

Annex C: Mapping provisions from the Code of Conduct for Marketing Retail Energy in Victoria

Subject	Clause in Code of Conduct for Marketing Retail Energy in Victoria (marketing code) ¹	Coverage in other instruments	Proposed change
Training	<p>1. Marketing Representatives – Training</p> <p>Retailers shall provide initial and ongoing training and testing of marketing representatives to ensure all representatives understand and comply with this Code and maintain their understanding and compliance. In their training retailers will provide information on and examples of:</p> <ul style="list-style-type: none"> the principles of consumer protection laws, such as those set out in the <i>Trade Practices Act 1974</i> and the <i>Fair Trading Act 1999</i> and in particular 	<p>Licence condition (sample)</p> <p>6.3. The Licensee must ensure that all relevant staff are provided with appropriate training in all Victoria specific obligations including the conditions of this Licence and the Energy Retail Code.</p> <p>Energy Retail Code (v21)</p> <p>106F Training</p> <p>(3) A <i>retailer</i> must ensure that training is provided to any person (including employees, agents and contractors) acting</p>	<p>We propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We are proposing to retain the existing obligation on a retailer to provide training to persons engaged in energy marketing activity, but we have updated and reduced the content requirement of this training. This obligation is proposed to become clause 53 of the Energy Retail Code of Practice.</p>

¹ Footnotes have been omitted from marketing code extracts.

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	<p>Part 4 Off-Business-Premises Sales and other sales of the <i>Fair Trading Act</i> 1999 and other relevant legislation;</p> <ul style="list-style-type: none"> • what is misleading, deceptive or unconscionable conduct and false representation (including what is coercion and harassment); and • basic contractual rights and the meaning and importance of the need for a consumer's explicit informed consent to a contract. • the ability to clearly explain the arrangements for competition in energy supply in Victoria; • the consumer's right to freely choose a retailer; • product knowledge, including: <ul style="list-style-type: none"> – tariffs, billing procedures, payment options; – eligibility requirements for concessions, rebates or grants; – knowledge of retailer's policies for customers experiencing financial hardship; and – availability of instalment plans. • understanding of basic contractual rights and the meaning and importance of the need for a consumer's explicit informed consent to a contract; • customer service skills including dealing with consumers with special needs and those without or with limited English language skills; 	<p>on its behalf who:</p> <ul style="list-style-type: none"> (a) may engage with <i>affected customers</i> by any means of communication; or (b) is a manager of a person identified in paragraph (a); or (c) is responsible for systems and processes that guide interactions with <i>customers</i>. <p>(4) For the purposes of subclause (1), a <i>retailer</i> must ensure that the training provided addresses:</p> <ul style="list-style-type: none"> (a) the nature and consequences of <i>family violence</i>; and (b) the application of the retailer's <i>family violence</i> policy; and (c) how to identify <i>affected customers</i>; and (d) how to engage appropriately and effectively with <i>affected customers</i>. 	<p>We are proposing to consolidate the marketing code provision relating to record keeping on training into clause 54 of the Energy Retail Code of Practice, which deals with broader marketing record keeping requirements (see 'visit records/ telephone records' below).</p> <p>Clause 53: Training</p> <p>(1) A <i>retailer</i> must ensure that training is provided to any person (including employees, agents and contractors) acting on its behalf who are engaged in <i>energy marketing activity</i>, in relation to</p> <ul style="list-style-type: none"> (a) the requirements of this code of practice; and (b) misleading and deceptive conduct, unconscionable conduct and false representation (including coercion and harassment) under the Australian Consumer Law. <p>(2) For the purposes of subclause (1)(a), a <i>retailer</i> must ensure that the training addresses:</p> <ul style="list-style-type: none"> (a) the requirements in relation to <i>explicit informed consent</i> (b) entitlements to assistance provided

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	<ul style="list-style-type: none"> the terms and requirements of this Code; and other areas as directed by the Commission. <p>Retailers shall ensure that copies of training manuals be retained for at least one year after the date they were last used for training, and ensure that records are kept of the training undertaken by marketing representatives for at least one year after the date on which the training took place.</p> <p>The manuals and records shall be made available for independent audit as required.</p>		<p>under this Code of Practice; and</p> <p>(c) requirements in relation to referral to interpreter services.</p>
<p>Contact with customers</p>	<p>2. Contact with Consumers</p> <p>2.1 Personal contact</p> <p>At all times in connection with any marketing, a marketing representative must identify himself or herself to a consumer. Identification involves the marketing representative using best endeavours to provide the consumer with:</p> <ul style="list-style-type: none"> the marketing representative's name; any relevant identification number; the name of the retailer on whose behalf the marketing is being undertaken and contact details for the retailer; sufficient contact details to enable the consumer to contact the retailer; and 	<p>Australian Consumer Law</p> <p>74 Disclosing purpose and identity</p> <p>A dealer who calls on a person for the purpose of negotiating an unsolicited consumer agreement, or for an incidental or related purpose, must, as soon as practicable and in any event before starting to negotiate:</p> <ul style="list-style-type: none"> (a) clearly advise the person that the dealer's purpose is to seek the person's agreement to a supply of the goods or services concerned; and (b) clearly advise the person that the dealer is obliged to leave the premises immediately on request; and (c) provide to the person such information relating to the dealer's identity as is prescribed by the regulations. 	<p>We propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We are proposing to retain the existing obligation on retailers to provide certain information when undertaking personal and telephone contact in relation to marketing activity. The Energy Fairness Plan Bill has banned cold calling and door-to-door sales for residential customers, however this obligation continues to have relevance insofar as that activity may continue for small business customers.</p> <p>This obligation is proposed to become clause 50 of the Energy Retail Code of</p>

