

The African Consumer Experience of the Contestable Energy Market in the West of Melbourne

**A report prepared by the Footscray Community Legal
Centre and the Financial Counselling Service Inc.**

November 2008

**The African Consumer Experience of the Contestable Energy
Market in the West of Melbourne**

Acknowledgement

This paper has been prepared by the Footscray Community Legal Centre and Financial Counselling Service with financial assistance from the Essential Services Commission. We would like to take this opportunity to thank a number of organisations that assisted with the collection of case studies, the provision of advice to members of the African community in the western suburbs and the preparation of this report. These agencies include:

- The Essential Services Commission Victoria
- The Energy and Water Ombudsman Victoria
- Footscray Anglican Sudanese Ministry
- Consumer Action Law Centre

We thank them for their support. We wish to acknowledge the support of Judy Bainbridge and her colleagues at the Footscray Anglican Sudanese Ministry for allowing us access to the hall at Pickett Street to conduct an all-day advice session for members of the African community in the west.

This report is a collaborative effort with input from the financial counselling team of Martin Stevens, Anita Smith and Ajak Nyariel, the Centre Manager, Denis Nelthorpe and Consumer Action Law Centre solicitor Ms Jillian Williams. We would like to acknowledge the support of the Consumer Action Law Centre and especially the patience and perseverance of Ms Williams for her contribution.

The views and interpretations expressed in this paper are those of Footscray Community Legal Centre and Financial Counselling Service and do not represent the views of any other agency. Footscray Community Legal Centre and Financial Counselling Service is located at 220 Nicholson Street Footscray 3011 Phone: 03 9689 8444 Fax: 03 9689 8155 Email: 'admin@footscrayclc.org.au'

Contents Page

Acknowledgement2

Contents Page3

Purpose of the Report4

Life in a Refugee Camp in Africa – The Experience of Ajak:.....4

Camp Life.....4

Village Life.....5

Arriving in Australia5

The Role of the Footscray Community Legal Centre and Financial Counselling Service5

African consumers and the energy market7

Financial Counsellors - Working with African clients8

Financial Counsellors - Working with utility companies.....9

Solutions – Practical and Regulatory10

Problems with direct marketing of energy contracts.....10

The maintenance of supply10

Case Studies11

Case 1.....11

Case 2.....12

Case 3.....13

Case 4.....14

Case 5.....15

Case 6.....17

Case 7.....19

Case 8.....19

Case 9.....20

Case 10.....22

Case 11.....23

Case 12.....25

Case 13.....26

Case 14.....27

Case 15.....28

Case 16.....29

Case 17.....31

Case 18.....32

Case 19.....33

Purpose of the Report

The African community in the western region of Melbourne is not coping with the complexities of the contestable energy market. A program designed to assist the African community in the west with financial counselling and community education has been swamped by African consumers with energy related problems.

In 1999 approximately 30 per cent of the clients of the Footscray service were of a non-English speaking background (NESB) and approximately 18 per cent of presenting problems were related to energy. In 2000 the percentage of NESB clients increased to 40 per cent and the percentage of energy related problems remained stable at 18 per cent. In 2008, as a result of our emphasis on service to the African community, 75 per cent of clients were from a NESB African background but energy related problems have increased to a staggering 61 per cent of presented problems.

Even accepting that African clients have a higher level of difficulty in dealing with the energy industry, this represents a massive increase on previous years.

The purpose of this report is to document the experiences of recently settled African community members and other disadvantaged consumers in the western suburbs in dealing with energy providers in the deregulated, contestable energy market. The report also identifies the difficulties encountered by financial counsellors in seeking to assist these consumers and the impact that casework on their behalf has had on the delivery of financial counselling casework services to residents of the western suburbs of Melbourne.

This report begins with a look at the refugee camp history of a single member of the African community to set the scene for those wishing to understand the difficulty of newly settled migrants, and particularly Africans, engaging in a competitive energy market in Australia. The report then draws on the experiences of our clients and our financial counsellors to make observations about the interaction between the retail energy industry and African consumers. The financial counsellors have also detailed the difficulties they have experienced in trying to work with the retailers to assist their clients to resolve their problems. The Consumer Action Law Centre of Victoria has provided an assessment of the legal and compliance issues arising out of the case studies. The report then examines the impact of these cases on the financial counselling program and offers some suggestions for reducing the impact of these problems on both the African community and the financial counselling program. Finally, the case studies are presented as an illustration of the experiences of the African community.

Life in a Refugee Camp in Africa – The Experience of Ajak:

Camp Life

When the war affected Ajak's family they were forced to move from their home in Sudan to Kenya, where they and many others set up a camp. The people who came had nothing with them and when they finally found sanctuary it was in the middle of the desert where nothing could be cultivated. The camp was solely reliant on provisions provided by and distributed through international aid organisations. Distribution centres in the camp distributed food every two weeks which then had to be rationed. Nothing that could not be stored was distributed. Fire wood, water (including the vessels to carry the water), tarps and poles to make houses were all given to the people in the camps. People did not enter into contracts to obtain these very basic goods and services, they did not have electricity or gas and they did not receive bills for their use of the camp's water or food.

Hundreds of thousands of people can live in the camps for many years before they either return to their home country or find asylum in another country. In Ajak's case, it was 10 years.

Village Life

Even before they were forced to flee to camps, people living in villages in Sudan had very little need for money. Their food and building supplies could all be cultivated from the natural environment. There was no need for electricity or gas in the villages. Moreover, formal education was generally not undertaken. This means that many people from Sudan have not learned to read or write in their first language, let alone in English. Ajak notes that this is not necessarily the case for people from other African countries or from the cities and towns of Sudan.

Arriving in Australia

However, many refugees who come to Australia from Sudan will have limited or no understanding of English and, in many cases, no prior experience of the relatively complex contractual arrangements entered into daily here. The concept of contracting with someone may not be alien, but the intricate terms and conditions that attach to contracts for goods and services may be. For instance, Ajak said that her mother knew that she had a contract with her energy supplier which required her to pay the supplier money, however, she did not know that this meant she would be liable for cancellation fees if she terminated her contract early.

