will still supply her electricity, but Retailer X will bill her. The customer did not think this sounded right and called EWOV to seek clarification.</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			(REP) Potential compliance issue: Misleading or deceptive conduct
C/2007/2643	Referred complaint	16 Mar 2007	The customer advised that she received a call at about 1.00pm on 16 March 2007 from a representative named Rob from Retailer X. The customer was told that Retailer X had an agreement with her retailer to provide a discount and that he would send out a form so she could receive the discount. She asked for the representative's contact number and he gave 1300 130 824 ext 4537. The customer then called her retailer who said it had no agreement with Retailer X. The customer attempted to ring the Retailer X number provided but was unable to reach anyone. She wanted to report the activity to EWOV as she is concerned some people would be signed up not realising they were being misled. She thought it was particularly worrying where elderly people are concerned. (REP) Potential compliance issue: Misleading and deceptive conduct
C/2007/2728	Referred complaint	20 Mar 2007	The customer is dissatisfied that their account was transferred by Retailer X as a result of misleading representations made by one of its sale representatives. The customer advised that about a fortnight ago his wife received a call from a Retailer X sales representative. He advised her that Retailer X were a part of her retailer. Further, the Retailer X sales representative informed her that her account was not being transferred to another retailer, but that she would receive a 7% discount off their bills if they paid on time. In order to resolve the matter, customer is seeking Retailer X cancel the transfer, and, to express his dissatisfaction with the Retailer X sales representative's conduct. (RHL) Potential compliance issue: Misleading or deceptive conduct
C/2007/2770 G/2007/788	Complaints – investigation	21 Mar 2007	OBO stated that she worked in the energy industry and became concerned when the customer (her friend) informed her that her husband advised he received a phone sales call, but did not agree to any kind of transfer. The customer's husband did recall that the representative had informed him that his current retailer was being taken over by Retailer X, and that as of the next scheduled reading date his retailer wouldn't exist. When the sales representative asked for his driver's licence number, the customer became concerned and terminated the call. On 6 March 2007 the customer received a welcome pack for gas and electricity. The cancellation fax was sent on three occasions within the cooling off period, but on calling Retailer X the call centre operator (David) stated that he had never heard of the fax number that was provided to send it to. OBO refaxed the

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			cancellation to David's fax number. OBO and the customer lacked faith in Retailer X's ability to resolve the issue so OBO called EWOV. Customers are seeking a retrospective transfer to their previous retailer, without having to pay a termination fee. The case was resolved by Retailer X's assurances that it would cancel the transfers and not charge a termination fee. Potential compliance issue: Transfer without explicit informed consent
C/2007/2809	Referred complaint	22 Mar 2007	The customer was dissatisfied with the conduct of a marketing Retailer X representative. She advised that a marketing representative attended her property on 17 March 2007. The representative did not identify which company she represented. She was advised that she would stay with the same company, but it would take over the billing of customers. The representative then proceeded to use the customer's phone and asked that she state her name and age and told her to say yes to the questions asked of her. The representative then advised that she would receive further information in the mail. She became concerned as the representative did not identify herself. She then found out that the representative was from Retailer X (she contacted her phone company and retrieved the phone number that was used when the marketing representative used her phone). She was worried that Retailer X had all of her information. She wanted to cancel her contract within the cooling-off period. She believed that the representative was misleading. In order to resolve the matter, she would like 1) to cancel the contract within the cooling-off period; and 2) an explanation of the representative's actions and information provided. (RHL) Potential compliance issue: Misleading or deceptive conduct

SECTION 2

Cases (8) where the customer was only seeking information from Retailer X or had agreed to have information sent out to them, but was transferred to Retailer X in the process

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/1256 G/2007/351	Referred Complaints	2 Feb 2007	OBO advised that her father was telephoned by a Retailer X sales representative around two to three weeks ago and agreed to have some information sent out to him in the mail regarding Retailer X's contracts. He did not receive any information, but has instead received gas and

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>electricity bills from Retailer X. He contacted Retailer X to advise that he did not agree to a transfer and was informed that Retailer X had a telephone recording of the agreement, although it could not be located at the time. In order to resolve this issue, he is seeking that Retailer X: 1) locate the telephone recording of the agreement to the contract; 2) provide an explanation as to what basis Retailer X established an electricity account; 3) provide an explanation as to why it did not issue any contract information; 4) conduct a retrospective transfer of his electricity account to his chosen provider, on the basis that he did not agree to a transfer. (RHL)</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/1616	Complaint – investigation	13 Feb 2007	<p>The customer stated that he had his accounts for electricity and gas with his chosen retailer (he is the account holder). In about November 2006, his wife received a call from a Retailer X sales representative. She did not agree to a transfer and just requested information be sent out to her. Despite this, the account was transferred and he has received accounts from Retailer X, in his wife's name. His account with his chosen retailer has been finalised. He is extremely dissatisfied and has contacted Retailer X several times to raise his dissatisfaction that the transfer occurred without explicit informed consent and with a non account holder. Retailer X advised he could transfer however this would incur a fee. This complaint was resolved with the retrospective transfer the customer sought, but Retailer X defends the transfer as made with explicit informed consent.</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/1705	Complaint - investigation	15 Feb 2007	<p>The customer had contacted Retailer X, his retailer, to discuss his concerns about whether he was being charged an appropriate rate for the 27 properties he managed and been told he would receive a call back. Around 5.15 pm 14 February 2007, he received a call and the operator quoted a number of different figures quite quickly. The customer stated that he did not understand all of the rates and was concerned that he was being charged too much. Customer then explained that he had agreed to transfer around two years previously on the understanding that he would be billed the same rate as his previous retailer, less 7% if paid on time. The customer was then told by the operator that he could be offered the gazetted rate. The customer asked for written information as he was in his car and was unable to follow what the operator was saying. He was told a package would be sent and the operator then asked if he could record the conversation. The customer agreed and was then asked a series of questions to which he gave non-committal answers. The</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			operator asked if customer wished to <i>continue</i> and he said 'hmmm'. The recording was ceased and the customer confirmed again that he would receive the packet in the mail. The customer did not see the conversation as a verbal contract as he did not provide explicit informed consent. As an outcome, the customer wanted to lodge a complaint regarding the sales tactics, to clarify whether his contractual rate was what he had agreed to initially, and to confirm he had not agreed to a new contractual term. (Case still in progress) Potential compliance issue: transfer without explicit informed consent and misleading and deceptive conduct
C/2007/1901	Referred Complaint	21 Feb 2007	The customer was dissatisfied that his electricity was transferred to Retailer X without his consent. He received a telephone call from a Retailer X marketing representative in early February 2007. He asked for information about the electricity rates offered to be sent to him before considering whether he wanted to transfer to it. He then received a letter stating that he was a customer of Retailer X. The letter stated that both his residence and his dairy had been transferred to Retailer X. He was dissatisfied as he had not consented to any transfer. (RHL) Potential compliance issue: Transfer without explicit informed consent
C/2007/2029 G/2007/593	Referred complaints	26 Feb 2007	The customer had his gas and electricity accounts with another provider. His wife received a call from Retailer X requesting that she change her gas and electricity accounts to it. She declined to give permission as the accounts were in her husband's name. Retailer X advised that it would send out some information to her. The customer received this information and threw it in the bin. He has now received a final gas bill from his chosen provider. He also received an electricity bill from Retailer X for the period 31 January 2007 to 14 February 2007. EWOV conducted searches which show that both the gas and electricity accounts were transferred to Retailer X on 31 January 2007. The customer was seeking an explanation as well as retrospective transfers. (RHL) Potential compliance issue: Transfer without explicit informed consent
C/2007/2131	Complaint - investigation	28 Feb 2007	The customer was originally with one provider and was in the process of being transferred to another (contract signed in November 2006). She had during the previous months shopped around for the best deal on the electricity rates. She contacted Retailer X around 23 October 2006 to request quote information. Retailer X took her through a verbal recording however she stated during the recording that she was only interested in receiving a quote. Retailer X advised the only

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>way to get a quote was by doing the recording. After the recording she again clearly stated she did not want to transfer or agree to the contract at this stage. Despite this Retailer X put in a transfer request to the current provider to take their account. She received an account for one week's electricity from Retailer X based on an estimate. She called Retailer X on 20 February and was advised that Retailer X was the customer's provider. She spoke to a supervisor who advised that as there had been a voice recording she was bound by the contract. Customer explained that she was informed that she could only get a quote by doing the recording. The supervisor retrieved the recording and attempted to play it for the customer but it would not work. She was told she would receive a return phone call but did not receive this. She called back again and Retailer X agreed to cancel the contract and return the account to her previous retailer. On 23 February 2007 she received a letter from Retailer X issued on 20 February stating that if Retailer X went ahead with the cancellation she would be charged a \$75 termination fee. During the last conversation with Retailer X she was advised the account would be sent back to her previous retailer but could not tell her which retailer this would be. She stated that her account should be with the retailer with which she has signed a contract but Retailer X refused to advise which company would receive her account.</p> <p>They have lost faith in Retailer X's ability to resolve this issue. They are seeking an apology and for the fee of \$75 to be waived. Also an assurance that the contract has been cancelled. (Case in progress)</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/2963	Referred complaint	27 Mar 2007	<p>The customer advised that she had suffered a severe illness for which she was still receiving treatment. She received a call from a telemarketer who implied that the call was coming from behalf of her current provider. At no stage did the telemarketer advise that they were representing Retailer X. She advised that she agreed to an arrangement where the retailer would send her out material to look at. She advised that she was not of sound mind at the time due to medication and other circumstances and could not comprehend what she was being advised. After she received the documentation she was not interested in going ahead with it. She then received a call from her chosen retailer advising that she had not paid her final account. She advised that she had not moved providers. She was advised that her account had been transferred. She contacted Retailer X and was advised that although she did not enter into a contract they sent her informative material. That meant she had ten days cooling off period. She was not aware that she was being transferred.</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			Retailer X advised that it would allow her to cancel however she would have to pay \$75. In order to resolve the matter she would like to have the \$75fee waived. She would like to have her account retrospectively transferred back. (RHL) Potential compliance issue: Transfer without explicit informed consent
G/2007/872	Referred complaint	30 Mar 2007	The customer stated that she received a phone sales call from Retailer X and advised Retailer X that she would think about transferring. She received another phone call and agreed to transfer with an incentive of a 7% discount, but she stated that she consistently repeated that she would only agree once she had read the terms and conditions. She received the information pack and decided that she did not wish to transfer as Retailer X were offering monthly billing, not quarterly. The customer did not respond or contact Retailer X to cancel. She received a phone call in early March 2007, to confirm that she accepted the terms and conditions and advised the operator that she did not wish to go ahead due to monthly billing. The operator asked customer what sort of billing she wanted and she stated that she did not wish to transfer under any circumstance. The operator then terminated the call. She received a bill from Retailer X. She called her retailer to advise it of the issue and that she didn't wish to be with Retailer X. The customer was told that she would need to pay the first bill. The customer then called Retailer X and was advised that if the voice recording reflected what she had stated, Retailer X would release her from the contract and retrospectively transfer her to her chosen retailer. The customer service officer informed the customer that she should have signed the cancellation form, but the customer stated that she did not receive such a form. The customer service officer confirmed that she would obtain the voice recording and call the customer as soon as possible. The customer was satisfied that Retailer X would respond to her concerns. The customer called EWOV to report the issue and request that it prevent Retailer X from marketing in such a manner. (RTP) Potential compliance issue: Transfer without explicit informed consent

SECTION 3

Cases (5) where Retailer X entered into energy agreements with non account holders

Marketing to non account holders was also mentioned, as a second issue, in C/2007/2395 (see section 4 of this report)

EWOV acknowledges that marketing to non-account holders is not a breach of the *Code of Conduct for Marketing Retail Energy in Victoria* but considers that good industry practice requires the consent of the account-holder.