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	<ul style="list-style-type: none"> advice as to the purpose of the marketing contact. <p>Where marketing is conducted in person, a marketing representative must wear an identification badge showing the marketing representative's photograph, name and the name of the retailer on whose behalf the marketing is being undertaken.</p> <p>2.2 Telephone contact –</p> <p>Marketing representatives who are conducting negotiations with a consumer on the telephone, which may lead to a consumer entering a contract or for an incidental or related purpose, must:</p> <ul style="list-style-type: none"> provide at the earliest reasonable opportunity: <ul style="list-style-type: none"> the first name and on request the operator identification number of the marketing representative making the telephone call; the name of the retailer on whose behalf the call is being made; and the purpose of the telephone call; and on request, provide the name of the field or telesales agency, if any, that the marketing representative is employed by. 		<p>Practice.</p> <p>Clause 50: Personal contact in relation to marketing activity</p> <p>(1) A <i>retail marketer</i> must ensure that any person contacting a <i>customer</i> in relation to <i>energy marketing activities</i> must provide the customer with:</p> <ul style="list-style-type: none"> (a) the person's name; (b) any relevant identification number; (c) the name of the <i>retailer</i> on whose behalf the <i>energy marketing activity</i> is being undertaken; (d) contact details for the <i>retailer</i>; and (e) advice as to the purpose of the <i>energy marketing activity</i>. <p>(2) A <i>retail marketer</i> contacting a consumer on the telephone in relation to <i>energy marketing activities</i> must, as soon as practicable provide the following details:</p> <ul style="list-style-type: none"> (a) the first name, and on request the operator identification number of the person making the telephone call; (b) the name of the <i>retailer</i> on whose behalf the call is being made; and (c) the purpose of the telephone call; and (d) on request, the name of the <i>retail marketer</i> that the person is employed

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<p>No contact lists</p>	<p>2.3 No contact lists</p> <p>Retailers must keep records of consumers who have requested that they not be contacted for marketing purposes at all or in a specified medium (ie. in person, by email, by telephone or by post) and, at the request of the consumer, must provide written confirmation that the consumer has been placed on a no contact list maintained by the retailer. Each no contact list must contain the name and address of each relevant consumer and the marketing media to which the no contact request relates.</p> <p>Retailers must not contact a consumer for the purpose of marketing in the medium specified on the no contact list maintained by the retailer in respect of that consumer.</p> <p>If a consumer changes address, the retailer may remove that consumer's details from the no contact list.</p> <p>Retailers must respect no canvassing signs.</p>	<p>Energy Retail Code (v21)</p> <p>65 No contact lists</p> <p>(1) This clause applies to <i>energy</i> marketing in person at a person's premises or marketing by mail, but does not apply to <i>telemarketing calls</i> or <i>e-marketing activities</i>.</p> <p>(2) A <i>retailer</i> must ensure that a "no contact list" is created and maintained for its <i>retail marketers</i>, whether by the <i>retailer</i> itself or by a person or organisation on behalf of the <i>retailer</i>.</p> <p>(3) A "no contact list" is a list of <i>small customers</i> who indicate they wish to be placed on the list.</p> <p>(4) A <i>small customer</i> may give such an indication by applying (in person, electronically, by telephone or in writing) to the <i>retailer</i> or by communicating directly with a <i>retail marketer</i>.</p> <p>(5) A <i>retail marketer</i> must not make contact with a <i>small customer</i> whose name is on the relevant no contact list.</p> <p>(6) An entry for a particular <i>small customer</i> in a no contact list continues for a period of 2 years, but the period is refreshed each time the <i>customer</i> requests inclusion or maintenance of inclusion.</p> <p>(7) A <i>retailer</i> must publish a statement on its website about the existence of its no contact list and the procedures for being placed on the list.</p>	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the Energy Retail Code (clauses 65 and 66, which are proposed to become clauses 51 and 52 of the Energy Retail Code of Practice) provides the consumer protections set out in this provision.</p> <p>We also note that the Energy Fairness Bill curtails the extent to which cold calling and door-to-door sales can occur. Amendments have been made to proposed clauses 51 and 52 (in terms of their original form at clauses 65 and 66 of the Energy Retail Code) to reflect these changes.</p>

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		<p>66 No canvassing or advertising signs</p> <p>In carrying out <i>energy marketing activities</i> a <i>retail marketer</i> must comply with any signs at a person’s premises indicating:</p> <ul style="list-style-type: none"> (a) canvassing is not permitted at the premises; or (b) no advertising or similar material is to be left at the premises or in a letterbox or other receptacle at or associated with the premises. <p>Australian Consumer Law</p> <p>There is no provision in the Australian Consumer Law which deals with no contact lists. The provisions below, whilst not exact, do deal with restrictions on contact of the customer:</p> <ul style="list-style-type: none"> • Section 75(2) states that if the prospective consumer makes a request for the dealer to leave the premises, the dealer must not contact the prospective consumer for the purpose of negotiating an unsolicited consumer agreement (or for an incidental or related purpose) for at least 30 days after the prospective consumer makes the request. • Section 73 deals with permitted hours for negotiating an unsolicited agreement. <p>Do Not Call Register Act 2006 (Cth)</p> <p>The <i>Do Not Call Register Act 2006 (Cth)</i> has provisions which relate to unsolicited telemarketing calls not being made to a number registered on the Do Not Call Register.</p>	