While a social worker is appointed to assist refugees upon their arrival to Australia, the information provided to people is limited. For instance, people may be assisted in signing up for basic services such as energy and told that they have to pay a company for their electricity but are not told that their usage affects how much they have to pay or that they will be required to pay fees if they cancel the contract.

Thus, a person's past experience, education and the limited information that they are provided upon arrival in Australia all impact on a person's ability to truly understand the contracts that they enter into. This problem is exacerbated by the way in which energy retailers market their services, as highlighted by the case studies below.

The Role of the Footscray Community Legal Centre and Financial Counselling Service

Two years ago the Committee of Management and staff of the Footscray Community Legal Centre and Financial Counselling Service made a decision to change the direction of the work of the Centre. It was decided that the Centre should focus more on economically disadvantaged client groups and legal problems arising directly out of financial hardship and poverty.

The centre directed resources towards the needs of recently settled migrants and in particular the members of the African communities in the Western region. Casework services targeted to these communities have been provided through legal and financial counselling clinics and community education sessions have been delivered in partnership with local settlement and welfare agencies and the Maribyrnong City Council.

An outreach clinic was established at the Footscray Anglican Sudanese Ministry at Pickett Street, Footscray. Clients, particularly women, from the African community appeared to feel more comfortable presenting at this location. The clinic was a success in terms of attracting clients but presented difficulties in terms of access to interpreters, internet/email and telephone.

From 1 January 2008 to 31 August 2008, 155 clients presented for financial counselling. Clients from the African community made up 76.2 per cent of the total number of these clients, of which 21.2 per cent presented at the outreach in Pickett Street Footscray. It is illuminating to compare the ethnic and language background of clients in 1999 and 2008.

In 1999 approximately 30 per cent of the clients of the service were of a NESB background and approximately 18 per cent of presenting problems were related to energy. In 2000 the percentage of NESB clients increased to 40 per cent and the percentage of energy related problems remained stable

at 18 per cent. In 2008, as a result of our emphasis on the African community, 75 per cent of clients were from a NESB African background but energy related problems had increased to a staggering 61 per cent of presenting problems.

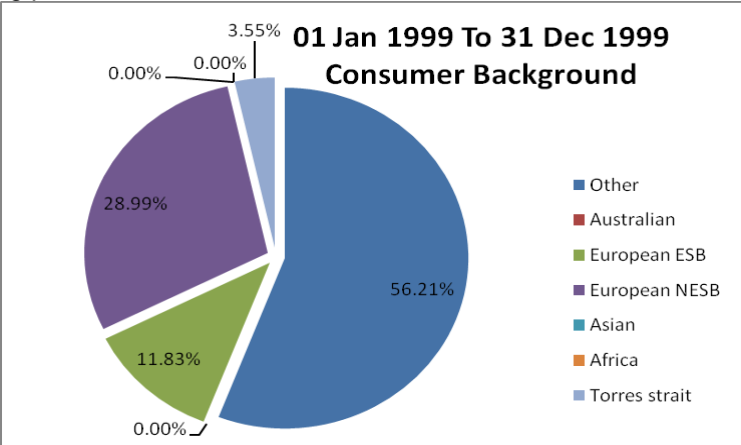


Figure 1 – Consumer Background of Clients January to December 1999

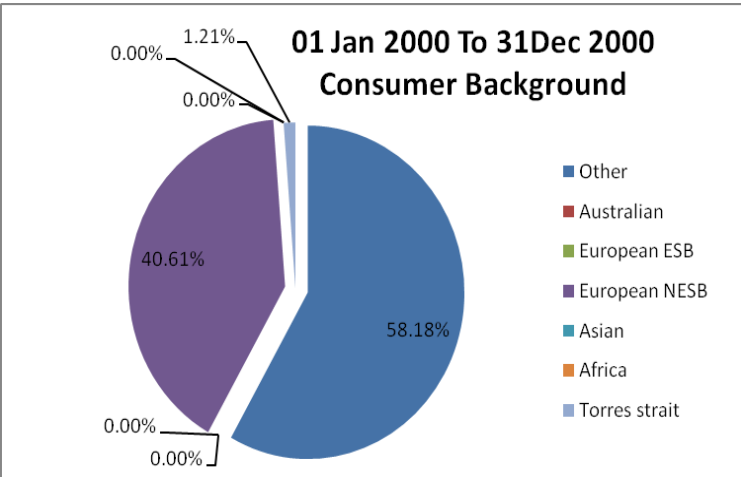


Figure 2 – Consumer Background of Clients January to December 2000

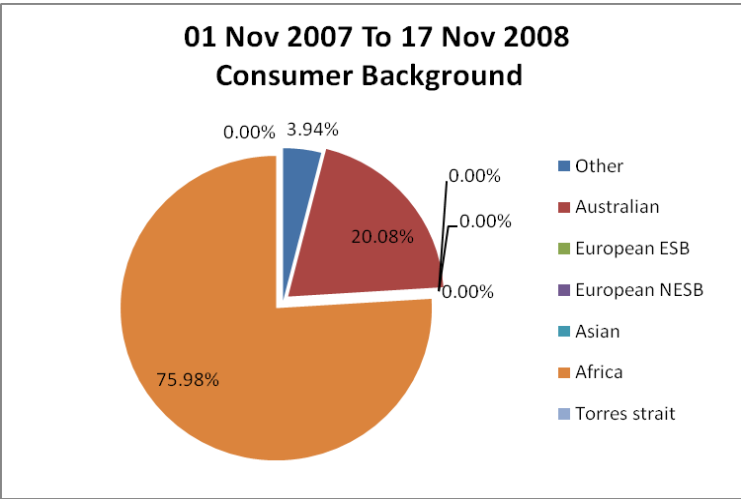


Figure 3 – Consumer Background of Clients November 2007 to 17 November, 2008

These figures illustrate the dramatic impact of the decision to prioritise service to the African community. When seen within the context of the difficulties of the African community members dealing

with energy industry it is not surprising that Centre has seen a massive increase in the number of clients presenting with energy problems as set out in Diagram 4 below.