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/1545	Referred Complaint	12 Feb 2007	EWOV received the customer's email dated 10 February 2007. The customer's gas and electricity are with another provider. The email outlines that late last year 2006, Retailer X phoned to promote its deals and spoke to his wife. She advised that it was not her decision whether or not to transfer. The customer has now received a bill from Retailer X, under his wife's name which is spelt wrongly. Retailer X advised that a transaction can be done over the phone without any written agreement or signature. (RTP – the email did not have contact details) Potential compliance issue: Transfer without explicit informed consent
C/2007/1836 G/2007/509	Referred Complaints	20 Feb 2007	OBO was dissatisfied that her electricity and gas were transferred to Retailer X. OBO was the account holder at her property and believed that another retailer was supplying her energy. She received two letters addressed to the customer stating that she had authorised the transfer of the electricity and gas to Retailer X. OBO was very dissatisfied with that. She advised that she was transferred to Retailer X without her consent or knowledge, as the account holder. Evidently the OBO's daughter had agreed to a transfer. (RHL) Potential compliance issue: Transfer without explicit informed consent
C/2007/1933 G/2007/541	Referred Complaints	22 Feb 2007	A Retailer X sales representative came to the customer's door in December 2006 and his son transferred the electricity account. His son signed a contract of supply for two years. The contract is in the customer's name, but his son signed it. The customer wanted to know if he was responsible for the account (RTP) Potential compliance issue: Transfer without explicit informed consent
C/2007/2335 G/2007/662	Complaints – investigation	6 Mar 2007	The OBO is dissatisfied that his gas and electricity contracts have been transferred to Retailer X. He was the primary account holder for his electricity and gas contracts with his chosen provider. His wife was telephoned by a sales representative of Retailer X and believed that she had only agreed to transfer the electricity account. He was dissatisfied that Retailer X had conducted the transfer of the electricity account, without his approval. He then received a final bill for both gas and electricity from his previous provider, and was charged a termination fee of \$70 for each

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			account. The matter was resolved by Retailer X agreeing to transfer the accounts back as of the date they were changed and to offer an apology. Potential compliance issue: Transfer without explicit informed consent
C/2007/2553 G/2007/762	Referred complaints	16 Mar 2007	The customer was dissatisfied that a non-account holder was able to transfer the gas and electricity accounts to Retailer X. OBO advised that the Salvation Army owned a property with tenants residing in it. In May 2006, one tenant established an account with Retailer X for gas and electricity under his name. He was not the account holder. It has been difficult for the Salvation Army to change the accounts back into its name again. She was very dissatisfied that the tenant was able to transfer to Retailer X as he was not the account holder. In order to resolve the matter, the Salvation Army would like 1) to be retrospectively transferred back to the retailer of choice; and 2) information as to the internal processes of Retailer X in relation to marketing conduct issues. Potential compliance issue: Transfer without explicit informed consent
C/2007/2727	Referred complaint	20 Mar 2007	The customer is dissatisfied that her account has been transferred by Retailer X into her friend's name, as a result of misleading representations made by a sales representative. The customer advised that approximately two weeks ago, the Retailer X sales representative came to her door. She was not present at the time, however her friend was. The customer's friend informed the sales representative, that she was not the account holder. The Retailer X sales representative advised her to sign some documents so that he would remember to come back to discuss it with the customer. She subsequently received a final bill from her previous retailer. (RHL) Potential compliance issue: Misleading or deceptive conduct

SECTION 4

Cases (4) where the customer signed a document, unaware they were signing a contract with Retailer X

Being unaware of signing a contract was also mentioned, as a second issue, in C/2007/2727 (see section 3 of this report)

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
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Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/1570	Referred Complaint	12 Feb 2007	<p>The customer was with another provider. A Retailer X representative approached the customer's house and spoke to the customer's son. The son was told by the Retailer X sales representative that the son was required to sign a document to prove to the sales representative team leader that the house had been visited. It has turned out that the document was a contract to switch energy providers. (RHL)</p> <p>Potential compliance issues: Misleading and deceptive conduct and transfer without explicit informed consent</p>
C/2007/1925 G/2007/538	Complaints – investigation	22 Feb 2007	<p>On 9 February 2007 a sales person attended the customer's property and advised that he was from the company supplying their gas and electricity and asked to see their bills to ensure that they were receiving the appropriate discounts. They also asked to see the meters. She provided the bill details and other personal details and was requested to sign a form. At this stage she questioned the representative further and was advised the representative was from Retailer X and she would actually be transferring her accounts. She did not sign anything, advised the accounts are in her husband's name and they did not want to transfer. In week beginning 12 February 2007 she received a call from Retailer X to check whether she had met with the salesperson and advising her of the benefits of Retailer X. She advised she did not want to transfer and ended the call. She subsequently received a letter from Retailer X advising that their gas and electricity had been transferred to Retailer X. She contacted Retailer X twice to advise that she did not authorise any transfer to Retailer X and complain about the conduct of the sales representative. She requested the transfer be cancelled but is uncertain whether this is to occur. The cases were resolved on the basis that Retailer X cancelled the contracts and the transfers and gave assurances that it had followed up appropriately with the sales representative.</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/2395	Complaint – investigation	8 Mar 2007	<p>Customer is dissatisfied that his supply has been transferred without his consent. On 30 November 2006 he received a final bill from his chosen provider for his gas supply. He contacted that provider and it advised him that another retailer had requested to transfer his supply. He was also advised that his electricity supply had transferred to another. He recalled that his son had been approached by a representative from an unknown retailer who offered a contract to his son. He advised that his son at the time replied that "it wasn't his place" to enter into the contract, but was asked by the representative to "sign something to say that they had actually visited". His son</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			signed the document without reading it. He then received a bill from Retailer X for gas and electricity usage in his son's name. The name was spelt incorrectly. He contacted Retailer X twice and on both occasions was advised that this matter would be referred to a higher level contact and he would be called back. He has not yet received a return call to date. The matter was resolved when Retailer X transferred the accounts back, apologised and made a customer service gesture. Potential compliance issue: Transfer without explicit informed consent

SECTION 5

Cases (4) where the customer had reported to EWOV that Retailer X had engaged in excessive marketing techniques

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/1409	Referred Complaint	7 Feb 2007	The customer has been contacted by Retailer X with relation to a marketing campaign. She is dissatisfied with the sales representative's conduct. She has been marketed "day after day". She wishes for Retailer X to permanently cease all types of marketing to her. To resolve this matter the customer would like: 1) to receive a written and verbal apology for the representatives pressure sales tactics; 2) to be placed on the no contact list; and, 3) to receive financial recognition for the inconvenience caused. (RHL) Potential compliance issue: Failure to cease marketing
C/2007/2398 G/2007/680	Referred complaints	8 Mar 2007	The customer received a marketing call from a female telemarketer from Retailer X on 7 March 2007. He felt pressured by the telemarketer and provided details of his pension card number and driver's licence number. He advised the telemarketer that he did not want to sign up his account now, but if he was sent written information, he would have a look at it and then decide if he wanted to transfer his gas and electricity accounts. He asked a number of times for confirmation that his accounts would not be signed up to Retailer X until he called, but he believes the telemarketer was evasive about this. The customer was then advised that he would get another phone call in two minutes. He hung up and received another phone call from a male telemarketer and the customer believes he put a lot of pressure on him to say the word "yes". The customer then became upset and advised that he definitely did not want to sign up with Retailer X. He hung up and then received

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			another call from the initial female telemarketer who again attempted to pressure him to transfer his accounts. He is concerned that his gas and electricity accounts will be transferred to Retailer X as it has his personal details. (RHL) Potential compliance issue: Failure to cease marketing
C/2007/3019	Referred complaint	28 Mar 2007	Over the last three days, the customer has been receiving two marketing calls a day from Retailer X requesting that he transfer his account to it. He believes this is excessive marketing and has requested a number of times that it stop. In order to resolve this matter, he would like Retailer X to: 1) Explain its policies and procedures surrounding acceptable marketing conduct. 2) Put him on its 'Do Not Call' register. (RHL) Potential compliance issue: Failure to cease marketing
C/2007/3051	Referred complaint	29 Mar 2007	The customer has received eight marketing calls in the last two weeks from Retailer X. On 25 March 2007, he called Retailer X's call centre and requested that his name be removed from its call list. He received another marketing call from Retailer X on 29 March 2007. In order to resolve this matter, he would like Retailer X to ensure that he is put on Retailer X's 'Do Not Call' register. Potential compliance issue: Failure to cease marketing

SECTION 6

Cases (3) where the customer reported to EWOV that Retailer X represented it was another provider or was not a retailer

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/1591	Referred Complaint	12 Feb 2007	The customer was dissatisfied with the actions of a Retailer X marketing representative. He received a phone call in relation to transferring to a retailer. At that time, he was advised that the representative was from CitiPower. He consented to transfer his electricity. He was provided with a telephone number to contact if he wanted to terminate the contract within the cooling-off period. He tried on numerous occasions to cancel the contract on the number provided, but could not get through. He then received a letter from Retailer X on 12 February 2007 stating that he had transferred to it. He was dissatisfied that he was misled in the information provided, ie that the representative was from

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			CitiPower. He was also dissatisfied that he was unable to terminate the contract with the telephone number he was provided with. (RHL) Potential compliance issues: Misleading and deceptive conduct and transfer without explicit informed consent
C/2007/2164	Referred Complaint	1 Mar 2007	The customer was dissatisfied with the 'attitude' of a Retailer X telephone sales consultant and the representations made by him. The Retailer X consultant offered discounts to customer but advised that Retailer X were a billing company, not a retailer. He did not mention that his actual account would be transferred if the customer agreed. In order to resolve the matter, customer is seeking clarification of why he was informed that Retailer X was not a retailer and whether Retailer X were marketing to his area. Further, he would like to express his dissatisfaction with Retailer X about the manner of the sales representative. (RHL) Potential compliance issue: Misleading and deceptive conduct
C/2007/2506 G/2007/702	Referred complaints	13 Mar 2007	The customer advised he received a phone call from a marketer. He advised he was told if he pays the bill monthly he would get a 7% discount. He didn't realise that his gas and electricity was going to be transferred. He reported that he agreed to pay monthly, not to change the company. He called Retailer X and stated that he didn't want his accounts to be with Retailer X. The customer refused to pay Retailer X. Retailer X requested that he pay. He requested Retailer X to change him back to his previous retailer, and Retailer X refused. (RHL) Potential compliance issue: Transfer without explicit informed consent

SECTION 7

Cases (4) where the customer did not have the capacity to provide explicit informed consent

Absence of explicit informed consent due to capacity was also mentioned, as a second issue, in C/2007/2963 (see section 1 of this report)

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/2196 G/2007/631	Complaints – investigation	2 Mar 2007	OBO stated that the customer was elderly with hearing difficulties. She was contacted by Retailer X in about August 2006. She did not agree to transfer her account but shortly after the contact

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>commenced receiving bills from Retailer X. In October 2006, she transferred back to her retailer of choice. Since this time she has continued to received bills from Retailer X that include termination fees and other charges that appear to be increasing. On 4 January 2007, she sent a letter to Retailer X requesting the matter be investigated however there was no response. On 9 February 2007, her son sent a letter to Retailer X requesting the matter be addressed but again no response. Since this time a further reminder notice was issued. The case was resolved by Retailer X's acknowledgement that the customer had transferred away, the reversal of the termination fees and the waiving of the remaining usage charge.</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
F/2007/73	Referred complaint	6 Mar 2007	<p>The customer had been approached by a Retailer X sales representative. The OBO stated that the customer does not have the capacity to sign any agreements and that it would have been evident to the sales representative. The OBO had taken steps in retrospectively transferring the customer back to her previous retailer. The OBO believed that EWOV should take measures in enforcing upon providers certain standards with regard to marketing to the elderly. (REP because OBO had dealt with the matter)</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/2196 G/2007/629	Complaints - investigation	2 Mar 2007	<p>The customer, who is elderly, was on strong medication at the time and had a carer, received a visit from a Retailer X sales representative on 28 January 2007. He agreed to transfer at the time but has now realised that it was not in his best interests and that he was not making sensible decisions at the time. He wants to revert back to his previous retailer on the same dual fuel plan he previously had. He has received a cancellation fee for the dual fuel plan and a final account for the gas account. He is suffering from financial hardship as well as from health issues. He really needs the account to be returned and the stress is severely impacting his health. He is seeking that Retailer X release the gas account and cancel the contract. The case was resolved when Retailer X released the customer from the contract.</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/2948	Complaint – investigation	27 Mar 2007	<p>The customer received a phone call from a Retailer X marketing representative and due to his limited understanding of English as his main language is Croatian he did not provide explicit informed consent. He believes he was misled to transfer to Retailer X. He was then charged a</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>termination fee of \$68 from his previous retailer. He would like Retailer X to cancel the contract and retro transfer him back to his previous retailer. The matter was resolved by Retailer X's agreement to this.</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>