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<p>Visit records/ telephone records</p>	<p>2.4 Visit records</p> <p>To enable the identification of <i>marketing representatives</i> and to assist in dealing with enquiries and complaints, <i>retailers</i> will ensure that <i>marketing</i> records are maintained detailing the following information about personal visits made by <i>marketing representatives</i> to <i>consumers</i>:</p> <ul style="list-style-type: none"> the premises visited at which contact with a <i>consumer</i> was made; the dates and times of such visits including the time at which the visit concluded; and the names of <i>marketing representatives</i> conducting <i>marketing</i> at the relevant time and place. <p>These records are to be kept for one year after the date of the visit and shall be made available for independent audit as required.</p> <p>2.5 Telephone records</p> <p>To enable the identification of <i>marketing representatives</i> and to assist in dealing with consumer enquiries and complaints, <i>retailers</i> must maintain <i>marketing</i> records which include the following information about telephone contacts made by <i>marketing representatives</i> with <i>consumers</i>:</p> <ul style="list-style-type: none"> where the <i>marketing representative</i> initiates 	<p>Energy Retail Code (v21)</p> <p>68 Record keeping</p> <p>(1) A <i>retailer</i> must ensure that records are kept of all <i>energy marketing activities</i> carried out by it or on its behalf by <i>retail marketers</i>, including details of <i>energy</i> marketing visits that have been conducted, and telephone <i>energy</i> marketing calls that have been placed.</p> <p>(2) The <i>retailer</i> must ensure that each such record is retained:</p> <p>(a) for the period of 12 months; or</p> <p>(b) where a <i>small customer</i> has within that period made a complaint or referred a dispute to the <i>energy ombudsman</i> in relation to <i>energy marketing activities</i>— for the period the complaint or dispute remains unresolved,</p> <p>whichever is the longer period.</p> <p>(3) A <i>retailer</i> must ensure that it and appropriate officers or employees of the <i>retailer</i>, have immediate access, or a right of immediate access, to each such record.</p>	<p>We propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We propose to combine the marketing code obligation on retailers to keep certain records in relation to personal and telephone contact in relation to energy marketing activity, with the existing record keeping obligation in the Energy Retail Code.</p> <p>This obligation is proposed to become clause 54 of the Energy Retail Code of Practice.</p> <p>Clause 54: Record keeping</p> <p>(1) A <i>retailer</i> must ensure that records are kept of all:</p> <p>(a) <i>energy marketing activities</i> carried out by it or on its behalf by a <i>retail marketer</i>; and</p> <p>(b) records of training undertaken as required by clause 53.</p> <p>(2) For the purpose of subclause (1)(a) records must include:</p> <p>(a) for any premises visited:</p> <p>(i) the address of the premises;</p>

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	<p>the call to the consumer, the telephone number called;</p> <ul style="list-style-type: none"> • the time and dates of calls; and • the names of the relevant marketing representatives at each relevant time. <p>Retailers must retain these records for one year after the date of each relevant call and must make the records available for independent audit as required.</p>		<ul style="list-style-type: none"> (ii) the dates and times of the visits, including the time at which the visit concluded; (iii) the names of the persons conducting the <i>energy marketing activities</i>. <p>(b) for any telephone contact made:</p> <ul style="list-style-type: none"> (i) the telephone number called; (ii) the times and dates of calls; (iii) the names of the persons participating in the call on behalf of the <i>retailer</i>. <p>(3) The <i>retailer</i> must ensure that each such record is retained:</p> <ul style="list-style-type: none"> (a) for the period of 12 months; or (b) where a <i>small customer</i> has within that period made a complaint or referred a dispute to the <i>energy ombudsman</i> in relation to <i>energy marketing activities</i>—for the period the complaint or dispute remains unresolved, <p>whichever is the longer period.</p> <p>(4) A <i>retailer</i> must ensure that it and appropriate officers or employees of the <i>retailer</i>, have immediate access, or a right of immediate access, to each such record.</p>

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<p>Clear language</p>	<p>3.1 Clear language</p> <p>Information that this Code requires to be provided to consumers shall be written in plain English and designed to be readily understood by consumers.</p>	<p>Energy Retail Code (v21)</p> <p>60B Objective</p> <p>The objective of this Division is to ensure that <i>retail marketers</i> carrying out <i>energy marketing activities</i> disclose to <i>customers</i> information regarding their plans in a clear and easily understood manner so as to assist <i>customers</i> to assess the suitability of, and select, a plan.</p> <p>70H Minimum standards – clear advice</p> <p>(1) Prior to obtaining a <i>small customer's explicit informed consent</i> to enter a <i>customer retail contract</i>, a <i>retailer</i> must communicate to the <i>small customer</i> in a readily understandable manner information about:</p> <ul style="list-style-type: none"> (a) any terms pursuant to which the amounts payable by the <i>small customer</i> may vary depending on the actions of the <i>small customer</i> (for example, any conditional discounts); (b) any terms pursuant to which the amounts payable by the <i>small customer</i> may vary depending on the actions of the <i>retailer</i> (for example, any terms pursuant to which the <i>retailer</i> may make <i>price changes</i>, or any specific <i>price changes</i> that will apply to that <i>customer retail contract</i>); (c) any terms pursuant to which a <i>benefit change</i> may occur; (d) the <i>retailer's</i> other generally available plans or a <i>Victorian default offer</i> available to the <i>customer</i>, which the <i>retailer</i> reasonably believes may be more suitable for the <i>customer</i> having regard to any information the <i>retailer</i> has regarding the <i>customer</i> wherever it is 	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the Energy Retail Code (clauses 60B and 70H, which are proposed to become clauses 43 and 38 of the Energy Retail Code of Practice) and Australian Consumer Law provide the customer protections set out in this provision.</p>

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		<p>practicable to do so; and</p> <p>(e) if switching to the <i>customer retail contract</i> involves moving the <i>small customer</i> to a new tariff structure, the cost impact that the new tariff structure may have for the customer.</p> <p>Australian Consumer Law</p> <p>79 Requirements for all unsolicited consumer agreements etc</p> <p>The supplier under an unsolicited consumer agreement must ensure that the agreement, or (if the agreement was negotiated by telephone) the agreement document, complies with the following requirements:</p> <p>[...]</p> <p>(f) it must be transparent.</p> <p>transparent:</p> <p>(a) in relation to a document—means:</p> <ul style="list-style-type: none"> (i) expressed in reasonably plain language; and (ii) legible; and (iii) presented clearly; [...]. <p>Transparency is also discussed under section 24 of the Australian Consumer Law in relation to unfair contract terms.</p> <p>The requirement of transparency is restricted to the provisions</p>	