African consumers and the energy market

The casework quickly revealed that large numbers of Africans consumers were struggling to maintain energy supplies to their homes due to difficulties in dealing with the marketing of energy, the plethora of energy retailers and confusion over billing processes and systems.

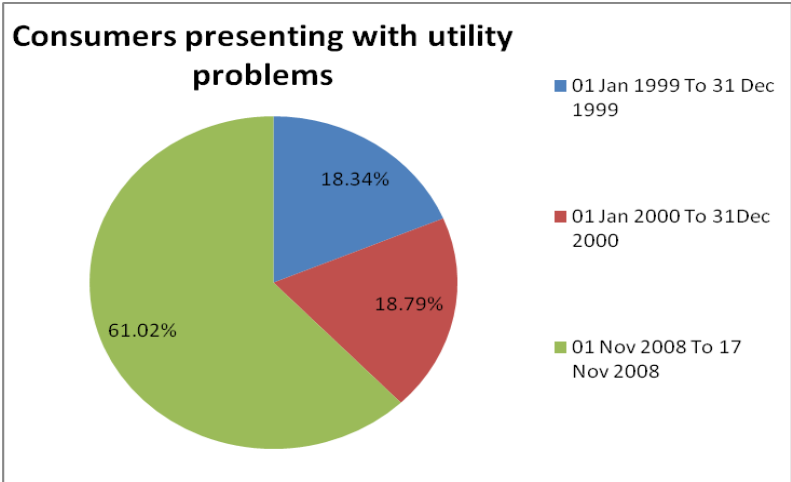


Figure 4 – Consumers presenting with Utility Problems

Our financial counsellors were frequently called on to provide basic community education to explain how the energy market and billing systems work. Problems with doorknockers led to the large scale distribution of “Do Not Knock” stickers. However the number of problems and the range of issues led the Centre to the conclusion that some of the cases should be documented in a report and forwarded to the Essential Services Commission and Consumer Affairs Victoria.

This report is based on 20 case studies obtained through the Footscray Community Legal Centre’s financial counselling service and an African Refugee Consumer Health Check undertaken on 5 September 2008. There are a small number of case studies that relate to non African clients that have been included to indicate that other disadvantaged client groups are also having difficulty understanding the operations of the Victorian energy market. The report is focused on the compliance and legal issues arising out of the experiences of the consumers and the problems the financial counsellors encountered in seeking to assist them.

A brief analysis of the client profiles showed that the consumers’ ages ranged from 21 to 70 with the majority between 30 and 60 and half between 40 and 50 years of age. The consumers were evenly split on the basis of gender and all bar one were in receipt of Centrelink benefits. Surprisingly, 16 out of 18 were housed in the private rental market. Fifty per cent were Sudanese, 33 per cent were Ethiopian and the others were recent arrivals except for two elderly Australians.

A brief analysis of the client problems showed that 50 per cent had signed door to door sales contacts; that none of those customers had been informed of, or understood their right to a cooling off period and six had not understood they had entered into a contract. Five consumers had entered a property where the utilities had been connected by the real estate agent or the settlement agency and had not understood that they had entered into a contract for energy services. Four consumers had multiple energy accounts for the same property.

Financial Counsellors - Working with African clients

Eighteen months ago, the Centre was struggling to provide quality financial counselling to African clients. Staff saw African clients late in the evolution of their financial problems— the day after the disconnection of gas or electricity, or when they had already incurred large debts. It was difficult to get phone interpreters for African languages such as Dinka and Tigrinya, particularly after hours at the night service. And although the number of African clients was increasing, staff believed that there were more people with financial and energy problems who were not able to access the Centre, or who didn't even realise that a financial counsellor might be able to help them.

The Pickett Street Outreach Clinic and targeted events designed to deliver triage advice to the African community on contractual and consumer issues quickly improved our visibility within the African community. The service quickly developed a large African client base and the staff have identified a number of systemic problems through the increased casework. These include:

Door-to-door sales teams employed by utility companies appear to have targeted vulnerable NESB consumers.

African community members are vulnerable to the tactics of door to door sales people, with little or no understanding of the complex contractual obligations involved or the right to or meaning of the cooling off period. These consumers are susceptible to misleading statements such as “we are from the Government”, or “we are from the Government and that they were converting the area to Retailer VV”.

Multiple companies have also door knocked the customer at home attempting to win back lost accounts.

Clients frequently say they have not been provided with a copy of the door to door contract.

Financial counsellors have noticed that African consumers rarely provide a copy of their energy contract when attending the Centre for advice. The clients frequently say that they do not recall being given a copy of a contract. Financial counsellors have also noted that many retailers are unable to provide a copy of the contract on request.

Most of these consumers are unable to read or write English and are also illiterate in their native language. Most have little understanding of the concept of a contract and no understanding of the difference between fixed and periodic contracts. Interpreters are rarely used by sales staff.

Consumers, once established in a property, are not made aware of the need to keep in contact with the utility company. Consumers recognise a utility bill by the logo on the bill and the dollar amount only. The customer's inability to read is clearly a major obstacle when information is provided in the written format.

Consumers who speak very little English find it difficult to communicate with utility companies.

Navigating a telephone call centre without an interpreter is a major problem for the linguistically challenged. This task becomes impossible if the customer is transferred several times. If the telephone contact is unsuccessful, customers will be unable to read follow up letters sent to them and the debt escalates with a variety of fees and charges added to the bill.

Community members have no education in the area of energy efficiency.

African community members are receiving higher than expected utility bills. Consumers in the African community are unaware that they can use the control knob or lever on the gas heater or hot water service to regulate the temperature which would result in less consumption and cost.