SECTION 8

Cases (3) where the customer has reported that the Retailer X representative said or implied that there was a Government involvement or association

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/1216	Referred Complaint	1 Feb 2007	<p>The customer was dissatisfied with the misleading representations made by a Retailer X sales consultant. She agreed to a transfer of her account as a result. The customer advised that the Retailer X sales consultant attended her property on 1 February 2007. He stated that he was from the 'Government' offering discounts on her account. Further, he stated that her electricity provider would remain the same. She has not been able to access its call centre to cancel the transfer. (RHL)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/2551	Referred complaint	14 Mar 2007	<p>The customer advised that she was marketed to today by a Retailer X telemarketer. He advised that the government was taking over the electricity supply in her area and increasing the tariff because customers in her area were not paying their electricity bills. She was not convinced by this information and told the market representative that she was not interested. However she was concerned that this type of tactic would be used on other customers in her area. In order to resolve the matter she would like to be removed from Retailer X marketing lists. (RHL but no call back from Retailer X required).</p> <p>Potential compliance issue: Misleading or deceptive conduct</p>
C/2007/2795	Referred complaint	21 Mar 2007	<p>The customer states that he is dissatisfied with representations made to him by a door-to-door sales person representing Retailer X and identification was not produced on request. The salesperson advised that there was going to be an upgrade to electricity supply in the next fortnight and stated that</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>he was in the area to see which residences qualified for a seven per cent discount that would come to the area upgrade. The salesperson then advised "if your NMI starts with a five or a seven you are not eligible for a discount but if it starts with a six you are". He believes that the salesperson was deliberately conveying an impression that he was representing an independent or government body, not a commercial entity. The salesperson requested he produce his bills. He went and got the bills but asked for identification prior to showing them. The salesperson said "It's only my second day in the job, I'm still waiting on my name badge". In order to resolve this the customer is seeking that Retailer X provide an explanation of why ID was not produced and address each of the statements (detailed above) made by the salesperson. (RHL)</p> <p>Potential compliance issues: Misleading or deceptive conduct and failure to produce identification</p>

SECTION 9

Cases (2) relating to the marketing of Green Energy

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/1846	Referred Complaint	20 Feb 2007	<p>Customer concerned with the information provided by a Retailer X marketing representative. She received a phone call from a Retailer X marketing representative in relation to green energy on 20 February 2007. She believed that Retailer X were implying that it was a government initiative to save energy. Retailer X would not send out an information pack unless she consented to transfer to it. She was seeking clarification about whether Retailer X were offering green energy. (RHL)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/2039	Referred Complaint	26 Feb 2007	<p>Customer believed that she may have been misled in the information provided in relation to green energy by Retailer X. She transferred to Retailer X. However, she then went on to the Energy Watch website and realised that Retailer X was not government accredited in relation to green energy. She was also seeking information about cooling-off rights. (REP – the customer was content to report the matter rather than having an RHL)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>

SECTION 10
Other cases (12)

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/1228 G/2007/347	Referred Complaints	2 Feb 2007	The customer advised that he received a call at 7.15pm on 1 February 2007. He advised that salesperson was very difficult to understand. The customer was not interested in transferring providers and advised the salesperson of this. He advised that salesperson advised him that he needed details from the customer in order to receive a discount on his bills. The customer advised that salesperson asked him for the meter number, this was provided. He was also asked for pension number, license number and other personal details, some were provided. The customer advised that he hung up on the salesperson when his license number was requested. The customer was unable to find a contact number for Retailer X on the internet and wants to ensure that he is not transferred to Retailer X. (RHL) Potential compliance issue: Failure to cease marketing
C/2007/1611	Referred complaint	13 Feb 2007	OBO called on behalf of her mother. She stated that her mother was contacted by phone, by a Retailer X sales representative. She advised the Retailer X representative that she did not understand what they were saying and the representative told her to "say ok and we will read it out for you". The OBO states that her mother's account transferred to Retailer X without her consent. She contacted Retailer X who advised the contract could be cancelled at a cost of \$34.78 and the account could go back to her chosen retailer as of 24 November 2006. She believed that the transfer to this retailer had occurred but is continuing to receive accounts from Retailer X. When she recently contacted Retailer X, it advised that the contract could still be cancelled however would cost more than the previously advised exit fee of \$34.78. (RTP – OBO wanted to check details before EWOV investigated) Potential compliance issue: Transfer without explicit informed consent
C/2007/1782	Complaint – investigation	16 Feb 2007	A Retailer X sales representative attended the customer's property in December 2006. The sales representative reviewed his bill from his retailer at the time and noted that he was on a stepped tariff. The sales representative advised him that that he would not be on a stepped tariff with Retailer X and he would be charged \$0.1297 for electricity. On this basis he transferred to Retailer

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			X for gas and electricity and has been issued with monthly bills. His account number is 66788120. He noted that he is being charged on a stepped tariff for electricity at a rate of \$0.1367 and then \$0.1387. He contacted Retailer X on two occasions to advise he was dissatisfied that the rates he was being charged differed to the rates as per the contract. Retailer X advised that he was being charged at the correct rate. The case was resolved on the basis that a flat tariff not being available in the customer's area, Retailer X would allow the customer a 10% discount for on-time payment, rather than 7%. Potential compliance issue: Misleading and deceptive conduct
F/2007/61	Referred Complaint	23 Feb 2007	The customer has been transferred to Retailer X. He believes that he was tricked into transferring from his original provider to Retailer X. He does not know whether he has been marketed on a door-to-door or telephone campaign. (RHL) Potential compliance issue: Transfer without explicit informed consent
C/2007/2031	Referred Complaint	26 Feb 2007	The customer had her electricity account with another provider. She has recently received a welcome letter from Retailer X dated 15 February 2007. She does not recall giving permission to Retailer X to transfer the account. (RHL) Potential compliance issue: Transfer without explicit informed consent
G/2007/584	Complaint – investigation	26 Feb 2007	The customer she is about to move out of the premises and it will be rented out. She transferred her electricity to Retailer X approximately 6 weeks ago, but did not transfer her gas at the time. She later received paperwork from Retailer X for the transfer of both her electricity and gas, although she did not sign or return the documents relating to the transfer of the gas supply. She is seeking to disconnect the gas supply as at 3 March 2007, as her new tenants will be moving in. She has been advised by Retailer X that she can transfer back to her former provider or disconnect supply, but a termination fee will apply. She has also been charged a termination fee of \$70 by her former provider. The customer is seeking an explanation for the gas transfer, reimbursement of the termination fee charged by the other provider and disconnection of the gas supply without penalty. (Case in progress) Potential compliance issue: Transfer without explicit informed consent
C/2007/2313	Referred	6 Mar	The customer advised that she received a final bill from her retailer. She rang the retailer on 5

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
	complaint	2007	<p>March 2007 and was told that she had signed a contract with another provider. The customer advised that she does not recall signing a contract and she is very careful about what she signs. In order to resolve the matter, the customer does not want to be transferred to another provider. (RHL)</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/2488 G/2007/719	Complaints – investigation	13 Mar 2007	<p>The customer transferred to Retailer X on the basis of assurances about rates and discounts. However, when the first bill arrived, the rates were higher than those promised. She advised that she spoke to Retailer X about this three times and was eventually told that the rates had gone up on 1 January 2007. She was offered a larger discount to make up but the bills continued to have problems and be confusing. She was told she would be moved to a quarterly billing cycle but this did not happen. She also missed out on the discount for paying on time because she had not been told that when paying by internet it was necessary to pay two days before the due date to get it. The case was resolved when Retailer X agreed that it would not object to the customer transferring and would not charge termination fees.</p> <p>Potential compliance issue: Misleading or deceptive conduct</p>
F/2007/81	Complaint – investigation	15 Mar 2007	<p>This case follows on from F/2007/73. The OBO rang back because the account had not been transferred away from Retailer X. The case was resolved when Retailer X confirmed that the retrospective transfer had taken place.</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/2792	Referred complaint	21 Mar 2007	<p>OBO stated that Retailer X informed her that the customer had received a phone sales call from Retailer X in January 2007, but the customer informed OBO that she did not recall the phone call. The customer received bills from her current retailer (final bill) and from Retailer X. Customer provided verbal authority to OBO and she called Retailer X to ask what had occurred and it was then that OBO was advised that the customer had agreed to a contract over the phone. OBO explained that the customer had no recollection of the transfer and asked that the account be transferred back. The Retailer X operator played the voice recording to OBO and OBO noted that the sales representative spoke over the top of the customer and she didn't really provide her explicit informed consent, it was more a pressure sale. Retailer X informed OBO that she could take the issue to her supervisor, but that she didn't think the customer would be allowed out of the</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>contract, and that Retailer X will offer a 10% discount in compensation. OBO stated that the customer did not want to remain with Retailer X, but was told to tell customer she was locked into a contract, then call Retailer X back. OBO called EWOV to clarify customer's rights prior to speaking to her and returning Retailer X call. (RHL but no call back required because OBO was dealing with Retailer X)</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/2760	Complaint – investigation	21 Mar 2007	<p>The customer stated that she had a call from a Retailer X sales person in November 2006. The customer stated that she called Retailer X after the call as she was concerned about what had occurred during the call, and thought she may have agreed to something she wasn't aware of. Retailer X informed her that she had definitely not agreed to anything. She received a letter from Retailer X saying that the contract would commence 29 Jan 2007. She wrote to Retailer X in December 2006, stating that she wanted to confirm there would be no transfer. The customer received a bill and called Retailer X to enquire about it and was told that she had agreed to a verbal contract. The customer explained what had happened on the phone and that she had written to Retailer X, but was told it did not have the letter and even if it did, it was past the cooling off period. She spoke to her chosen retailer who advised her to call Retailer X and ask to speak to a manager, which she did, but was still told that she must pay the termination fee if she cancelled. The customer was dissatisfied and called her retailer again who referred her to EWOV. She would like to transfer back to her previous retailer without penalty. She cannot afford the fee. The matter was resolved by Retailer X's agreement to a transfer without cancellation fees.</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/2968	Referred complaint	27 Mar 2007	<p>The customer is dissatisfied with the representations made by a Retailer X sales rep who just came to his door. The sales representative advised that they were in the area and were doing some 'free' upgrades and requested to look at his bills. He did not advise which company he represented until customer requested the information. Customer expressed concern that elderly residents will be misled and is seeking that Retailer X be informed of the conduct. (REP)</p> <p>Potential compliance issue: Misleading or deceptive conduct</p>

**Retailer Y Marketing Cases
 received by EWOV in January and February 2007 and raising potential compliance issues**

An **enquiry** is a request from a customer for general information (for example, about relevant codes or guidelines) (PGI outcome) or a matter that is referred to another agency (for example if it's outside EWOV's jurisdiction) (OOJ outcome).

A **complaint** is an expression of dissatisfaction regarding a policy, practice or customer service performance of an energy or water provider which is part of the EWOV scheme, where a response or resolution is explicitly or implicitly expected. If a customer has not yet spoken with the energy or water provider about their complaint, EWOV generally refers them back to the provider's call centre (complaint – RTP). If the customer has spoken once with someone at the call centre but it remains unresolved, EWOV usually refers them to a higher-level contact at the provider (complaint- RHL). EWOV fully investigates complaints which remain unresolved following two or more contacts between the customer and energy or water provider (complaint – investigation). Where a customer does not wish to be contacted by the company but wants to report the matter to EWOV, EWOV records the customer's complaint and takes appropriate action where the matter may be a regulatory and/or systemic issue (complaint – REP).

Please note that the term “OBO” refers to a person contacting EWOV on behalf of a customer.