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		<p>mentioned above in the Australian Consumer Law whereas the clear language provision under the Marketing Code is a broad obligation relating to information that the Marketing Code requires to be provided to consumers.</p>	
<p>Conduct</p>	<p>3.2 Conduct</p> <p>Marketers must, and retailers must ensure that marketers, comply with all applicable Commonwealth and State and Territory laws in relation to:</p> <p>(a) misleading, deceptive or unconscionable conduct;</p> <p>(b) undue pressure, harassment or coercion; and</p> <p>(c) the quality, form and content of marketing information.</p>	<p>Energy Retail Code (v21)</p> <p>60C Duty of retailer to ensure compliance</p> <p><i>A retailer must ensure that a retail marketer who is an associate of the retailer complies with this Division.</i></p> <p>Australian Consumer Law</p> <p>Australian Consumer Law has provisions in relation to:</p> <ul style="list-style-type: none"> • misleading and deceptive conduct (sections 18 and 19) • harassment and coercion (section 50) • unconscionable conduct (sections 20-22A) • unfair contract terms (sections 23-28). 	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the Australian Consumer Law provides the customer protections set out in this provision.</p>
<p>Pre-contractual information</p>	<p>3.3 Pre-contractual information</p> <p>A retailer must provide the following information to a consumer before entering into a contract:</p> <p>(a) for a proposed market contract or a standing offer, details of all applicable prices, charges, tariffs and service levels that will apply to the consumer, where the retailer must declare that the price offered is inclusive of all costs, including GST; and</p>	<p>Energy Retail Code (v21)</p> <p>63 Form of disclosure to small customers</p> <p>(1) Required information provided to a <i>small customer</i> before the formation of the <i>market retail contract</i> may be provided electronically, verbally or in writing.</p> <p>(2) Required information provided to a <i>small customer</i> after the formation of the <i>market retail contract</i> must be provided in</p>	<p>We propose to consolidate one element of this marketing code provision into the Energy Retail Code of Practice.</p> <p>We are proposing to retain one specific element of the obligation at clause 3.3 of the marketing code (which is proposed to become clause 47(1)(f) of the Energy Retail Code of Practice), relating to providing</p>

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	<p>(b) in addition, for a market contract:</p> <ul style="list-style-type: none"> the type, frequency of bills and payment methods the consumer will receive; the details of all applicable prices, charges, tariffs and service levels that will apply to the consumer, where the retailer must declare that the price offered is inclusive of all costs, including GST; the full name, address and telephone number of the retailer; any rights the consumer has to cancel the contract, the charges, if any, that would apply on cancellation and the circumstances where these charges would apply; that the consumer may be contacted as part of an audit procedure, to confirm their understanding of and consent to the contract; all relevant information about any difference between the contract's terms and conditions and the basic terms and conditions under the Energy Retail Code; in the case of contracts formed by marketing representatives in person off the business premises of the retailer, the full terms of the contract including the period of the contract, and whether the marketing representative will 	<p>a single written disclosure statement.</p> <p>(3) If required information was provided to a <i>small customer</i> electronically or verbally before the formation of the <i>market retail contract</i>, required information in a single written disclosure statement must also be provided to the <i>customer</i> after the formation of the contract.</p> <p>64 Required information</p> <p>(1) The required information that a <i>retail marketer</i> is to provide to a <i>small customer</i> is information in relation to the following:</p> <p>(a) all applicable prices, charges, early termination payments and penalties, <i>security deposits</i>, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;</p> <p>(b) the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the <i>customer</i> moves out during the term of the contract;</p> <p>(c) if any requirement is to be or may be complied with by an electronic transaction—how the transaction is to operate and, as appropriate, an indication that the <i>customer</i> will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction;</p> <p>(d) the rights that a <i>customer</i> has to withdraw from the contract during the <i>cooling off period</i>, including how to exercise those rights;</p>	<p>information to a customer about whether a marketing associate will receive any commission or fee paid by a retailer by reason of the customer entering into the contract.</p> <p>Clause 47: Required information</p> <p>(1) For the purposes of this Subdivision, the required information that a <i>retail marketer</i> is to provide to a <i>small customer</i> is information in relation to the following:</p> <p>[...]</p> <p>(f) whether a <i>marketing associate</i> will receive any commission or fee paid by a <i>retailer</i> by reason of the <i>customer</i> entering into the <i>customer retail contract</i>.</p> <p>We consider that the other elements of the marketing code relating to pre-contractual information are covered by clause 70H in the Energy Retail Code (which is proposed to become clause 38 of the Energy Retail Code of Practice).</p>

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	<p>receive a commission or fee from the retailer if the customer enters into a contract.</p> <p>A retailer must provide the consumer with a reasonable opportunity to consider this information before entering into the contract.</p>	<p>(e) the <i>customer's</i> right to complain to the <i>retailer</i> in respect of any <i>energy marketing activity</i> of the <i>retail marketer</i> conducted on behalf of the <i>retailer</i> and, if the complaint is not satisfactorily resolved by the <i>retailer</i>, of the <i>customer's</i> right to complain to the <i>energy ombudsman</i>.</p> <p>(2) The required information, when given in a written disclosure statement, must include or be accompanied by a copy of the <i>market retail contract</i>.</p> <p>70H Minimum standards – clear advice</p> <p>(1) Prior to obtaining a <i>small customer's explicit informed consent</i> to enter a <i>customer retail contract</i>, a <i>retailer</i> must communicate to the <i>small customer</i> in a readily understandable manner information about:</p> <ul style="list-style-type: none"> (a) any terms pursuant to which the amounts payable by the <i>small customer</i> may vary depending on the actions of the <i>small customer</i> (for example, any conditional discounts); (b) any terms pursuant to which the amounts payable by the <i>small customer</i> may vary depending on the actions of the <i>retailer</i> (for example, any terms pursuant to which the <i>retailer</i> may make <i>price changes</i>, or any specific <i>price changes</i> that will apply to that <i>customer retail contract</i>); (c) any terms pursuant to which a <i>benefit change</i> may occur; (d) the <i>retailer's</i> other generally available plans or a <i>Victorian default offer</i> available to the <i>customer</i>, which the <i>retailer</i> reasonably believes may be more suitable for the <i>customer</i> having regard to any information the <i>retailer</i> has regarding the <i>customer</i> wherever it is 	