Community members being billed simultaneously by several service providers.

Multiple bills may be issued to a consumer for a variety of reasons. The service provider may separately provide electricity and gas and may bill bulk hot water separately from electricity and gas. The customer may also have signed a series of contracts with door to door sales representatives and may receive multiple bills due to problems with the transfer of accounts between retailers. Sorting out these problems is time consuming for the financial counsellor and often reduces their capacity to see other clients

Financial Counsellors - Working with utility companies

The financial counsellors at Footscray have encountered a number of problems during communications and negotiations with utility companies which have adversely impacted on their work. These problems have resulted in a significantly increased time per case when clients present with utility problems. It has also led to both frustration and inefficiency at a time when the counsellors are experiencing increasing workload because of the increased demand for their services.

The most frequently recurring problems are the inability to contact call centre and hardship team staff, the need for interpreters, unnecessary delays and requests for documents and a lack of appropriate processes for dealing with non English speaking consumers. A more detailed list of problems includes the following:

- The financial counsellors have been asked to provide personal details such as their own date of birth before the utility company representative will negotiate with them as a client representative. (AGL, City West Water)
- The companies do not answer phone messages. This is of particular concern when clients are faced with service disconnection and the financial counsellors are unable to get through to the hardship teams even after constantly leaving messages. (All companies)
- Often the hardship teams take from 15 – 30 minutes to answer their phones. Often these calls are timed out and the process has to begin all over again. (All companies)
- The hardship teams often make unreasonable requests, i.e. copies of client bank statements or completion of statements of affairs asking for details of assets – information unnecessary for the resolution of the problem. (AGL, Victoria Electricity, City West Water)
- Financial counsellors are required to fax an authority to act which is proof that the client has given them permission to talk to the company. Some utilities have stated that it will take two to three working days to process this authority and representatives are therefore not be able to discuss the clients' problems with them. (AGL, TRU, City West Water)
- Financial counsellors are required to wait several weeks for a reply to queries regarding a client's problem. (All companies)
- Financial counsellors are required to make repeat phone calls to the utility companies before the company will send out Energy Relief Grant forms. (All companies)
- Frontline phone contacts at the utility companies are often not aware that clients can apply for these grants. The process of then getting the forms sent out requires constant transfers between a series of departments within the company to find an appropriate person with the authority to send out the forms. This can often take an hour or more. (All companies)
- Utility companies do not have appropriate processes for dealing with non English speaking clients. This often means that at every internal transfer stage NESB clients are required to give a new authority for the financial counsellor to speak to each new company representative. This adds both to the time factor and the expense of using interpreter services. (All companies)

- The utility companies require agencies to provide interpreter services. This is a particular concern when clients require several appointment times due to delays in negotiations caused by the failure to be able to get through to the utility company. (All companies)

Solutions – Practical and Regulatory

There are two immediate problems that need to be addressed by energy regulators.

Problems with direct marketing of energy contracts

Many of our clients have been unable to cope with the aggressive marketing activities of the energy providers calling upon them at home in person or by telephone. The frequent transfer of a single account often leads to confusion as to the identity of the intended or preferred supplier, multiple accounts and bills and significant debts. The fundamental cause of this problem has been the failure of the door to door salesman to obtain the explicit informed consent of the client to the transfer of the account. In our experience most of the African consumers do not have the language skills or the understanding of the energy market to give their explicit informed consent.

We submit that there are a range of vulnerable customers such as refugees and resettled migrants, the very elderly and intellectually disabled consumers who are not capable of giving explicit informed consent for the transfer of their account. We request the Essential Services Commission (ESC) to organise some formal discussions between community sector representatives and energy retailers to seek some agreement as to how this issue should be resolved. Possible solutions might include the extension of the Marketing Code to prohibit sales to some defined disadvantaged customers or to establish a voluntary code enforceable by EWOV to allow the automatic reversal of transfer for a defined set of vulnerable customers.

However, given the evidence of grossly misleading behaviour and statements by marketing representatives exposed by the case studies, we also believe there is a need for improved enforcement by consumer regulators, such as the imposition of civil pecuniary penalties and the recovery of profits from illegal conduct (See Productivity Commission, *Review of Australia's Consumer Policy Framework*, April 2008. Pg 197 Draft Recommendation 10.1).

The maintenance of supply

Financial counsellors and their clients have to deal with the overwhelming sense of urgency created by energy problems. This sense of urgency is a product the inability of energy providers to respond to the transfer problems created by marketing staff or the responses from financial counsellors to consequent threats of disconnection.

This situation could be resolved, or alleviated, if the Energy Ombudsman had the capacity to seek a moratorium on any form of collection or enforcement against members of the African community and other recently settled migrant groups whilst financial counsellors are negotiating with energy retailers. EWOV currently has the capacity to stop a disconnection from the moment of contact with their office. In our view a similar process should be put in place to deal with the multitude of problems arising between the retailers and the African and settlement communities. In particular, the requirement for the customer or their representative to make contact with the retailer before contact with EWOV should not apply to these consumers.

Case Studies

Case 1

Gender **Male**
Age **55-64**
Country of Origin..... **Sudan**
Language **Dinka (interpreter required)**
Literacy **Unable to read or write English or any other language**
Accommodation **Renting Private**
Income **Centrelink**
Company..... **AGL**

PROBLEM:

Mr LA was signed up to AGL for both electricity and gas by his Case Worker when he arrived in Australia as a refugee. He later moved from his premises but did not know that he had to inform AGL that he had moved. He has now been sent two letters of demand from Hudson Lawyers acting for AGL.

Gas: He received two letters of demand dated 3 July 2008, one states he owes \$183.10 and the other \$247.45. They both state the same account number. He has an account dated 15 November 2007 stating he owes \$522.45 and another Final Reminder dated 9 January 2008 stating he owes \$372.45.

Electricity: This final reminder states he owes \$244.10.