Section 1: Cases (8) where the customer has reported that the Retailer Y representative said or implied that there was a Government involvement

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/453	Referred Complaint	12 Jan 2007	<p>The customer sent an email complaint form. A sales representative from Retailer Y came to the customer's door twice in the last fortnight. When the customer questioned the representative as to who she was, she said she was a NSW government representative who could offer savings. The customer realised after speaking with her for a while that Retailer Y is another supplier of electricity. On 10 January 2007, another representative knocked on the customer's door, and the customer recognised the representative immediately and advised that he did not want to speak about any offers. The representative then advised that she had been sent by the NSW government and would like to see a copy of the customer's bill, and that it was a free service offering a discount off the bill. The customer thought this was a misleading statement. He believed that the representative had used strong statements to encourage him to believe she was a government representative. The customer wished to remain anonymous and merely to report the matter to EWOV. (REP)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
F/2007/14	Referred Complaint	15 Jan 2007	<p>The customer advised that a Retailer Y representative attended his property on 6 January 2007. He believed that the representative was from the government, due to the name of the retailer. The representative advised that he would like to peruse his electricity and gas bills to see whether he was applicable for a 'further' discount. He believed that this may mean that he would remain with his own retailer. He provided the bills to the representative. The representative asked for details, which he was confused about as he believed the 'government' would know the details. He consented to the transfer. He was provided</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>with the contract, which he looked at. At that point he realised that the representative was from a retailer. He was dissatisfied with the misrepresentations of the Retailer Y person. In order to resolve the matter, he would like Retailer Y to stop the misrepresentations. He contacted Retailer Y on 15 January 2007 to cancel the contract he had with it. He wanted to report the matter to EWOV. Customer did not want to deal with Retailer Y any more. (REP)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/1069	Referred Complaint	29 Jan 2007	<p>The customer advised that a Retailer Y representative attended his property on 29 January 2007. The Retailer Y representative looked at his bills and advised that he was entitled to receive a 5% discount with Retailer Y. He was 'not keen' on the representative's approach. He believed that the representative was from an 'authority' as he was checking his rates on his bill, and not from a retailer. However after asking where the representative was from, he was advised that he was from Retailer Y. (REP)</p> <p>Potential compliance issue: Misleading or deceptive conduct</p>
F/2007/42	Referred Complaint	9 Feb 2007	<p>OBO advised that the customer is concerned about the marketing relating to her gas and electricity account. OBO advised that the customer was unsure of whether or not she had actually accepted a contract with Retailer Y as she thought that salesperson was from the government. In order to resolve the matter, the customer wants to ensure that any contract is cancelled and transfer does not occur. (RHL)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/1594	Referred Complaint	12 Feb 2007	<p>A sales representative from Retailer Y came to the customer's door on 12 February 2007. He did not state which company he was from. The customer believes that he made representations that he was from the government. He asked to see her account to check her greenhouse gas emissions. On questioning him more, she realised he was from Retailer Y and that he wanted her to transfer her electricity account to it. The customer did not reveal any personal details, so does not believe she will be transferred over, but is dissatisfied with the marketing practices used by the sales representative. (REP)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/1637	Referred Complaint	13 Feb 2007	<p>The customer had a sales representative from Retailer Y come to her door on 13 February 2007. He advised that he was sent by the government to make sure that customers were being charged at the correct rates. The customer advised the sales representative that she was not interested. The customer states that the salesperson then swore at her. (REP)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/1751	Referred Complaint	16 Feb 2007	<p>A sales representative from Retailer Y came to the customer's house on 14 February 2007. He believes that the sales representative misrepresented that he was from the government and was checking bills. The customer asked the sales representative three times which provider the sales representative was from and was advised he was from Retailer Y. In order to resolve this matter, the customer would like Retailer Y to explain the process it uses to train its sales representatives and to</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			advise if Retailer Y has a policy relating to acceptable marketing practices. (RHL) Potential compliance issue: Misleading and deceptive conduct
C/2007/1934	Referred Complaint	22 Feb 2007	An Retailer Y sales representative attended the customer's home on 21 February 2007, and asked to see her bill. The representative informed the customer she may be paying more than the government gazetted tariff and that Retailer Y was a government based company. The customer showed her bill and was told that her current provider was overcharging by a few cents. The customer was offered loyalty rewards and discounts off her bills if she paid on time, as well as the 'correct' tariff. The representative also informed the customer that her billing company would not change. Customer obtained written information from the representative, but asked to think about the transfer. The representative agreed and said he would be in the area for a few more days so the customer could contact him. The customer then contacted EWOV to seek independent advice about whether Retailer Y were government based and if her billing company would change. As an outcome, the customer wanted to ensure no transfer took place and to discuss the salesperson's conduct. (RHL) Potential compliance issue: Misleading and deceptive conduct

Section 2: Cases (11*) relating to the marketing of Green Energy

(* 'Green energy' was also mentioned, as a second issue, in C/2007/786, C/2007/876 and C/2007/2129 (see section 3 of this report). Green energy was also mentioned incidentally in several other cases in sections 3 and 4 of this report.)

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/462	Referred Complaint	12 Jan 2007	OBO lodged a complaint. The customer (OBO's husband) was marketed to by a door to door salesperson ("Andrew") on 11 January 2007. The OBO advised that Andrew had immediately stated, "Don't worry, I'm not a door to door salesperson", before advising that 'Green Energy' was taking over the electricity supply in Footscray. As the customer had wanted to transfer his supply to Green Energy, he asked Andrew in and agreed to transfer the supply to Retailer Y. He was advised that Retailer Y would be "cheaper" but was not told the specific rates that would apply to the contract. No rates schedule or any details of the tariffs/charges to apply was left with the customer. When the OBO returned home and found that there was no rates schedule or information about the type of Green Energy supplied by Retailer Y, she contacted the salesperson directly on his mobile. He handed the phone to his colleague, as he was driving at the time. His colleague advised that a) a charge of 12.97c per kwh (excl GST) would apply to all usage b) the customer hadn't actually signed a contract at all, as there is no fixed term or termination fees c) the energy supplied would be 100% renewable energy, the "highest grade" of renewable energy available. When the OBO sought clarification of what percentage of the power would be accredited "new" renewable energy, he confirmed that the supply would be 100% accredited, new renewable energy. The OBO queried how Retailer Y was able to supply 100% new, accredited renewable energy at the same price as the local standing tariff,

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>without any fixed term or termination fees. The salesperson advised that as Retailer Y owns a sugarcane biomass plant in Qld, they are able to "cut out the middle man", meaning that their rates are really good. The OBO checked the Retailer Y website the following day, and found that the Green Energy product marketed, with no surcharge, termination fees or fixed term, consisted of only 10% accredited Green Energy. She contacted Retailer Y, outlined her concerns regarding the marketing and requested that the contract be cancelled. The representative advised that the customer (rather than the OBO) would need to call Retailer Y to cancel the contract. As the OBO did not wish to have her husband call through Retailer Y's general line and speak with a different representative who was not aware of the issue, she transferred the representative straight through to her husband for the contract to be cancelled. (RHL)</p> <p>Potential compliance issues: Misleading and deceptive conduct and failure to provide pre-contract information</p>
C/2007/562	Referred Complaint	16 Jan 2007	<p>The customer advised that a door-to-door salesman for Retailer Y came to her home on Monday 15 January 2007. According to the customer the salesman marketed Retailer Y as Green Energy but was unable to answer a number of questions in regard to where the Green Energy was coming from. Customer is concerned that not all of the energy is 'Green' and wants verification of where Retailer Y's energy comes from. (RHL)</p> <p>Potential compliance issue: failure to provide pre-contract information</p>
C/2007/624	Referred complaint	16 Jan 2007	<p>The customer was originally with different providers for gas and electricity. The customer states that a Retailer Y door to door sales representative misrepresented that she would stay with both companies, but the energy would be green. The customer had informed the sales representative that she did not want to change retailers for either gas or electricity as she had a prior debt to the companies. The Retailer Y representative however switched both the gas and electricity to Retailer Y, although having represented to the customer that both the existing accounts would stay with their respective retailers. The customer has taken steps to transfer the accounts back to the original retailers. The customer wanted EWOV to note the issue, rather than investigating it. (REP)</p> <p>Potential compliance issue: transfer with explicit informed consent</p>
C/2007/766	Referred Complaint	19 Jan 2007	<p>The customer had his electricity account with an incumbent provider. A sales representative came to his door and advised he was from that provider and would offer him Green energy. The customer signed up his electricity account. He received a letter from Retailer Y on 18 January 2007 saying welcome to Retailer Y. He called Retailer Y and advised he did not want to transfer his account to them and he only signed up because he thought that the sales representative was from his own provider. Retailer Y has agreed to cancel the transfer and his provider has agreed to take his account back. The customer wanted EWOV to be aware of Retailer Y's marketing practices. (REP)</p> <p>Potential compliance issues: Misleading or deceptive conduct and transfer without explicit informed consent</p>
C/2007/788	Referred Complaint	19 Jan 2007	<p>The customer advised that just before Christmas 2006, a door to door salesman from Retailer Y discussed Green Energy with her. The salesman advised that if she wanted to register for Green Energy she could do that with him and nothing</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>would change as far as her retailer is concerned, apart from a logo on her bills. The customer received a final bill from her provider in the week beginning 8 January 2007. She spoke with that provider and was advised that her account had been transferred to Retailer Y. The customer spoke with Retailer Y call centre in the week beginning 8 January 2007 and she was advised that she could not transfer back. She was further advised that the salesman was a contractor and not Retailer Y's responsibility. She was also advised that a supervisor from Retailer Y would get in contact with her within a week, but this did not occur. The customer did not want to change retailers and is concerned that her gas bill will also be transferred. (RHL)</p> <p>Potential compliance issues: Misleading or deceptive conduct and transfer without explicit informed consent</p>
G/2007/258	Referred Complaint	23 Jan 2007	<p>On 23 January 2007, a Retailer Y telephone consultant stated to the customer that his retailer did not offer green gas. He agreed to the transfer his accounts on this basis. The customer subsequently contacted his retailer and was informed that it did, in fact, offer green gas. In order to resolve the matter, he is seeking that Retailer Y cancel the transfer of his gas account. (RHL)</p> <p>Potential compliance issue: Misleading or deceptive conduct</p>
C/2007/921	Referred Complaint	23 Jan 2007	<p>The customer states that a Retailer Y door-to-door sales representative stated to her that the entire area was going to be converted to green energy. He requested to see her bills and advised that by signing the form, their previous company would still supply the power but they would receive bills from Retailer Y. Customer expressed dissatisfaction with this marketing approach and concern about elderly and non-English speaking residents. (REP)</p> <p>Potential compliance issue: Misleading or deceptive conduct</p>
C/2007/1015	Complaint for investigation	29 Jan 2007	<p>The customer is dissatisfied with Retailer Y's marketing conduct as a result of the attendance of a marketing representative at his property on 20 October 2006. He emailed his complaint to Retailer Y on 20 October 2006 and advised his complaint fell into four areas: two issues concerned potential breaches of the Energy Marketing Code, one issue related to privacy and the final issue related to what he regarded as the unprofessional sales approach of the marketing representative. Since this time he has been in contact with Liz from Retailer Y regarding his complaint. He received a written letter of apology from Retailer Y in January 2007 advising his concerns had been addressed and the contract document returned. On 18 January 2007 he wrote to Retailer Y and advised that, from his point of view, the matters relating to the Energy Marketing Code remained unresolved. As at 29 January 2007 (when he contacted EWOV), he had not been contacted further by Retailer Y. Specifically, he believed that clause 5.2 of the Energy Marketing Code had been breached – he had not been provided with a response by Retailer Y regarding the identification of Retailer Y marketing representatives and staffing of a complaints line while Retailer Y's representatives are marketing to customers. He also believed that the marketing representative engaged in misleading and deceptive conduct by claiming that Retailer Y could provide cheaper rates for Green Energy than he was currently paying with his current retailer. He advises he has not been provided with any written information regarding Retailer Y's rates and his own comparison showed his current rates are cheaper. In order to resolve this matter the</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>customer was seeking that Retailer Y: (1.) Provide the name of the marketing representative who attended his property. (2.) Explain why the marketing representative did not identify himself appropriately and how Retailer Y has addressed this issue. (3.a.) Explain if Retailer Y has a staffed complaints line and the days and hours this line operates. (3b.) Explain why the complaints line was not operational when he was marketed to on 20 October 2006. (3c.) Explain how Retailer Y has addressed the issue of having a staffed complaints line available when it is marketing to customers. (4.) Explain why the marketing representative advised he could obtain cheaper rates on green energy with Retailer Y and if Retailer Y believes that this is correct. (5.) Explain why the marketing representative did not provide any written information or rates to substantiate that he could get better rates from Retailer Y's green energy. (6.) Explain the standard practice used by Retailer Y in quoting rates to customers and how Retailer Y substantiates that a customer would obtain cheaper rates. (7.) Explain what steps Retailer Y has taken to address his concerns that Retailer Y's marketing representative engaged in misleading or deceptive conduct. (Case in progress; referral of regulatory issues to the ESC)</p> <p>Potential compliance issues: Lack of identification produced by door-to-door salesperson and lack of staffed telephone number re marketing issues (Energy Marketing Code clause 5.2) and misleading or deceptive conduct</p>
C/2007/1166	Referred Complaint	31 Jan 2007	<p>On 25 January 2007, a Retailer Y representative approached the customer's home to conduct door to door marketing. The Retailer Y representative asked to see the energy bill as the "whole area had changed to renewable energy" and advised that all the customers had to change. The customer had said that she already had renewable energy and did not need to change. The customer said that the Retailer Y representative was forceful and demanding. The customer contacted Retailer Y and asked to speak to someone regarding the matter but no one had called her back. To resolve this matter the customer would like Retailer Y to call her, to receive an apology for the representative's actions and financial recognition for the inconvenience caused. (RHL)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/1405	Referred Complaint	7 Feb 2007	<p>The customer was approached by a Retailer Y representative on a door to door campaign on 6 February 2007. The customer believes that the representative was trying to switch his service over to Retailer Y without his consent by taking the number off the back of the bill. The customer believes that the representative was very pushy and had demanded to "see the power bill, must see the power bill". The representative said that the whole of Hamilton "was going to convert to renewable energy and that everyone in Hamilton was changing". The customer advised that he chased the Retailer Y bus and spoke with the team leader, took photos of the bus and confronted the representative in question, took his phone number, and took a photo of the representative's badge. Customer contacted Retailer Y on 7 February 2007 about the matter and was advised to email Retailer Y about it. He did not want to do this because he did not want to deal with Retailer Y. To resolve this issue, he would like to receive a written and verbal apology for the representative's behavior (which he regarded as deceptive), to encourage the retraining of Retailer Y's marketing staff and to receive financial recognition for the inconvenience caused. (RHL)</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			Potential compliance issue: Misleading and deceptive conduct
F/2007/47	Referred Complaint	12 Feb 2007	<p>The customer is dissatisfied with the actions of a Retailer Y door-to-door marketing representative. He advised that a marketing representative from Retailer Y attended his property on 12 February 2007. The representative 'demanded' to see his bills to check on his greenhouse gas emissions. He felt that the representative had no right to be intrusive. The representative advised further that his area was converting to green energy and that he should as well. He believed that the Retailer Y representative was misleading. In order to resolve the matter, he would like Retailer Y to explain the actions of its marketing representative. (RHL)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>