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		<p>practicable to do so; and</p> <p>(e) if switching to the <i>customer retail contract</i> involves moving the <i>small customer</i> to a new tariff structure, the cost impact that the new tariff structure may have for the customer.</p>	
Cooling-off	<p>3.4 Cooling off</p> <p>(a) A consumer may cancel a market contract.</p> <p>(b) Unless the consumer has a longer cancellation period under the FT Act, to cancel a market contract a consumer must give a cancellation notice to the retailer within:</p> <ul style="list-style-type: none"> if the market contract is for electricity and it is an energisation contract or it is for gas and is in respect of a supply point which requires only unplugging or installation of a meter to allow the flow of gas, 5 business days from and including the relevant date; and otherwise, 10 business days from and including the relevant date. <p>(c) Appendix 1 applies in respect of the cancellation of a market contract which is neither a door-to-door agreement, a non-contact sales agreement nor a telephone marketing agreement.</p>	<p>Energy Retail Code (v21)</p> <p>47 Cooling off period and right of withdrawal (MRC and EPA)</p> <p>(1) Right of withdrawal</p> <p>A <i>small customer</i> who enters into a <i>market retail contract</i> or an <i>exempt person arrangement</i> with a <i>retailer</i> has the right to withdraw from the contract in accordance with this clause.</p> <p>(2) When right of withdrawal may be exercised</p> <p>The right of withdrawal may be exercised within the period of 10 <i>business days</i> (the cooling off period) commencing with the date the <i>small customer</i>:</p> <p>(a) receives the required information under clause 64 about the contract; or</p> <p>(b) enters into the <i>exempt person arrangement</i>.</p> <p>(3) Customer’s agreement or acceptance is not a bar to withdrawal</p> <p>The right of withdrawal may be exercised even though the <i>small customer</i> agreed to or accepted the contract or the</p>	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the Energy Retail Code (clause 47, which is proposed to become clause 97 of the Energy Retail Code of Practice) and Australian Consumer Law provide the consumer protections set out in this provision.</p>

Subject	Clause in Code of Conduct for Marketing Retail Energy in Victoria (marketing code) ¹	Coverage in other instruments	Proposed change
		<p><i>exempt person arrangement.</i></p> <p>(4) How right of withdrawal may be exercised</p> <p>The <i>small customer</i> withdraws from the contract or arrangement on the <i>exempt person arrangement</i> by informing the <i>retailer</i> orally or in writing of the <i>customer's</i> intention to withdraw from the contract or arrangement.</p> <p>(5) Rights and obligations to be set out in contract</p> <p>A <i>retailer</i> must include in each <i>market retail contract</i> or <i>exempt person arrangement</i> it enters into with a <i>small customer</i> express provisions setting out the rights and obligations provided for by this clause.</p> <p>(6) Record of withdrawal</p> <p>A <i>retailer</i> must create a record of each withdrawal, and the provisions of clause 3D of the Code apply in relation to a record of withdrawal as if it were a record of <i>explicit informed consent</i>.</p> <p>(7) Effect of withdrawal</p> <p>Withdrawal from a <i>market retail contract</i> or an <i>exempt person arrangement</i> operates as a rescission of the contract or arrangement.</p> <p>(8) Application of this clause to exempt persons</p> <p>This clause applies to <i>exempt persons</i> in the following categories:</p>	

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		VD1, VD2, VD7, VR1, VR2, VR3 and VR4.	
Contract formation	<p>3.5 Contract information</p> <p>(a) On or before the second business day after the relevant date in respect of a contract, a retailer must give a consumer:</p> <ul style="list-style-type: none"> a copy of the contract or other document evidencing the contract which sets out the tariff and all of the terms and conditions of the contract including: <ul style="list-style-type: none"> (A) the total consideration to be paid or provided by the consumer under the contract or, if the total consideration is not ascertainable at the time the contract is entered into, the manner in which it is to be calculated; and (B) any additional retail charges or other charges or fees to be paid by the consumer or which the consumer may become liable to pay, including any payable on cancellation. <p>The retailer must comply with any relevant guideline in preparing this document;</p> <ul style="list-style-type: none"> if the consumer has a right to cancel the contract, a notice advising the consumer of the consumer's right to cancel the contract, accompanied by a further form of notice which 	<p>Energy Retail Code (v21)</p> <p>64 Required information</p> <p>(1) The required information that a retail marketer is to provide to a small customer is information in relation to the following:</p> <ol style="list-style-type: none"> all applicable prices, charges, early termination payments and penalties, <i>security deposits</i>, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed; the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the customer moves out during the term of the contract; if any requirement is to be or may be complied with by an electronic transaction—how the transaction is to operate and, as appropriate, an indication that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction; the rights that a customer has to withdraw from the contract during the <i>cooling off period</i>, including how to exercise those rights; the customer's right to complain to the retailer in respect of any <i>energy marketing activity</i> of the retail marketer conducted on behalf of the retailer and, if the complaint is 	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the Energy Retail Code (clause 64, which is proposed to become clause 47 of the Energy Retail Code of Practice) provides the consumer protections set out in this provision.</p>

Subject	Clause in Code of Conduct for Marketing Retail Energy in Victoria (marketing code) ¹	Coverage in other instruments	Proposed change
	<p>sets out the name and address of the retailer and the date and details of the contract which may be used by the consumer to cancel the contract;</p> <ul style="list-style-type: none"> information relating to Government energy assistance schemes which may be available to the consumer; details of how to make a complaint to, or enquiry of, the retailer and details of the Energy and Water Ombudsman, Victoria; and information regarding the existence and general scope of this Code and how to access Code compliance procedures. <p>(b) A retailer will be taken to have given the document, notices or information required by clause 3.5(a) on the second business day after the relevant date if by then the retailer has posted the document, notices or information to the consumer.</p>	<p>not satisfactorily resolved by the retailer, of the customer's right to complain to the energy ombudsman.</p> <p>(2) The required information, when given in a written disclosure statement, must include or be accompanied by a copy of the market retail contract.</p>	
Electronic commerce information	<p>3.6 Electronic commerce information</p> <p>In the case of contracts formed through electronic commerce, the retailer shall have on line processes to ensure the consumer has received the information required by Section 3.5 of the Code, prior to entering into the contract and shall supply such information required by Section 3.5 via email to the consumer immediately after entering into the</p>	<p>Energy Retail Code (v21)</p> <p>63 Form of disclosure to small customers</p> <p>(1) Required information provided to a small customer before the formation of the market retail contract may be provided electronically, verbally or in writing.</p> <p>(2) Required information provided to a small customer after the formation of the market retail contract must be provided in</p>	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the Energy Retail Code (clause 63, which is proposed to become clause 46 of the Energy Retail Code of Practice) provides the consumer protections set out in this provision.</p>