Mr LA is not in the position to pay these accounts as he is in receipt of Centrelink benefits and is now paying high rent where he is living.

ISSUES:

- ***Ongoing communication needs not appropriately addressed:***

The requirement in **Clause 4.2 (p)** of the **Retail Code** that the retailer include on the customer's bill, details, in relevant languages, of interpreter services, may not have assisted Mr LA who is unable to read in his own language. The anomalies in the various amounts stated on the correspondence received by Mr LA would have been difficult for anyone to understand, let alone someone who requires the assistance of an interpreter.

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the Retail Code is "enhanced consumer protection for customers in vulnerable circumstances" and **Clause 4.2** of the **Marketing Code** requires training and testing to include "customer service skills including dealing with consumers with special needs and those without or with limited English language skills".

The failure of the company to obtain an interpreter when it was clear or should have been clear that Mr LA was having difficulty communicating with the company may be a breach of the Codes.

- ***Breach of requirement that the retailer assess reasons for person’s inability to pay:***

Pursuant to **Clause 11.1** of the **Retail Code**, responsibility falls on the consumer to inform the retailer of any difficulties they have in paying a bill. In Mr LA’s case, this requirement was clearly impossible to meet given that he could not read his bills to know that he was behind in his payments.

Unfortunately, it appears in this case that AGL failed to act on the information it had to hand which would have led it to believe that Mr LA was experiencing repeated difficulties in paying his account or required payment assistance. Had such a belief been formed, AGL would have been required, in accordance with **Clause 11.2** of the **Energy Code** to undertake a number of steps that may have prevented Mr LA from falling into hardship.

Case 2

Gender Female
Age 39
Country of Origin..... Sudan
Language Dinka (speaks very little English)
Literacy Unable to read or write English or any other language
Accommodation Private Rental
Income Centrelink since 2004
Companies..... AGL and Origin

Background: Ms FA arrived in 2004 as a refugee and has been on Centrelink ever since. She has seven children in her care and a 20 year old son still in Sudan. She separated from her husband in September 2007. As a result of separation she has continued to make payment on a joint personal loan with her former partner from which she derived no benefit. She has continued to make monthly payments in order that she did not jeopardise her ability to get rental property, which is already difficult for her as a result of having seven children in her care.

PROBLEM:

Ms FA has been receiving simultaneous bills from both AGL and Origin for electricity supply. Ms FA does not read or write English and though she does speak some English, she was unable to communicate her problem over the phone. Also due to her inability to read or write in either English or her first language, she was not aware of her right to make a complaint to the energy companies, nor was she aware of the existence of EWOV. Ms FA did not know what an Ombudsman was, nor did she know that you could complain to an Ombudsman.

ISSUES:

- ***Ongoing communication needs not appropriately addressed:***

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the **Retail Code** is “enhanced consumer protection for customers in vulnerable circumstances” and **Clause 4.2** of the **Marketing Code** requires training and testing to include

“customer service skills including dealing with consumers with special needs and those without or with limited English language skills”.

The requirement in **Clause 4.2 (p)** of the **Retail Code** that the retailer include on the customer’s bill, details, in relevant languages, of interpreter services, would not have assisted Ms FA, who is unable to read in her own language.

Case 3

Gender Male
Age 65
Country of Origin..... Ethiopia
Language Amharic (interpreter required)
Literacy Unable to read or write English or any other language
Accommodation Private Rental
Income Centrelink since 2004
Company..... TRU Energy

Background: Mr. NA arrived in Australia as a refugee in 2004. He has no proficiency in English and requires an interpreter at all times. Mr NA is unable to read and write in either his first language or in English - the writing on his energy bills means nothing to him. Mr NA recognizes only the logo on the bill and the amount to be paid.

PROBLEM:

Mr NA had been without electricity for more than 10 days when he first met with a financial counsellor at Footscray CLC. TRU Energy advised Mr NA’s financial counsellor that this was because he had not made a payment on his bill. TRU Energy advised the financial counsellor that it was prepared to accept \$20 per fortnight. However, future usage was not included in this payment arrangement. An additional \$20 per fortnight would be required to cover future usage, which would place Mr NA in further financial hardship.

According to TRU Energy, Mr NA’s electricity had been disconnected twice previously and yet investigations into his gas account by TRU Energy revealed that his bill was paid in full each time. TRU Energy issues separate bills for gas and electricity. Mr NA pays the first of these bills that he receives (the gas bill) in full. When he receives the second bill (the electricity bill) he recognizes it as a utility bill by its logo and therefore believes that he has already paid it, not aware that the second bill is in fact for electricity. Mr NA was unable to distinguish between his gas and electricity bills because all he can understand is the logo and this was the same on both his gas and electricity bills.

TRU Energy’s credit department stated that it is not willing to consider Mr NA for its hardship program as he has previously paid his gas bill in full in the past. In making this decision TRU Energy failed to properly consider either his language difficulties or his current financial position.

While TRU Energy agreed to reconnect Mr NA, further communication difficulties were encountered by him when he was told he needed to put the main switch to the OFF position. Mr. NA did not understand what the OFF position meant, did not understand what a meter was and could not understand how usage is measured. Yet TRU Energy advised that it would not reconnect unless the main switch was in the OFF position due to union rules that required the occupant and not the energy supplier to move the position of the main switch. TRU Energy was advised that the customer did not understand this fact, even with the aid of an interpreter.

ISSUES:

- ***Ongoing communication needs not appropriately addressed:***

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the Retail Code is “enhanced consumer protection for customers in vulnerable circumstances” and **Clause 4.2** of the **Marketing Code** requires training and testing to include “customer service skills including dealing with consumers with special needs and those without or with limited English language skills”.

The requirement in **Clause 4.2 (p)** of the **Retail Code** that the retailer include on the customer’s bill, details, in relevant languages, of interpreter services, could not have assisted Mr NA who is unable to read or write in his own language.

The failure of the company to obtain an interpreter when it was clear or ought to have been clear that Mr NA was having difficulty communicating with the company is a breach of the Codes.