Section 3: Cases (5) where the customer reported the door-to-door sales representative was wearing a 'work vest'/'fluorescent vest'

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/786 (Note: this case also involved the sale of 'Green Energy'.)	Referred Complaint	19 Jan 2007	<p>On 19 January 2007, a Retailer Y sales representative attended his property wearing a safety vest. He didn't look like a sales person. He looked more like he was from the distribution business as he was wearing the vest. The representative stated that he was there about 'greenhouse' gas emissions and didn't say he was from Retailer Y. His wife showed bills as requested. The representative then stated that the area had been put under renewable energy and she needed to sign to have her bill reduced. It was only when the customer asked who he was from that he advised he was a Retailer Y sales representative. The customer did not want to speak further with Retailer Y; he wanted only to report the matter to EWOV. He regarded the salesperson's conduct as misleading.</p> <p>Potential compliance issues: Lack of production of identity card by salesperson and misleading or deceptive conduct</p>
C/2007/876 (Note: this case also involved the sale of 'Green Energy'.)	Referred Complaint	22 Jan 2007	<p>On 22 January 2007, a representative attended the customer's property wearing a workman's vest with reflective tape stating that he was there to "check the electricity supply". He didn't identify himself as from Retailer Y. The representative stated that renewable energy was coming to the area and they were doing a comparison on their readings. It was only after the customer asked which company he was from that the representative identified himself as being from Retailer Y. The customer is dissatisfied that the sales representative made what he regards as misleading representations, in order to try to gain access to the meter and transfer the account. The customer wanted to report the matter but did not want to be contacted by Retailer Y. (REP)</p> <p>Potential compliance issues: Lack of production of identity card by salesperson and misleading and deceptive conduct</p>
C/2007/898	Referred	23 Jan 2007	On 22 January 2007, two sales representatives from Retailer Y came to the customer's door. They were wearing florescent

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
	Complaint		<p>safety jackets and looking at power lines. The sales representatives advised they were there to check his energy bill to check he was on the correct rate. The customer advised that he believed he was on the right rate. The sales representatives also advised that he can now access renewable energy and the customer advised that he knew that and he has been able to access it for some time. The sales representatives also advised Retailer Y could offer a cheaper rate, however the rate that the customer is currently on is cheaper than the rate they provided. The customer is concerned as he believes the representatives were trying to represent that they were not sales representatives. He is also concerned they were using inaccurate information to suggest they could offer a cheaper rate. In order to resolve this matter, the customer would like Retailer Y to confirm it will work toward providing better training for its sales representatives and confirm it will use appropriate wording and selling techniques.</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/1365	Referred Complaint	6 Feb 2007	<p>The customer reported that, in 2006, Retailer Y called the customer a number of times and tried to get her to transfer her account to it, without giving details of who it was. In the week beginning 5 February 2007, two sales representatives from Retailer Y came to her door advising they wanted to check if she is eligible for a rebate and asked to see her bills. After about 10 minutes, she realised that they were from Retailer Y. She believes they were representing that they were from the customer's company and that they were wearing orange work vests, which she believes was misleading. (REP)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/2129 (Note: this case also involved the sale of 'Green Energy'.)	Referred Complaint	28 Feb 2007	<p>A sales representative from Retailer Y came to the customer's house on 28 February 2007. He was wearing a wearing a fluorescent jacket and advised that he was there to change her account over to green energy. The customer requested that she see some more information on green energy before she signed and the sales representative advised that there was no information, it was a change that was being made. The customer believes that the sales representative was trying to represent that he was from her current provider. In order to resolve this mater, the customer would like Retailer Y to explain the training process it has for its marketing staff and advise if it has any policies surrounding acceptable marketing practices.</p> <p>Potential compliance issues: Lack of pre-contract information and misleading and deceptive conduct</p>

Section 4: Other (28) Cases

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/40	Complaint for investigation	2 Jan 2007	<p>In September 2006 a Retailer Y sales representative attended the property. The representative advised she needed a bill from the previous provider to see if she is eligible for the special offer. The customer said that she showed her the bill and was advised that there was a special code on the bill which showed she was not under a current contract and could change</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>to Retailer Y without penalty. However, when she received her final bill from her previous supplier, it included a termination fee. She called Retailer Y to complain about this fee and the misleading information she had received from the sales representative. Her previous retailer has now agreed to take the account back and cancel the termination fee if she can get Retailer Y to release the account retrospectively back to 18 December 2006. Retailer Y is refusing to release the account back to 18 December 2006. She has spoken to Retailer Y on numerous occasions. Retailer Y has agreed to cancel the contract but have refused to allow the retrospective transfer. (Outcome of EWOV investigation: The case was resolved by Retailer Y agreeing to allow the retrospective transfer and undertaking not to charge a termination fee.)</p> <p>Potential compliance issue: misleading and deceptive conduct</p>
C/2007/153	Referred Complaints	4 Jan 2007	<p>An Retailer Y sales representative attended the customer's residence around August 2006. She was offered a transfer on cheaper rates and accepted the agreement on this basis. When she received the first bill she noticed that the rates were in fact higher than with her previous provider. When she raised her concerns, she was advised the contract would be cancelled. She received another bill from Retailer Y on 20 December 2006 and she called Retailer Y to dispute the account on the basis that she had received two letters from Retailer Y in late November 2006 advising that her accounts with Retailer Y had been cancelled. The customer service representative advised that there was no record on Retailer Y's system that it had issued the two letters. The customer has the Retailer Y letters. She called her previous provider who advised that on 8 December 2006 Retailer Y tried to transfer customer's accounts again to itself which it rejected. Customer has been in contact with Retailer Y several times and at the latest contact she was advised that Retailer Y is in the process of investigating this matter with a view to cancelling all charges. She was told she would be contacted again but to date has not received a return call. She advised she is willing to wait another five days for Retailer Y to contact her. As such, she was just reporting the matter to EWOV.(RTP)</p> <p>Potential compliance issues: Misleading and deceptive conduct and transfer without explicit informed consent.</p>
C/2007/266	Referred Complaint	8 Jan 2007	<p>The customer advised a door-to-door sales representative approached her several days ago [in early January 2007] and stated that he is "paid to check her electricity bills". The customer demanded to know why and his response was that is what he is paid to do. Based on her previous experiences, she did not believe that this was correct. Customer believes that the representative should have stated that he intended to make a billing comparison with a view to offering a transfer to Retailer Y, and felt that the statement he made was misleading. She put this to the representative and he insisted that he is paid to check her bills. The customer obtained the representative's details as Paul, provider no. SMV2265. When the customer contacted Retailer Y she was advised that the representative should not have said this to her, and that someone would get back to her. She was not satisfied with this and wanted someone at a higher level to be aware of the matter. The customer is seeking an apology and an explanation from Retailer Y, as well as an assurance that this conduct will be appropriately dealt with. (RHL)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
C/2007/288	Referred Complaint	8 Jan 2007	<p>The customer advised he worked at a regional mental health clinic and was concerned about the conduct of sales representatives of RETAILER Y. He advised he had had to follow up a couple of matters for his clients. Retailer Y sales representatives had attended his clients' property, however, his clients did not have the capacity to understand their accounts were being transferred. He advises that these contracts have now been cancelled (within the cooling off period). He was concerned to try to prevent this from occurring to others – as he believed his clients were 'bullied' into transferring their accounts. He did not wish to speak with Retailer Y further. (REP)</p> <p>Potential compliance issues: Unconscionable conduct and transfer without explicit informed consent</p>
F/2007/8	Referred Complaint	11 Jan 2007	<p>The customer advised that she received a telephone call from a Retailer Y sales representative during the 1st week of January 2007. Retailer Y advised that it was acting on behalf of her supplier and that if she combined her gas and electricity accounts to the one account with Retailer Y, it would send a combined bill and would deduct 7% from those bills. When the customer enquired as to what this was about, she was informed that Retailer Y had 'taken over' from the Victorian electricity company that had gone under, and those people had a few customers that had been given a deduction of 2% instead of 5% for the past year - which is why they offered this extra discount. The sales representative advised that the customer's supplier wouldn't change. He said that he would send some paperwork out, which hasn't arrived, and at the end of the conversation, he asked whether he could put the customer down as a 'Yes' to the offer - to which she declined. The customer had to call her normal provider about another matter and also asked about what she was advised by Retailer Y. She was advised that it was not true. The customer was dissatisfied that she had, in her view, been lied to by the Retailer Y sales representative and wanted to report the matter. The customer wished to report the matter to EWOV but did not wish to speak further with Retailer Y. (REP)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/537	Complaint for investigation	15 Jan 2007	<p>The customer moved into commercial premises in late June 2006. She stated she was advised by Retailer Y that she would be billed for off-peak usage and was told she also had an off-peak meter. Her developer also advised her that her meter could facilitate off-peak usage. An Retailer Y representative attended her shop before she entered into the contract and she states specifically advised her that she would receive off-peak rates. However, her first bill, for \$3,550.93, was fully billed at peak rates. She was dissatisfied with Retailer Y's representations that she would be billed at off-peak rates. As the matter was not directly resolved, EWOV received it for full investigation. (Case in progress: In its response, Retailer Y advised that the customer was told in November 2006 that she needed an electrician to enable off-peak metering. The customer is now seeking a reduction in her first bill, covering late June 2006 to October 2006, so that it reflects a peak/off-peak split.)</p> <p>Potential compliance issue: Misleading and deceptive conduct</p>
C/2007/690	Complaint for investigation	17 Jan 2007	<p>The customer advised that she had transferred to Retailer Y in November 2006, but had done so on the basis of a misleading representation, that is, that her retailer would remain the same. She advised that when a Retailer Y representative came to her house he advised her that she would still remain a customer of her previous retailer, however she</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>would receive a discount on her bill from Retailer Y. Prior to entering into the agreement with the representative she advised that she wanted to remain a customer of her current retailer. She was advised that she would. She is very dissatisfied that she has been transferred to Retailer Y. She advised that as soon as she realised that she had been transferred she has been trying to arrange to be transferred back. (As the complaint remained unresolved, EWOV received it for full investigation: The matter was resolved by a retrospective transfer without termination fees.)</p> <p>Potential compliance issues: Misleading and deceptive conduct and transfer without explicit informed consent</p>
C/2007/807	Referred Complaint	22 Jan 2007	<p>The customer is the account holder. On 5 January 2007, a sales representative from Retailer Y phoned, spoke with his wife and discussed Green Energy. When the telemarketer mentioned a contract, his wife asked to terminate the conversation and stated that she did not wish to enter into a contract with Retailer Y. The customer then received a letter and information pack from Retailer Y on 15 January 2007, which advised of a cancellation fee and cooling off period. He called Retailer Y on 22 January 2007 and advised he wanted to terminate the contract. The customer believes that he is now not in a contract with Retailer Y, but is not satisfied with the way that it conducts its marketing. He wished to report the matter. (REP)</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/837	Referred Complaint	22 Jan 2007	<p>OBO advised that her mother was with one provider for many years. Her father pays fortnightly through Australia Post. They have continued to make these payments and are now in credit because the account has transferred to Retailer Y. They have spoken to Retailer Y. Retailer Y advised the account transferred to Retailer Y 6 September 2006. Retailer Y advised that the transfer may have been a mistake. Retailer Y advised that the account would be transferred back and the contract cancelled. OBO feels her mother should not have to pay the bill from Retailer Y. Her mother wants to know how Retailer Y got her information as she is not in the phone book. She also cannot recall being contacted by a salesperson. Her previous provider has advised it will also put in for a transfer to get the account back. To resolve this issue customer is seeking an explanation as to how this error occurred. Also the customer believes she should not have to pay the Retailer Y bill. (RHL)</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
F/2007/27	Referred Complaint	25 Jan 2007	<p>The customer advised that a "bus load" of sales representatives attended his area [Footscray West] on Thursday 4 January 2007, and were conducting what he regarded as "illegal marketing". He advised that the sales representatives who spoke to him advised that "his current supplier was no longer going to provide him with energy and that Retailer Y is now taking over the contract as his supplier". The customer requested that the sales representative leave, however, he proceeded to take out his paperwork and explain the contracts Retailer Y could offer. He has since requested that Retailer Y remove all of his details from its marketing database. In order to resolve this issue, he would like to discuss the marketing of the Retailer Y sales representatives, and is seeking confirmation that Retailer Y has removed his details from its marketing database. (RHL)</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			Potential compliance issue: Misleading or deceptive conduct
C/2007/1040	Referred Complaint	29 Jan 2007	The customer transferred her account to Retailer Y as she felt pressured to by one of its sales representatives who attended her property. [A NEMMCO search conducted by EWOV shows that the transfer took place on 2 January 2007.] In order to resolve the matter, she is seeking a retrospective transfer of her account to back to her previous provider and a waiver of any termination fees. (RHL)
			Potential compliance issue: Transfer with explicit informed consent
C/2007/1122 G/2007/345	Complaints for investigation	30 Jan 2007	The customers (a husband and wife) state that they are dissatisfied with information provided by a door to door salesperson representing Retailer Y, on the basis of which they transferred their account. On 2 October 2006, they received a visit from a door to door salesperson representing Retailer Y. The salesperson stated that if they transferred their account to Retailer Y, their bills would be 3% cheaper. On this basis, the husband agreed to transfer her account to Retailer Y. She has now received an electricity account for \$294.46 from Retailer Y, which is significantly higher than their previous bills with their original provider. She contacted Retailer Y in the week ending 28 January 2007 and requested an Italian interpreter to assist her in querying the bill and information on the basis of which her husband had agreed to transfer their account. She states that Retailer Y's response was solely to say that the electricity had been used and would need to be paid for and that the meter could be checked at a cost of \$60. She was not happy with this and called a second time to see if there was any other assistance Retailer Y could provide. She advised that Retailer Y reiterated its earlier advice. She now believes the information provided by the door to door salesperson was a misrepresentation in that it did not specify what the bills would be 3% cheaper than. She states that this naturally left her to assume that her bills with Retailer Y would be 3% cheaper than the bills issued by her original provider. (Outcome of EWOV investigation: The complaint was resolved by a retrospective transfer back to the customers' original provider.)
			Potential compliance issue: Misleading and deceptive conduct
G/2007/338 C/2007/1193	Referred Complaints	1 Feb 2007	The customer advises that his gas and electricity account was transferred to Retailer Y without his consent or authority. He advises that he received letter from Retailer Y thanking him for transferring his account to it, but he did not agree to the transfer. Retailer Y advised that he had agreed to it over the phone which he disputes. (RHL)
			Potential compliance issue: Transfer without explicit informed consent
C/2007/1293	Referred Complaint	5 Feb 2007	The customer is dissatisfied with what she regards as misleading representations made by a Retailer Y sales representative on 2 February 2007. The Retailer Y sales representative attended her property and informed her that Retailer Y had 'taken over' her retailer. She agreed to a transfer of her account as a result. The customer has since requested a cancellation of the transfer, but remains dissatisfied that she was misled. In order to resolve the matter, she is seeking that Retailer Y confirm that it will not be transferring her account to it. Further, she would like to express her dissatisfaction to it regarding the sales representative's representations. (RHL)