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	<p>contract.</p>	<p>a single written disclosure statement.</p> <p>(3) If required information was provided to a <i>small customer</i> electronically or verbally before the formation of the <i>market retail contract</i>, required information in a single written disclosure statement must also be provided to the <i>customer</i> after the formation of the contract.</p>	
<p>Off retailer business premises contracts</p>	<p>3.7 Off retailer business premises contracts</p> <p>Retailers must comply with Part 4 of the <i>Fair Trading Act 1999</i> that deals with Off-Business-Premises Sales. This includes, among other provisions, that retailers must provide specified information about: the contract, cooling off periods, when a consumer may cancel the contract, the effect of cancellation, what a retailer and a consumer must do in the event of cancellation, and what charges a retailer can charge on cancellation.</p> <p>In addition to complying with relevant sections of Division 2 of Part 4 of the <i>Fair Trading Act 1999</i> retailers shall comply with and provide to the consumer the consumer protection provisions of the Division as if they applied to all negotiations carried on by marketing representatives in person in the presence of the consumer, not at the business premises of the retailer, which lead to a contract. The consumer protection provided by this Section extends to all person-to-person negotiations for</p>		<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>This clause is out of date. This provision obligated retailers to comply with Part 4 of the <i>Fair Trading Act 1999</i> that deals with off-business-premises sales. This Part was repealed in 2010 and the matters are instead regulated by the Australian Consumer Law.</p>

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	<p>contracts that are negotiated/entered into away from the retailer’s business premises. It is designed to ensure that the same standards apply whether the negotiations are conducted at the consumer’s home, workplace, in public or in other places and whether the consumer is an individual or a body corporate.</p>		
<p>Consumer transfer</p>	<p>4.1 Consumer transfer</p> <p>(a) A retailer shall not transfer a consumer to itself from another retailer without first obtaining that consumer’s explicit informed consent to such transfer.</p> <p>(b) Clause 4.1(a) does not apply if the transfer is made in connection with a new energy contract arising from the consumer’s acceptance of the retailer’s standing offer.</p>	<p>Energy Retail Code (v21)</p> <p>57 Retailer obligations in relation to customer transfer</p> <p>(1) A retailer must not submit a request for a transfer under the relevant <i>Retail Market Procedures</i> unless:</p> <ul style="list-style-type: none"> (a) the retailer has obtained <i>explicit informed consent</i> from the customer to enter into the <i>relevant customer retail contract</i>; and (b) the retailer has a <i>customer retail contract</i> in place to enable the sale of <i>energy</i> to the customer at their premises. <p>(2) A customer transfer under the relevant <i>Retail Market Procedures</i> is permitted prior to the completion of the <i>cooling off period</i>, provided that the transfer can be reversed if the customer elects to withdraw from the contract under clause 47.</p> <p>58 Notice to small customers on transfer</p> <p>A retailer must, within 5 <i>business days</i> of receiving notification that it has become the <i>financially responsible retailer</i> for a</p>	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the Energy Retail Code (clauses 57-59, which are proposed to become clauses 113-115 of the Energy Retail Code of Practice) already provides the consumer protections set out in this provision.</p>

Subject	Clause in Code of Conduct for Marketing Retail Energy in Victoria (marketing code) ¹	Coverage in other instruments	Proposed change
		<p><i>small customer</i> as a result of a <i>customer</i> transfer, give notice to the <i>customer</i>:</p> <ul style="list-style-type: none"> (a) that the <i>retailer</i> has commenced selling <i>energy</i> to the <i>customer</i>; and (b) of the date on which the <i>retailer</i> commenced selling <i>energy</i> to the <i>customer</i>. <p>59 Notice to small customers where transfer delayed</p> <p>Where a <i>retailer</i> has notified a <i>small customer</i> of the expected date of a transfer and that transfer does not occur, the <i>retailer</i> must, within 5 days of becoming aware that a transfer has not occurred on the expected date, notify the <i>customer</i>:</p> <ul style="list-style-type: none"> (a) that the transfer did not occur; and (b) of the reason for the delay; and <p>of the new expected date of the completion of the transfer, if it is still proceeding.</p>	
<p>Contract terms</p>	<p>4.2 Contract terms</p> <p>An agreement between a <i>retailer</i> and a <i>consumer</i> to include a term or condition which is inconsistent with a term or condition set out in the Energy Retail Code which is marked with an asterisk (*) in a new contract or in addition to or in substitution of the terms and conditions of an existing contract is only effective once the <i>consumer</i> has given its explicit informed consent to the incorporation of the inconsistent term or condition.</p>	<p>Energy Retail Code (v21)</p> <p>16 Pre-contractual duty of retailers</p> <p>(4) A <i>retailer</i> must obtain the <i>explicit informed consent</i> of a <i>small customer</i> for the entry by the <i>customer</i> into a <i>market retail contract</i> with the <i>retailer</i>.</p> <p>46A Variations to market retail contracts</p> <p>(1) The structure and nature of the tariff of a <i>market retail contract</i> between a <i>customer</i> and a <i>retailer</i> may only be varied</p>	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>This clause is out of date and is inconsistent with the current Energy Retail Code (since 2015 there are no longer terms or conditions in the Energy Retail Code marked with an asterisk which this clause refers to). We also consider that other clauses in the Energy Retail Code cover</p>