- ***Breach of requirement that the retailer assess reasons for person’s inability to pay:***

Pursuant to **Clause 11.1** of the **Retail Code**, responsibility falls on the consumer to inform the retailer of any difficulties in paying a bill. In Mr NA’s case, this requirement was clearly impossible to meet given that he could not read his bills to know that he was behind in his payments.

Unfortunately, it appears in this case that TRU Energy failed in its obligation to act on the information it had to hand which would have led it to believe that Mr NA was experiencing repeated difficulties in paying his account or required payment assistance. Had TRU Energy formed such a belief it would have been required, in accordance with **Clause 11.2** of the **Retail Code** to undertake a number of steps that may have prevented Mr NA from having his electricity disconnected and from falling into hardship

Case 4

Gender Male

Age 80

Country of Origin..... Australia

Accommodation Owner

Background Retired, blind aged pensioner. Lives alone

Income Centrelink – Aged Pension

Retailer..... AGL and Victoria Electricity

PROBLEM:

Mr AJ was referred by a case worker. Mr AJ was originally with AGL for gas and then he transferred to TRU Energy as a result of a cold call. It appears that his granddaughter approved the transfer. There are three authorised people on the account, one of whom is his granddaughter. As a result of the transfer being done by the granddaughter without consultation with the grandfather, the Centrelink

payment to AGL was never cancelled. And therefore a credit balance of approximately \$800 accumulated. Mr AJ's financial situation is worsened by the fact that one of his adult children and grandchildren live in a caravan at the front of his property and have run an extension cable from the main house to the caravan to operate heating and lighting. This relative has a full time job but refuses to make a contribution. Similarly, Mr. AJ has another son who also runs an extension cable to the rear bungalow for lighting and also makes no contribution. It is apparent from Mr AJ's other financial difficulties that his family may not have his best interests at heart.

Victoria Electricity acquired the electricity account from TRU Energy. Victoria Electricity lost the account back to TRU Energy then Victoria Electricity again acquired the account from TRU Energy Mr AJ still wants to transfer back to AGL.

ISSUES:

▪ **Capacity to contract:**

It appears that TRU Energy has allowed a third party to bind Mr AJ without appropriate authority. If this is the case, TRU Energy may have breached **Clause 7.4** of the **Marketing Code**, which places an onus on the retailer to take reasonable steps to conduct contract negotiations with the person who has authority to enter into the contract at the site.

▪ **Explicit informed consent and vulnerability to door knockers:**

It appears from the facts of this case that the retailers in each instance have failed to obtain the explicit informed consent of the person being bound to the contract. That is, if Mr AJ is to be considered liable under the utility contracts, then the *explicit informed consent* of Mr AJ, rather than his granddaughter, ought to have been obtained as required by **Clause 7.1** of the **Marketing Code**.

Moreover, it is difficult to believe that Mr AJ (or his granddaughter for that matter) were giving explicit informed consent each of the four times that a transfer was effected between TRU Energy and Victoria Electricity, particularly given the fees that would have been incurred each time and the fact that Mr AJ instructs that he doesn't want to be with either of these retailers

Case 5

Gender Female
Age 42
Country of Origin..... Ethiopia
Language Amharic (interpreter required)
Literacy Unable to read or write English or any other language
Marital Status..... Recently separated, 1 child
Accommodation Public Rental
Income In the process of applying for Centrelink Single Parent Payment and Family Tax Benefit
Company..... Origin Energy, Victoria Electricity

PROBLEM:

Ms XY is from Ethiopia. She speaks some English but cannot read or write. About 12 months ago she moved into a Ministry of Housing flat in Ascot Vale. At that time she telephoned Origin Energy and connected the electricity and gas with it. After 40 days she received an account of \$275. She tried to

contact Origin Energy but because of the language problem was not able to get an explanation from them as to why she had received this large account.

About April 2008, Victoria Electricity came to her door and she agreed to transfer to this company. She did not know that she had a cooling off period for the contract.

Several weeks later Origin Energy came to her door and advised her that her area was an Origin Energy area and she should not have switched to Victoria Electricity. She therefore signed a contract with Origin Energy again. At this stage she was not informed that she was signing a new contract and that she had the right to a cooling off period.

Ms XY instructs that she does not want to be with Origin Energy and wishes to convert back to Victoria Electricity. On phoning Origin Energy, the Financial Counsellor was informed that Ms XY was due to be switched back to Victoria Electricity at the end of September, 2008.

At this stage the \$275 debt still has not been resolved.

ISSUES:

This case highlights a number of problems relating to both the marketing of energy and the way in which companies are dealing with their customers who do not understand English during and after the transfer.

▪ ***Explicit Informed Consent:***

Given Ms XY's limited English language skills which would have been apparent to both Origin Energy and Victoria Electricity and the apparent failure by these companies to communicate with her through an interpreter, these companies failed to obtain Ms XY's *explicit informed consent* when they procured her entry into the supply contracts. This may be a breach of **Clause 7.1** of the **Marketing Code**. Moreover, it shows a failure by the retailer to 'use words and images that promote consumer comprehension' as required by **Clause 6.2** of the **Marketing Code**.

▪ ***Breaches of the FTA:***

Contact Sale provisions –

Under the contact sale provisions of the Act, Origin Energy and Victoria Electricity are required to:

- (a) provide a cooling off notice on the front page of the sale contract together with a form that the consumer can use to cancel the contract (section 61); and
- (b) provide the client with a copy of the Sale Contract (section 61).

These provisions are specifically reinforced by **Clauses 5.1** and **6.3** of the **Marketing Code**.

Whether or not Origin Energy and/or Victoria Electricity failed to provide the relevant cooling off notices and documentation, in circumstances where she was unable to read English, it was appropriate to verbally advise her through an interpreter of this right in accordance with **Clause 6.2** of the **Marketing Code** referred to above.