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			Potential compliance issue: Misleading and deceptive conduct
C/2007/1314 G/2007/364	Referred Complaints	5 Feb 2007	The customer stated that she was with another retailer for gas and electricity. In December 2006 or early January 2007, a Retailer Y representative attended her home and informed her that she could get a number of benefits if she would transfer her electricity and gas to Retailer Y, but that she would be remaining with her current provider and only the bill issuer would change. The customer advises she agreed to transfer and received the welcome pack, but did not read it. On 5 February 2007, she received a letter from her other retailer cancelling her payment plans and telling her she was no longer with it. She then read the welcome pack and became concerned that she had transferred her account. She called Retailer Y and was told that she had transferred. The customer asked the operator to cancel the transfer and lodge a complaint. The customer informed the operator she would be reporting the matter to the EWOV. As an outcome, she wanted her account retrospectively transferred to her preferred retailer and to discuss the conduct of the sales person. (RHL)
			Potential compliance issues: Misleading and deceptive conduct and transfer without explicit informed consent
C/2007/1513	Referred Complaint	9 Feb 2007	The customer remains dissatisfied with Retailer Y pressure marketing techniques. The customer was approached by three different door to door sales representatives at following times: Monday 5 February 2007 at 7.20pm, Tuesday 6 February 2007 at 7.15pm; and Thursday 8 February 2007 at 7.30pm. The customer states he was harassed by the two representatives on 5 February and 8 February 2007. 5 February 2007: After the customer said she was not interested, the representative insisted she enter into a contract and would not leave the property. She told the representative to leave the property and shut the door. She states that the representative however remained at the property and yelled abusive language through the door. He refused to leave for a short period. The customer was very upset. 8 February 2007: The sales representative attempted to pressure her into a transfer and she again asked the representative to leave. She states the representative continued to remain on the property after she had asked him to leave and yelled through the door. She is very dissatisfied with the representatives' behaviour and wants Retailer Y to investigate the matter and have them disciplined. [The customer did not want a return call from Retailer Y. She was instead seeking to be placed on a no contact list, a written apology from Retailer Y and written advice from Retailer Y about the outcome of its review of the matters she had raised.] (RHL)
			Potential compliance issue: Failure to cease marketing when requested
F/2007/43	Referred Complaint	9 Feb 2007	The customer is dissatisfied with the information provided by a Retailer Y marketing representative. He advised that a Retailer Y representative contacted him by telephone offering green energy for his gas and electricity. He was advised that he would still be with his current retailer, but Retailer Y would be billing him. He consented to the transfer at that time. He was concerned with the information provided as he believed that he was misled. He had contacted Retailer Y to terminate the contract but remained dissatisfied with the information provided. In order to resolve the matter, he would like an explanation as to the information provided by the representative. (RHL)
			Potential compliance issue: Misleading and deceptive conduct
C/2007/1623	Complaints for	13 Feb	The customer advised that in January 2007, two Retailer Y salespeople attended her property and 'pushed her' into signing

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
G/2007/464	investigation	2007	<p>a contract. Her housemate then located the salespeople and asked that the contract be ripped up. The customer was given a contact number for Retailer Y to call and cancel the contract. The following day she called Retailer Y to cancel the contract, however, she states that Retailer Y does not have a record of this. She then received a letter dated from Retailer Y stating that Retailer Y took over her supply on 10 January 2007. She called Retailer Y straight away and the compliance team called her. She was advised that she signed a contract and therefore Retailer Y will not allow the retrospective transfer. She called Retailer Y back a few days after this and was advised not to worry and that the contract had been cancelled. The customer advised that she has contacted Retailer Y three times to cancel the contract. She called her previous retailer on 13 February 2007 and was advised that Retailer Y still has the account. (Outcome of complaints investigated by EWOV: resolved by a retrospective transfer to the customer's chosen retailer.)</p> <p>Potential compliance issue: Transfer without explicit informed consent</p>
C/2007/1790	Complaint for investigation	16 Feb 2007	<p>The customer advised that a salesperson from Retailer Y came to her home at 1.30pm on Saturday 10 February 2007. She advised that the salesperson was extremely pushy and rude. She advised that the salesperson wanted to see a bill but she did not want to show him a copy of her bill. The sales representative stated he was from Retailer Y, the old SEC, and that he was ensuring people that people should be receiving a 5% discount. The customer was not sure that this was an accurate representation as to why the salesperson was at the property. The sales person was quite persistent and would not leave the door unless she showed him a copy of the bill. The salesperson stated that "people like you don't know what is good for you". (Outcome of complaint investigated by EWOV: Retailer Y provided an apology, placed the customer on its 'Do Not Contact' list and confirmed that the customer's account had not been transferred. Retailer Y also undertook to take the matter up with the sales representative involved.)</p> <p>Potential compliance issues: Misleading and deceptive conduct and not ceasing marketing.</p>
F/2007/52	Referred Complaint	19 Feb 2007	<p>The customer is dissatisfied that Retailer Y transferred the account for the property, without proper consent or authority. He advises that he had been required to set up an account for the tenants of the property, as they were unable to establish an account themselves. The tenants do not speak English fluently and he believes that a Retailer Y sales representative took advantage of this. He advises that the matter has been finalised however, he is dissatisfied that Retailer Y attempted to transfer the account without his authority. In order to resolve the matter, the customer would like to express his dissatisfaction with Retailer Y. (RHL)</p> <p>Potential compliance issues: Unconscionable conduct and transfer without explicit informed consent</p>
C/2007/1944 G/2007/552	Referred Complaints	22 Feb 2007	<p>OBO stated that a Retailer Y representative attended her parents' home in late November or early December 2006. Her father told the representative that they were not able to transfer as they were on a contract with another retailer. The representative advised that she only wanted to speak to the OBO's mother. On speaking to her, the representative informed her that their current retailer would not be changing, but that the bill would look different and the rate would be cheaper. The representative only discussed electricity. Her mother agreed to saving money and staying with their current provider.</p>

Case Number	Case Type	Received Date	Summary of customer's issue / statement (outcome) [potential compliance issue(s)]
			<p>In February 2007, her parents received a final bill from their retailer and noted that it was higher than expected. They took the bill to the OBO's house and she noted there was an early termination fee. OBO contacted Retailer Y to discuss the issue. During the course of the conversation it was also ascertained that the gas account had been transferred. OBO stated that all the people she spoke to at Retailer Y on 22 February 2007 were extremely helpful. OBO was informed that the accounts would be retrospectively transferred to the original retailer. The original retailer confirmed that would take place. OBO lodged a complaint with Retailer Y about the sales representative's conduct and was told that the matter would be registered, but she had a lack of faith that would resolve the issue on an ongoing basis. As an outcome, OBO and her parents wanted to discuss the matter further with Retailer Y. (RHL)</p> <p>Potential compliance issues: Misleading and deceptive conduct and transfer without explicit informed consent</p>
C/2007/2019	Referred Complaint	26 Feb 2007	<p>A sales representative came to the customer's door in October 2006. He asked her if she was with a particular provider and she advised that she was. He advised that she would be changed to a domestic supplier and would receive \$150 off her bills. She believed the sale representative was from that provider and she signed the form that he gave her. She then received a letter from Retailer Y congratulating her for changing her electricity provider. She also received an electricity account from Retailer Y which was for an amount of \$300, which is double what her electricity bills usually were with her previous retailer. She called Retailer Y and it advised that she pay the account and it will give her \$50 off the next bill. The customer does not want to keep her electricity account with Retailer Y. In order to resolve this matter, the customer would like Retailer Y to retrospectively transfer her account back to her chosen provider as at 9 November 2006 and waive any cancellation fees as she did not realise that she was signing up to it. (RHL)</p> <p>Potential compliance issues: Misleading and deceptive conduct and transfer without explicit informed consent</p>
C/2007/2084	Referred Complaint	27 Feb 2007	<p>A customer from Glen Waverley contacted EWOV and advised that a marketing representative attended his property on 27 February 2007. The representative did not identify himself as being from Retailer Y initially. The representative stated that 'some people in his area were eligible for discounts' and asked to see the customer's electricity bill, which he did. The customer believed that the representative was indicating that he would remain with his current retailer, but would receive a discount. The representative then stated that he was from Retailer Y. He was concerned that the representative was misleading. In order to resolve the matter, the customer would like Retailer Y to be aware of the information its marketing representatives were providing. (RHL)</p> <p>Potential compliance issues: Lack of production of identity card by salesperson and misleading and deceptive conduct.</p>

Electricity Case Studies

Contract cancelled but transfer goes ahead (C/2006/8436)

(Resolution 23)

Three days after signing up with an electricity retailer door-to-door, Ms T changed her mind.