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		<p>by agreement in writing between the <i>customer</i> and the <i>retailer</i>. The <i>retailer</i> may be required to obtain the <i>customer's explicit informed consent</i> in order to vary a <i>market retail contract</i> if provided for by a provision of this Code.</p> <p>(2) If the structure or nature of the tariff changes in accordance with a term or condition of a <i>customer retail contract</i> previously agreed between the <i>customer</i> and the <i>retailer</i> or in accordance with the Advanced Metering Infrastructure (Retail and Network Tariffs) Order 2021, no further agreement is required between the <i>retailer</i> and the <i>customer</i> to effect such tariff change, provided that, where the contract is a <i>market retail contract</i>, the <i>customer</i> had given its <i>explicit informed consent</i> to the inclusion of the relevant term or condition in the <i>customer retail contract</i>.</p> <p>(3) For the avoidance of doubt, if the tariff and terms and conditions of a <i>dual fuel contract</i> vary on <i>disconnection</i> by a <i>retailer</i> of a <i>residential customer's</i> gas in accordance with and as contemplated by a <i>disconnection warning notice</i>, no further agreement is required.</p> <p>(4) In this clause:</p> <p><i>dual fuel contract</i> has the meaning given to it in clause 117(1) of this Code.</p>	<p>requirements for consent in relation to entry and variation of contracts.</p>
<p>Sales to minors and “authorised”</p>	<p>4.3 Sales to minors and “authorised” consumers</p> <p>The <i>retailer</i> will take reasonable steps to conduct <i>contract</i> negotiations with a person who has the</p>	<p>No comparable clause in the Energy Retail Code.</p> <p>There are provisions of the goods act that relate to a minor’s capacity to buy goods and services (see s 7).</p>	<p>We propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p>

Subject	Clause in Code of Conduct for Marketing Retail Energy in Victoria (marketing code) ¹	Coverage in other instruments	Proposed change
consumers	<p>authority to enter into a contract for electricity supplied to the actual site.</p> <p>Where it is shown that an adult was resident at the site, the onus will be upon the retailer to prove that a minor was the appropriate authorised consumer to enter into a contract.</p>		<p>We are proposing to retain the obligation on retailers to take reasonable steps to ensure it enters into a customer retail contract with persons who have the authority to enter into that contract.</p> <p>This obligation is proposed to become clause 31 of the draft Energy Retail Code of Practice.</p> <p>Clause 31: Sales to authorised customers</p> <p>(1) A <i>retailer</i> must take reasonable steps to ensure it enters into a <i>customer retail contract</i> with a person who has authority to enter into that contract for the supply of energy to the premises.</p>
Commencement of retail service	<p>5. Commencement of Retail Service</p> <p>A retailer will advise the consumer at the time of entering into the contract of the expected date of when the retailer will be responsible for electricity and/or gas retail service to the supply address. Any changes of more than one week to this date shall be advised to the consumer as soon as reasonably possible after the retailer becomes aware of such change.</p>	<p>Energy Retail Code (v21)</p> <p>64 Required information</p> <p>(1) The required information that a <i>retail marketer</i> is to provide to a <i>small customer</i> is information in relation to the following:</p> <p>(a) all applicable prices, charges, early termination payments and penalties, <i>security deposits</i>, service levels, concessions or rebates, billing and payment arrangements and how any of these matters may be changed;</p>	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the Energy Retail Code (clause 64(1)(b), which is proposed to become clause 47(1)(b) of the Energy Retail Code of Practice) already provides the consumer protections set out in this provision.</p>

Subject	Clause in Code of Conduct for Marketing Retail Energy in Victoria (marketing code) ¹	Coverage in other instruments	Proposed change
	<p>When, pursuant to a contract, the retailer is not responsible for electricity and/or gas retail service to the supply address until at least three months after the date of the contract for electricity or at least two months after the date of the contract for gas, the retailer shall after the expiry of the period and before commencing to take responsibility at the site, take reasonable steps to keep the consumer informed that the consumer has entered into a contract and of the expected date of commencement of that retailer's responsibility.</p>	<p>(b) the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the <i>customer</i> moves out during the term of the contract;</p> <p>(c) if any requirement is to be or may be complied with by an electronic transaction—how the transaction is to operate and, as appropriate, an indication that the <i>customer</i> will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction;</p> <p>(d) the rights that a <i>customer</i> has to withdraw from the contract during the <i>cooling off period</i>, including how to exercise those rights;</p> <p>(e) the <i>customer's</i> right to complain to the <i>retailer</i> in respect of any <i>energy marketing activity</i> of the <i>retail marketer</i> conducted on behalf of the <i>retailer</i> and, if the complaint is not satisfactorily resolved by the <i>retailer</i>, of the <i>customer's</i> right to complain to the <i>energy ombudsman</i>.</p> <p>(2) The required information, when given in a written disclosure statement, must include or be accompanied by a copy of the <i>market retail contract</i>.</p>	
Marketing and consumer information	<p>6. Marketing and Consumer Information</p> <p>Retailers shall not represent that they are conducting market research when a purpose of the contact with the consumer is an attempt to</p>	<p>Australian Consumer Law</p> <p>Australian Consumer Law has provisions in relation to misleading and deceptive conduct (sections 18 and 19).</p>	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the consumer protections</p>