• ***Unconscionable and misleading and deceptive conduct :***

Given the particular vulnerability of Ms XY in not understanding English, it appears that both Origin Energy and Victoria Electricity may have engaged in unconscionable conduct in breach of **section 8 of the FTA** and thereby may have breached **Clause 6.2** of the **Marketing Code** which explicitly reinforces the requirement not to engage in such conduct.

• ***Misleading & Deceptive Conduct:***

Moreover, Origin Energy, through its agent or representative, has clearly engaged in misleading and deceptive conduct in breach of **section 9** of the **FTA** and **Clause 6.2** of the **Marketing Code**. The particular misrepresentation made also evidences non-compliance with the requirement under **Clause**

4.2 of the **Marketing Code** that training and testing include ‘the consumer’s right to freely choose a retailer’.

Moreover, whether or not the retailer failed to provide the relevant cooling off notices and documentation, the failure by it to bring Ms XY’s attention to the existence of a cooling off period in circumstances where she had difficulty reading, was arguably misleading and deceptive, and may be in breach of **section 9** of the **FTA** and **Clause 6.2** of the **Marketing Code**. For instance, it failed to ‘use best endeavours to ensure that information provided to consumers is truthful and when supplied directly to individual consumers, also relevant to that consumer’s circumstances and that they do not omit important information that should be disclosed’ as required by **Clause 6.2** of the **Marketing Code**.

▪ ***Ongoing communication needs not appropriately addressed:***

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the Retail Code is “enhanced consumer protection for customers in vulnerable circumstances” and **Clause 4.2** of the **Marketing Code** requires training and testing to include “customer service skills including dealing with consumers with special needs and those without or with limited English language skills”.

The requirement in **Clause 4.2 (p)** of the **Retail Code** that the retailer include on the customer’s bill, details, in relevant languages, of interpreter services, may not have assisted Ms XY who is unable to read in her own language. In this instance, Ms XY satisfied her obligation under **Clause 11.1** of the **Retail Code** to contact Origin Energy and advise it of her repayment difficulties.

In this instance, Origin Energy does not appear to have appropriately dealt with Ms XY’s complaint in accordance with its obligations under **Clause 11.2** of the **Retail Code**

Case 6

Gender **Male**
Age **32**
Country of Origin..... **Sudan**
Language **Arabic (speaks very little English)**
Literacy **Unable to write in English or any other language**
Accommodation **Private Rental**
Income **Centrelink – Newstart**
Company..... **Victoria Electricity + AGL**

Background: Mr NM arrived in Australia 2005. Mr NM has been unemployed since 2006. In 2007 he returned to Sudan to get married and came back to Australia. As he has sponsored his wife she is not eligible for Centrelink payment for 24 months.

PROBLEM:

Mr NM advised that the real estate agent connected his gas and electricity to Victoria Electricity and he did not have much choice in the matter. Mr NM has since learned from friends that AGL is the major service provider and their service is much better. As a result Mr NM wishes to transfer to **AGL**.

Mr NM also advised that he is not accustomed to cold weather and thus tends to have the gas heater on all the time. Mr NM's current bill stands at \$1,123 as at April 2008.

ISSUES:

- ***Capacity to contract***

Clause 7.4 of the **Marketing Code** places an onus on the retailer to take reasonable steps to conduct contract negotiations with the person who has authority to enter into the contract at the site. By allowing Mr NM's real estate agent to bind Mr NM to a contract with it, Victoria Electricity has failed to take these reasonable steps.

- ***Explicit informed consent***

This case highlights issues relating to the failure of the retailer to obtain the *explicit informed consent* of the person being bound by the contract. That is, if Mr NM is to be considered liable to Victoria Electricity under the contract, then the *explicit informed consent* of Mr NM, rather than his landlord, ought to have been obtained.

- ***Difficulties in understanding usage***

Clearly Mr NM did not understand efficient energy use when he was connected to his electricity account. Unfortunately, Victoria Electricity does not appear to have formed the belief that Mr NM was experiencing repeated difficulties in paying his bill, despite the fact that he is a Sudanese refugee whose sole source of income is Centrelink- New Start and he has an outstanding bill of \$1,123. If it had formed this reasonable belief, it would have had to have taken steps in accordance with **Clause 11** of the **Retail Code** to provide Mr NM with details on concessions etc and consider conducting an energy efficiency field audit to assist Mr NM address the difficulties he was experiencing.

- ***Breach of requirement that retailer assess reasons for person's inability to pay:***

For anyone on Centrelink a bill for \$1,123 would be difficult to pay without hardship. Had it acted on the information it had to hand which would have led it to believe that Mr NM was experiencing difficulties in paying his account or required payment assistance, Victoria Electricity would have conducted an energy field audit to assist Mr NM to address his difficulties with paying the bill in accordance with **Clause 11.3** of the **Retail Code** and informed him about energy efficiency and any available concessions as required by **Clause 11.2(4)** of the **Retail Code**.

Case 7

GenderMale
Age45
Country of Origin.....China
Language.....Mandarin (speaks very little English)
Literacy.....Unable to read or write English or any other language
AccommodationPrivate Rental
IncomeEmployed
CompanyTRU Energy

Background Mr XJ arrived in Australia in 2006. He started working in April 2008.

PROBLEM:

Mr XJ has difficulty communicating in English. Mr. XJ moved into his home in 2008. Mr. XJ's first bill for the period 28 February 2008 to 23 April 2008 (being for 55 billing days), totalled \$842.46. The bill indicated a current meter reading. However, because his gas heater was out of order between February 2008 and May 2008, Mr. XJ queried this amount. The heater did not get repaired until approximately June 2008. Due to his difficulties in communicating in English, Mr XJ required the assistance of a financial counsellor to get TRU Energy to investigate his bill. After investigation TRU Energy adjusted Mr XJ's bill to reflect the correct amount outstanding, being \$45.