She rang to cancel the contract, within the 10 business days cooling-off period the sales representative said she had. Unable to speak with anyone, Ms T left a message requesting the cancellation. Three days later, she rang again and left another message. The next day, a customer service representative rang her to confirm the contract would be cancelled. Two months later, Ms T received a 'welcome pack' from the retailer. When she rang to find out why, she was told her contract hadn't been cancelled. It was also recommended that, since her account was now with the retailer, she should stay with it.

Our investigation confirmed Ms T's complaint that she was told the contract would be cancelled, but it wasn't. The retailer transferred her back to her original retailer, retrospectively, with no charges payable.

The Energy Marketing Code and Energy Retail Code supplement the cooling-off provisions of the Fair Trading Act 1999 (Vic). Energy retailers must ensure compliance with these provisions.

Contract runs on after expiry date (C/2006/7277)

(Resolution 23)

Although Ms L's contract had expired, she was charged a termination fee when she switched to another retailer.

The original retailer said that, just before Ms L's contract expired it sent her a letter saying the contract would continue unless she made contact to instruct otherwise. Ms L said she didn't remember receiving this letter and wasn't aware the contract could continue after its three year term.

The retailer recognised there'd been a misunderstanding, apologised to Ms L and waived the \$70 termination fee (less \$8.34 in benefits she'd received under the contract).

Customers are responsible for ensuring they understand the terms and conditions of the contracts they're signing. On the other hand, where a retailer is to contact a customer at the end of a contract, the retailer must be able to show it has made reasonable and timely efforts to do so, as required by the Energy Retail Code.

Processes for new contracts not up to scratch (C/2006/900)

(Resolution 22)

Moving its operations to a new location, a business customer contacted its electricity retailer to enter into a market contract for the site.

Although the retailer had a full record of the customer's usage history, when the new contract was entered into, the customer was quoted a business network tariff for a distributor in a different area. The retailer also placed the customer on an inappropriate demand tariff and used an incorrect and outdated contract.

The customer accepted the quotation on the retailer's advice that the tariff was the best available to it.

The retailer's errors had the effect of increasing the customer's bills by some \$25,000 a year. They were drawn to the retailer's attention when the customer raised concerns about its high bills. Although it helped the customer move to a more appropriate tariff, the retailer wouldn't compensate for the over-billing.

In investigating this complaint, we worked closely with the customer and the retailer to ensure a fair and reasonable outcome. After considerable negotiation, the retailer recognised there were a number of issues it could have handled better and resolved earlier. As the customer had already paid its accounts in full, the retailer settled the case by issuing a refund cheque for \$17,311.

Both parties to a market contract should understand the contract basis and conditions. It's a given that retailers must ensure the contracts they're using are correct and up-to-date, and that their quoting and contracting policies and procedures are accurate and understood by sales representatives. For their part, customers should consider whether their decision-making about new contracts would benefit from greater research or independent advice.

Sales representative allows customer's brother to sign to switch (C/2006/5159)
(Annual Report 2006)

Mr G didn't recall signing a contract with a particular electricity retailer. However, when he contacted the retailer, it produced a signed contract - in his name, but signed by his brother.

Mr G wanted an immediate transfer back to his original retailer. The retailer said he'd be transferred back at the end of the current three month billing cycle and he'd be charged for that three months usage. Unhappy with this outcome, Mr G rang EWOV.

Responding to our investigation, the retailer said the behaviour of its sales representative in allowing Mr G's brother to sign on his behalf, wasn't in line with its training or marketing practices. It said it was investigating the incident further. In line with Mr G's request, it cancelled the contract immediately, and arranged for Mr G's account to be retrospectively transferred back to his original retailer. It also apologised and sent him \$30 in recognition of poor customer service.

EWOV maintains that an energy retailer should be required to obtain the express authority of the account holder before any other person, including a close relative, is able to enter into an energy contract for a property.

Unacceptable sales approach to retirement village residents (C/2006/1667)
(Resolution 22)

Ms C's daughter contacted EWOV on her mother's behalf, after the mother's retirement village was visited by an electricity retailer's sales representative. The sales representative advised the residents that their electricity supply was being taken over by the retailer he represented and that they just needed to sign some paperwork to make it official. The manager of the retirement village asked the sales representative to leave, but not before Ms C had signed the paperwork.

Ms C's daughter had made several calls to the retailer, without response. She wanted assurances that the transfer wouldn't take place, the retailer wouldn't market to her mother again, and this type of sales approach would cease.

The retailer apologised to Ms C in writing, explaining that the sales representative had acted outside of his training and his employment had been terminated. It cancelled the transfer and undertook to put her on its 'Do Not Call or Visit' list.

Ms C's case illustrates the need for retailers to monitor the sales approaches taken by their representatives and to act decisively where these are unacceptable.

Gas Case Studies

Concern about contract signed by a minor (G/2006/1272)
(Annual Report 2006)

Ms S (a financial counsellor) contacted EWOV on behalf of her client Mr Q. She was dissatisfied that a natural gas retailer had billed Mr Q for usage at a transitional housing facility while he was 16 years of age.

Ms S believed that, in light of his age and circumstances at the time, Mr Q hadn't been in a position to provide his explicit informed consent to an energy market contract over the phone. Mr Q had also been contacted by a debt collection agency about arrears of \$395.16 on the account.

EWOV's investigation took into account relevant laws and codes. The Code of Practice for Marketing Retail Energy in Victoria provides that, where an adult lives at the property, the onus is on the retailer to show that a person under 18 (a 'minor') is the appropriate authorised consumer to enter into the contract.

In this case, it was unclear whether a person aged 18 or over had been at the site when Mr Q entered into the contract. EWOV also noted that young people in transitional housing are sometimes in a vulnerable position, and may be poorly placed to negotiate with an energy retailer, or understand the full implications of a market contract. In light of EWOV's investigation, the energy retailer agreed to waive the outstanding \$395.16. It also withdrew all associated collection activity.

This case highlights the importance of energy retailers being aware of the laws and codes relevant to their activities, and ensuring their sales representatives act in accordance with these.

Long transfer delay raises contract benefit concerns (G/2005/2130)

(Resolution 21)

Mrs F was concerned that she wouldn't benefit fully from her new three-year contract because of the long delay in transferring her account after she'd signed up with her new retailer in September 2004. She said she was told she'd receive a final bill from her existing retailer, after which her account would be transferred.

As expected, she received a bill, but in February 2005 she also received a second one. When Mrs F contacted it, the new retailer's contact centre was initially unable to locate her new contract, but did so after she provided the receipt number from the contract acceptance form. The customer service operator offered to follow up on the status of the transfer.

In August 2005, Mrs F received a third bill from her existing retailer and, despite a number of phone calls to and undertakings from the new retailer, the matter wasn't resolved.

Contacted by Mrs F, EWOV established that the contract she'd signed hadn't been given to the retailer by the sales representative. In resolution of the matter, the new retailer undertook to request a transfer of Mrs F's account from her existing retailer effective from the next scheduled meter read, and to take the contract's term of three years from the date of that transfer. It also credited Mrs F's new account with \$50.

This case illustrates some of the problems which can arise when customers' concerns are not dealt with appropriately by contact centre staff.

Rebate delayed by transfer error (G/2006/3111)

(Resolution 23)

Mr T said a natural gas retailer's sales representative approached his mother (the co-account holder) offering her a gas and electricity contract. The sales representative said that if she transferred both their gas and electricity to the retailer, they'd receive a \$150 rebate on both their gas and electricity accounts after 12 months. On this basis, Mr T's mother agreed to switch retailer.

Their first bill arrived in July 2005. In January 2006, Mr T's mother rang the retailer to check that the \$150 rebate would be applied in July 2006. She was told the rebate wouldn't be applied until January 2007.

Mr T and his mother were unhappy about this delay. Our investigation found that, due to an error in the retailer's transfer process, the promotional offer wasn't registered until September 2005. As a result, the application of the rebate had been delayed.

In recognition of the inconvenience caused to Mr T and his mother, and to honour its original offer, the retailer credited both their gas and electricity accounts with \$150. Retailers must have processes in place to fulfil the undertakings given by their sales representatives.

Transfer incentive not delivered (G/2006/2792)

(Resolution 21)

Mr I said that he transferred to his new gas retailer after a visit from a door-to-door sales representative, who had offered him a free two-year magazine subscription to be received within eight weeks of his transfer. Sixteen weeks later, Mr I still hadn't received his magazine.

When he contacted the retailer, he was given a \$20 account credit and assured the magazine would be issued. When this still didn't happen, Mr I contacted EWOV. Our investigation revealed that the transfer of Mr I's gas account hadn't taken place because the gas retailer's sales representative had incorrectly entered Mr I's postcode. It also showed that the delay in issuing the magazine was the fault of the publishing company, not the gas retailer.

The matter was resolved on the basis that Mr I's gas account would be transferred at the next scheduled meter read. Mr I would receive his magazine within two weeks of the transfer, with the subscription period of two years beginning then.

Energy providers need to monitor any associated offers made by their sales representatives to ensure all terms and conditions of those offers are honoured.

Dual Fuel Cases**Arrears from underestimation of monthly payments (F/2005/295)**

(Annual Report 2005)

Ms K received a backbill and a letter from her energy retailer advising that her dual fuel account had been cancelled for arrears of \$261.55.

When the account was set up, Ms K was told that payments of \$70 a month would cover both her electricity and gas usage, so the arrears came as a surprise to her. In investigating Ms K's concerns, we found that the retailer had underquoted her monthly payments and hadn't notified her that the amounts she was paying weren't covering the cost of the electricity and gas she was using. The retailer acknowledged that Ms K's arrears had accrued due to its underquoting and its lack of notification to her, and credited her electricity account with \$131.65.

Ms K was satisfied with this outcome.

Because arrears can accumulate quickly, accounts (particularly those based on usage estimates and instalment amounts) should be monitored regularly to make sure the agreed payments are covering usage. If this is found not to be the case, the customer needs to be informed and given the opportunity to adjust either their payments or their usage accordingly

Copy of the contract would have been enough (F/2006/100)

(Resolution 22)

Ms B was charged two \$90 exit fees (one electricity, one gas) when she terminated her dual fuel contract in its first year.

Unable to recall agreeing to pay an exit fee and not being able to find a copy of her contract terms and conditions, she'd written to the energy retailer twice, saying that she'd pay the fees if the retailer could provide evidence of where she'd agreed to do so.

Ms B paid the final account, less the total fees of \$180, and included a letter with the payment explaining that she'd been a customer of the retailer for many years, not just in respect of this dual fuel contract. While her cheque was cleared, neither of her letters received a response.

Instead, she was issued with final notices and the matter was referred to a credit collections agency. As well as being concerned about the imposition of the fees, Ms B was worried that her credit rating may be affected by the collections action. Contacted by EWOV, the retailer provided a copy of the three year contract Ms B had signed almost 12 months earlier.

It clearly stated that if the contract was terminated early, exit fees would apply. This information was provided to Ms B, who then paid the fees promptly. For its part, the retailer waived the legal fees associated with the debt collection action and confirmed that Ms B's credit rating wouldn't be affected.

It also sent her a \$25 cheque, in recognition of the inconvenience caused to her by its not replying to her letters.