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	<p>encourage the customer enter into a contract with the retailer.</p> <p>Retailers shall establish and abide by procedures that, so far as is relevant for marketing, comply with the National Privacy Principles, as outlined in the amendments to the <i>Privacy Act 1988</i>. Retailers will also comply with any relevant Guideline issued by the Commission.</p>	<p>Licence condition (sample)</p> <p>21. Compliance with laws</p> <p>21.1. The Licensee must comply with all applicable laws.</p> <p>21.2. The Licensee must ensure that any contract entered into with any third parties contains such provisions as are necessary to enable the Licensee to comply with the requirements of this Licence.</p> <p>Other</p> <p>The Energy Fairness Plan Bill relevantly prohibits some conduct (e.g. ‘save’ and ‘win-back’ offers) and excludes “general marketing campaigns” from those prohibitions.</p> <p>The Privacy Act 1988 will apply to licensees with turnover of \$3million or more.</p>	<p>set out in this provision are addressed by the Australian Consumer Law, Energy Fairness Bill provisions, licence conditions and privacy legislation.</p>
<p>Dispute resolution</p>	<p>7. Dispute Resolution</p> <p>7.1 Dispute resolution – internal</p> <p>Retailers shall have an internal process for handling complaints and resolving disputes arising from the retailer’s marketing activities, which complies with the Australian Standard on Complaints Handling (AS ISO 1002-2006). This process will be provided at no cost to consumers.</p> <p>If a consumer complaint is not resolved internally in</p>	<p>Energy Retail Code (v21)</p> <p>50 Small customer complaints and dispute resolution information</p> <p>(1) A <i>retailer</i> must include, as a minimum requirement in relation to the terms and conditions of a <i>market retail contract</i>, provisions to the effect of the following:</p> <p>(a) the <i>small customer</i> may, if they have a query, complaint or dispute, contact the <i>retailer</i>;</p> <p>(b) the <i>retailer</i> is obliged to handle a complaint made by a</p>	<p>We do not propose to consolidate this marketing code provision into the Energy Retail Code of Practice.</p> <p>We consider that the Energy Retail Code (clauses 50, 56, 59A and 64, which are proposed to become clauses 102, 13, 14 and 47 of the Energy Retail Code of Practice) already provides the consumer protections set out in this provision.</p>

Subject	Clause in Code of Conduct for Marketing Retail Energy in Victoria (marketing code) ¹	Coverage in other instruments	Proposed change
	<p>a manner acceptable to the consumer, the retailer shall:</p> <ul style="list-style-type: none"> provide reasons for the outcome to the consumer and, if the consumer so requests, the retailer shall supply such reasons in writing; and provide information to the consumer on further action the consumer may take including information about and contact details for the Energy and Water Ombudsman (Victoria) (EWOV). <p>The retailer shall retain records of the grounds for complaint, the outcome including the reasons for the outcome of the complaint and statistics of the number of complaints made to the retailer. These records shall be kept for two years after the date on which the complaint was made and shall be made available for an independent audit on request.</p> <p>7.2 Dispute resolution – external</p> <p>If a consumer complaint has not been resolved to the satisfaction of the consumer within one month of the consumer complaint being made to the retailer, the retailer shall provide written or verbal information to the consumer advising the consumer of the right to lodge a complaint with EWOV.</p>	<p><i>small customer</i> in accordance with the <i>retailer's</i> standard complaints and dispute resolution procedures, which can be found on the <i>retailer's</i> website or provided to the <i>customer</i> on request;</p> <p>(c) the <i>retailer</i> must inform the <i>small customer</i> of the outcome of the <i>customer's</i> complaint;</p> <p>if the <i>small customer</i> is not satisfied with the <i>retailer's</i> response to the <i>customer's</i> complaint, the <i>customer</i> has a right to refer the complaint or dispute to the <i>energy ombudsman</i>.</p> <p>(2) The provisions required to be included in the <i>market retail contract</i> must provide the <i>retailer's</i> contact details for the <i>small customer</i> to contact the <i>retailer</i> in connection with a query, complaint or dispute.</p> <p>56 Provision of information to customers</p> <p>(1) A <i>retailer</i> must publish on its website a summary of the rights, entitlements and obligations of <i>small customers</i>, including:</p> <p>(aa) the entitlements of <i>customers</i> to assistance from the <i>retailer</i> under Part 3; and</p> <p>(a) the <i>retailer's</i> standard complaints and dispute resolution procedure; and</p> <p>(b) the contact details for the relevant <i>energy ombudsman</i>.</p> <p>(2) If a <i>small customer</i> requests information of the kind referred to in subclause (1), the <i>retailer</i> must either:</p> <p>(a) refer the <i>customer</i> to the <i>retailer's</i> website; or</p>	

Subject	Clause in Code of Conduct for Marketing Retail Energy in Victoria (marketing code) ¹	Coverage in other instruments	Proposed change
	<p>7.3 Dispute resolution – information</p> <p>Retailers shall:</p> <ul style="list-style-type: none"> • make available information which: <ul style="list-style-type: none"> – promotes consumer access to and understanding of complaints handling processes and procedures; – defines the time-frame within which a complaint will be addressed by the retailer, and • provide consumers with information about the retailer's complaints handling process and the existence and role of EWOV. 	<p>(b) provide the information to the <i>customer</i>.</p> <p>(3) The <i>retailer</i> must provide a copy of any information of that kind to the <i>customer</i> if the <i>customer</i> requests a copy.</p> <p>(4) The information or a copy of the information requested under this clause must be provided without charge, but information requested more than once in any 12 month period may be provided subject to a reasonable charge.</p> <p>59A Standard complaints and dispute resolution procedures</p> <p>(1) A <i>retailer</i> or <i>responsible person</i> must develop, make and publish on its website a set of procedures detailing the <i>retailer's</i> or <i>responsible person's</i> procedures for handling <i>small customer</i> complaints and dispute resolution procedures. The procedures must be regularly reviewed and kept up to date. The procedures must be substantially consistent with the Australian Standard AS ISO 10002-2006 (Customer satisfaction – Guidelines for complaints handling in organizations) as amended and updated from time to time.</p> <p>64 Required information</p> <p>(1) The required information that a <i>retail marketer</i> is to provide to a <i>small customer</i> is information in relation to the following:</p> <p>[...]</p> <p>(e) the <i>customer's</i> right to complain to the <i>retailer</i> in respect of any <i>energy marketing activity</i> of the <i>retail marketer</i> conducted on behalf of the <i>retailer</i> and, if the complaint is</p>	

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		<p>not satisfactorily resolved by the <i>retailer</i>, of the <i>customer's</i> right to complain to the <i>energy ombudsman</i>.</p> <p>Note: there are various other provisions in the Energy Retail Code where a retailer must inform a customer of their right to make a complaint to the ombudsman (e.g. clause 29(7) relating to billing disputes).</p>	