Had the retailer responded to the customer's correspondence, this complaint could have been resolved within its internal dispute resolution processes.

Customer accepts a market offer that wasn't available to him (F/2005/82)
(Resolution 20)

Mr S was dissatisfied that he hadn't received the rebate on his dual fuel account in accordance with the terms of his contract. He'd entered into a three-year dual fuel contract and understood that the terms of the agreement included his receiving a \$150 concession, as well as a \$50 annual concession spread over each bill.

He was concerned that the rebate hadn't appeared on his first bill. EWOV's investigation found that there had been an error in the market offer made to Mr S - the retailer advised that the customer service representative incorrectly sold him a dual fuel offer available for gas in his distribution area, but not for electricity.

In recognition of the error and the fact that Mr S had signed the contract on the basis of the offer, the retailer issued him with a cheque for \$300 representing the benefit he would have received from the market contract. It also confirmed that Mr S would be contacted so that a correct market offer for his electricity account could be set up.

Energy retailers must ensure their sales representatives are well trained and informed. They should also monitor new market contracts to ensure customers are not signing them on the basis of misleading information.

Customer's budget concerns realised (F/2005/68)

(Resolution 20)

Ms K, a pensioner living in a rural area, was contacted by a sales representative with an offer to sign up to a dual fuel contract. As she was on a fixed income, Ms K was particularly concerned about the cost of her payments.

The retailer's sales representative said that her monthly payments would be \$75, enabling her to manage her utility budget.

Ms K said that when she raised concerns that this might result in a large backbill if her payments didn't meet the full cost of her usage, the sales representative said the end-of-year adjustment wouldn't be likely to be more than a couple of hundred dollars at the most. At the end of the year, Ms K received a letter from her retailer saying that her monthly payments would be increased to \$300 to cover some \$1,500 in arrears. Ms K felt that, if the format of her bills had been clearer, she could have monitored her usage and managed her situation.

On a fixed income, she couldn't afford to pay \$300 a month. Not able to resolve the matter with her retailer, Ms K contacted EWOV.

Responding to EWOV's investigation, the retailer acknowledged that the monthly payment amount on which Ms K's account had been set up had been calculated on a limited billing history.

To address this issue, the retailer offered to waive almost 50% of Ms K's arrears.

With EWOV's assistance, the parties agreed an affordable payment arrangement to address the remaining arrears. In this case, the retailer accepted responsibility for the contractual arrangement made with the customer. Its action in substantially reducing the arrears not only offered Ms K some financial relief, it helped rebuild the customer-retailer relationship. The retailer also recognised the need for a longer term solution by showing flexibility in the negotiation of an ongoing payment plan. A solution beyond a quick-fix is essential in matters concerning a customer's capacity to pay, to prevent continuing cumulative arrears.

Dual fuel account structure causes confusion (F/2006/385)

(Resolution 23)

In September 2005, when Ms N took up a dual fuel contract, the energy retailer advised her that her monthly payment of \$100 would cover both her gas and electricity. She was also told she would receive a combined monthly gas and electricity statement.

To ensure she didn't accumulate arrears, Ms N increased her payments to \$120 a month, effectively contributing \$60 towards both her gas and electricity. In late 2006, Ms N decided to switch retailer.

When she did so, her original retailer issued her with a final gas bill of \$564.85, with no mention of electricity. Ms N found this very confusing because she was used to

receiving the combined statement. She also thought the bill was very high, given the regular payments she'd been making over and above the \$100 the retailer had recommended.

Then, when she rang the retailer, she was told that her gas arrears had been accumulating since August 2006. In addition, she was told that she also owed \$435.62 for electricity – in spite of making the additional regular payments.

Ms N couldn't understand why she owed so much. She said that, in 2006, she'd contacted the retailer and was told her account was in credit. She wanted all of the arrears waived, because the retailer hadn't notified her that her ongoing payments weren't adequately covering her usage.

Our investigation confirmed that the original payment plan set by the retailer wasn't enough to cover Ms N's ongoing usage. However, it also revealed that the retailer had written requesting that she increase her payments. The retailer had also been sending her separate electricity and gas bills every three months, both of which showed balances owing. These were in addition to the monthly dual fuel statement. From our investigation, it appeared that Ms N didn't fully understand that the \$100 a month arrangement was a payment plan only and that separate bills for gas and electricity would also be generated.

To resolve Ms N's complaint, the retailer agreed to reduce the arrears by 50%. This left an account balance of \$500.24, plus a termination fee of \$63.64 payable because Ms N had initiated the switch to the new retailer. Ms N agreed to make this payment and the case was closed.

This case highlights the importance of retailers clearly explaining to customers the terms and conditions of the contracts they're entering into. It also shows that customers need to be vigilant in ensuring that contracts they're agreeing to suit their usage and lifestyle needs.

Instalment amounts not calculated properly (F/2005/458)
(Resolution 21)

Mr T was dissatisfied with adjusted instalments proposed by his energy retailer. He said that when he'd requested a dual fuel account in October 2003, he was quoted monthly instalments of \$30 for electricity and \$20 for gas.

Due to problems with the transfer of his accounts, the dual fuel billing didn't commence until October 2004. In September 2005, the retailer reconciled his account and proposed new monthly instalments of \$60 for electricity and \$45 for gas - it wouldn't accept Mr T's proposal of \$80 a month in total.

Investigating Mr T's concerns we found that, based on his annual usage, he should have been paying \$30 a month for gas.

There were arrears on his electricity account when the dual fuel billing commenced, and had these been taken into account, his monthly instalments for electricity should

have been \$55 a month. An instalment plan on this basis would have been sufficient to pay Mr T's arrears and ongoing usage over the first 12 months of dual fuel billing.

The retailer recognised its error in calculating Mr T's monthly instalments and agreed to waive 50% of his arrears for both gas and electricity. It recalculated his monthly instalments at \$45 for electricity and \$35 for gas, to clear the remaining arrears and cover his ongoing usage for the following 12 months.

This case highlights the need for retailers to calculate dual fuel instalments properly, inclusive of existing arrears, when making offers to customers. These payment arrangements then need to be reviewed regularly, with customers notified about shortfalls and given the opportunity to prevent further arrears developing.

New contract struck without account holders knowledge (F/2006/131)

(Resolution 22)

Although the electricity and gas accounts were in Ms V's name only, a retailer's door-to-door sales representative signed her husband up to a new dual fuel contract. Ms V said she contacted the retailer to cancel the contract within the cooling-off period, but was told the contract would have to be cancelled by her husband as he had entered into it.

Ms V said she told the retailer her husband was seriously ill and incapable of making that decision. She also pointed out that, as the accounts were in her name only, they shouldn't have been cancelled without her consent. Contacted by EWOV, the energy retailer apologised for the inconvenience caused to Ms V.

Taking into account her statements about the health of her husband, the retailer agreed to cancel the dual fuel contract without penalty. It also placed their property on its 'do not contact' list for marketing purposes, to ensure the situation didn't arise again.

This case highlights the ease with which electricity and gas contracts can be entered into verbally, and how difficult it can be for the customer responsible for the account to cancel the new contract. With a view to preventing customer complaints, EWOV maintains that a retailer should be required to obtain the express authority of the account holder before another person is able to enter into a contract for the property.

Problems when contract terms aren't understood (F/2006/40)

(Annual Report 2006)

Mr W's energy retailer had increased the monthly payments on his dual fuel account, even though he'd been paying the agreed amounts. He said the retailer told him the increase was necessary because his payments weren't covering his electricity usage. Mr W was concerned about this apparent shortfall. He also told EWOV that he'd been unaware he was signing a three year contract. He wanted the contract cancelled without the application of termination fees.

EWOV's investigation of Mr W's concerns found that his monthly gas payments were higher than necessary, but his monthly electricity payments needed to increase. It was

also found that he may not have been explicitly informed that he was entering into a three year contract, with a fee for early termination.

The energy retailer recognised Mr W's concerns and released him from the contract without a termination fee. It also separated his gas and electricity accounts and issued him with separate bills for each fuel, to prevent any future difficulties.

Some customers have difficulty understanding dual fuel billing and how it differs from that for single fuel contracts. Providers should ensure customers are fully aware of the terms of any contract they are entering into, and of any fees for early cancellation.

Promised DVD isn't forthcoming (F/2006/337)

(Resolution 23)

Mr A said that, when he took up his dual fuel contract in June 2006, he was promised a DVD player. However, by September 2006, despite receiving and paying his bills, he still hadn't received it.

He said he rang the retailer on three separate occasions, but was told that he wasn't entitled to the DVD player, as the contract he'd entered didn't include this incentive. Mr A asked that the telephone recording of his discussion with the retailer's marketing representative be retrieved.

The recording confirmed that a DVD would be forthcoming - in accordance with the advertisement Mr A had responded to, which clearly offered the DVD for customers who agreed to a dual fuel contract.

Contacted by us, the retailer confirmed that the DVD player hadn't been sent to Mr A, but it couldn't provide any reason for the delay or any explanation about why Mr A wouldn't be eligible for it when he had information which suggested otherwise.

The retailer agreed to send the DVD player to him within 14 days and the complaint was closed on this basis.

Apart from being bad business practice, not delivering on marketing promises leaves retailers open to the perception of misleading sales behaviour and the possibility of regulatory scrutiny.

Sales pitch doesn't make billing option clear (F/2005/233)

(Resolution 20)

When Mrs A agreed to a dual fuel account, the sales representative advised there would be a fixed monthly charge regardless of the amount of gas and electricity she used. However, what the retailer was offering was a billing option (not a tariff option) which relied on past and estimated future use to generate a monthly billing amount that would be reviewed periodically to match Mrs A's actual usage (bill smoothing). Mrs A was subsequently told that her account was in arrears because the monthly amounts were insufficient to meet the electricity and gas she was actually using her monthly payment would need to be increased to match her ongoing usage. Mrs A objected, saying that she'd agreed to the contract based on the sales representative's information about the monthly charge.

The retailer apologised to Mrs A and acknowledged her concerns. In turn, Mrs A acknowledged that electricity and gas had been used and the retailer was entitled to be paid for that. To resolve the matter, the retailer agreed to reduce the arrears in line with Mrs A's understanding of the dual fuel account and Mrs A agreed to pay those arrears within a set time.

The case highlights the impact of marketing practices and the difficulties that can arise if sales representatives misinform customers, or if customers are left unclear about the nature of the contract they're agreeing to.

Unexpected arrears from underquoting of instalments (F/2006/7)

(Annual Report 2006)

Ms J had been on a dual fuel plan with her retailer for two years when she decided to switch to another retailer. When she cancelled her existing plan, her retailer invoiced for outstanding balances on her gas and electricity accounts.

Ms J said she was surprised, because she'd met all of her monthly payments. She also observed that her monthly payments had increased over time, despite the fact that her usage hadn't. She was worried she'd been billed incorrectly. She didn't think she owed anything further and wanted the retailer to waive the outstanding balances.

In responding to EWOV's investigation of the complaint, the retailer advised that the monthly instalment amounts in Ms J's plan were underquoted when the plan was set up. Her monthly payments had been increased over time to cover both her usage and the arrears which had accrued because of the underquoting.

It advised that it had already credited Ms J's account quite substantially, in recognition of the inconvenience the underquoting had caused.

To resolve the matter, the retailer offered to waive \$944 representing half the outstanding balances, including arrears for usage after the dual fuel plan was cancelled. Ms J accepted the offer and entered into a payment arrangement of \$100 a month.

This case highlights the value of recognising the individual circumstances of each complaint. It's important that both customers and providers review bill smoothing arrangements regularly to prevent the accumulation of arrears. Communication at the commencement of a smoothpay plan is also important to ensure that customers understand their monthly instalments may not cover all their usage costs.

Consumer Awareness (Omnibus) Survey

In February 2007, EWOV commissioned a survey of general consumer awareness of the EWOV scheme.

The key results (from 994 respondents) were:

- 46% of all respondents stated they would contact an ombudsman to resolve an energy or water dispute and 27% said they would contact the company/authority directly. Younger respondents (18-24 and 25-29 years of age) mentioned ombudsman less than the general sample.
- When asked (once) if they had heard of the Energy and Water Ombudsman (Victoria), 45% of all respondents stated they had. Of the respondents who receive a concession on their energy and/or water bills (321 of the 994 respondents), 49% stated they had heard of EWOV. Male respondents had higher awareness of EWOV.
- 18% of respondents had either had dealings or knew someone else who had had dealings with EWOV.