ISSUES:

- ***Ongoing communication needs not appropriately addressed:***

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the **Retail Code** is "enhanced consumer protection for customers in vulnerable circumstances" and **Clause 4.2** of the **Marketing Code** requires training and testing to include "customer service skills including dealing with consumers with special needs and those without or with limited English language skills".

The failure of the company to obtain an interpreter when it was clear or ought to have been clear that Mr XJ was having difficulty communicating with the company may be a breach of the Codes.

Case 8

Gender Female
Age 42
Country of Origin..... Burundi
Language Kirundi (required interpreter - 17 yr old daughter assists with this)
Literacy Unable to read or write in English or any other language
Accommodation Private Rental

Income Centrelink
Company..... Victoria Electricity

PROBLEM:

Victoria Electricity acquired this account by way of a door to door sale. Client did not give approval for transfer on this account. Ms PN learnt of the transfer when she received the first bill in May but was unable to pay the bill.

AGL confirmed that her electricity account was not with it however the gas account was.

Report made to EWOV. EWOV did a search to identify the supplier of electricity to this property. Settlement agency assisted Ms PN with transfer of electricity.

ISSUES:

- ***Failure of Consent:***

Ms PN did not consent to a transfer in this instance, highlighting a failure on the part of the Victoria Electricity's representative to either understand or acknowledge the consumer's instructions during communications with the consumer.

- ***Breaches of the FTA:***

Contact Sale provisions –

Under section 61 of the Act, Victoria Electricity is required to obtain the consumer's signature on the sale contract and to leave a copy of this with her. Given that Ms PN did not approve the transfer, it appears that it may be in breach of this provision.

The contact sale provisions are specifically reinforced in **Clauses 5.1 and 6.2** of the **Marketing Code**.

- **Unconscionable and misleading and deceptive conduct:**

Given the particular vulnerability of Ms PN in being unable to communicate in English and the failure of Victoria Electricity to properly understand her instructions, it appears that Victoria Electricity may have engaged in unconscionable conduct in breach of **section 8 of the FTA**.

Case 9

Gender Male
Age 44
Country of Origin..... Ethiopia
Language Amharic (interpreter required)
Literacy Unable to read or write in English or any other language
Accommodation Private Rental
Income Centrelink – Newstart Allowance
Company..... AGL, Victoria Electricity

PROBLEM:

Mr MI was connected to Victoria Electricity by his landlord via Direct Connect. Mr MI is unable to read, write or speak English. Direct Connect have advised Mr MI's Financial Counsellor that it uses an interpreter service.

Victoria Electricity informed Mr MI's Financial Counsellor that when a transfer/connection is agreed to, Victoria Electricity confirm by sending a "connection kit". If the customer does not cancel within the 10 day (cooling off period) Victoria Electricity considers this a confirmation of the contract. Mr MI states that he did not receive a copy of any contract for the supply of electricity from Victoria Electricity, Direct Connect or the Real Estate Agent.

Mr MI made it very clear to the Financial Counsellor that he wishes to transfer his electricity account to AGL. However, during a phone call with AGL, AGL insisted that the client ring and ask for the Connections and Transfers department and it would help him out.

Mr MI's Financial Counsellor advised AGL that Mr MI speaks absolutely no English and requires an interpreter. AGL advised the Financial Counsellor to teach Mr MI to say "Interpreter" when he rings AGL. AGL informed the Financial Counsellor that it would then get an interpreter for him. Financial Counsellor asked AGL how it would know what language its customer needed. AGL advised the Financial Counsellor to teach Mr MI to say "Interpreter Amharic" when he rings.

Upon further investigation, AGL states that Mr MI has never been a customer of AGL. Therefore, Mr MI would need to sign a new contract with AGL.

Mr MI's property has two gas meters, one for bulk gas hot water supplied by AGL. The second is for domestic use with an as yet unknown supplier (possibly Victoria Electricity).

ISSUES:

▪ **Capacity to contract**

Mr MI's estate agent had no capacity to bind Mr MI to a contract without appropriate authority from Mr MI and his *explicit informed consent*. **Clause 7.4** of the **Marketing Code** which places an onus on the retailer to take reasonable steps to conduct contract negotiations with the person who has authority to enter into the contract at the site may apply.

▪ **Explicit informed consent**

This case potentially highlights issues relating to the failure of the retailers in each case to obtain the explicit informed consent of the person being bound to the contract. That is, if Mr MI is to be considered liable under the utility contracts, then the *explicit informed consent* of Mr MI, rather than his estate agent, should have been obtained. Moreover, given that Mr MI does not read or write English, Victoria Electricity could not have obtained his informed consent if Mr MI did not have an interpreter present when the contracts were signed.

• **Ongoing communication needs not appropriately addressed:**

The requirement in **Clause 4.2 (p)** of the **Retail Code** that the retailer include on the customer's bill, details, in relevant languages, of interpreter services, may not have assisted Mr MI who is unable to read in his own language.

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the Retail Code is "enhanced consumer protection for customers in vulnerable circumstances" and **Clause 4.2** of the **Marketing Code** requires training and testing to include "customer service skills including dealing with consumers with special needs and those without or with limited English language skills".

The failure of the companies to obtain an interpreter when it was clear or ought to have been clear that Mr MI was having difficulty communicating with the company may be a breach of the Codes.

Case 10

Gender Male
Age 57
Country of Origin..... Sudan
Language Dinka (speaks very little English)
Literacy Unable to read or write English or any other language
Accommodation Private Rental
Income Centrelink - Austudy
Company..... AGL

Background Has been on Centrelink since arriving in Australia in 2004. Has one teenage son also on Austudy

PROBLEM:

Mr TW speaks little English and was unable to communicate effectively with credit department personnel. He is now experiencing hardship as a direct result of AGL’s poor performance in issuing three bills in the space of three days for a total of \$1038.83.

Mr TW advised he has received two bills with an issue date of 8 September 2008 (the second bill has an overdue amount from the first bill) followed by a third bill issued on 10 September 2008 with an overdue amount from the previous two bills. There was a delay by AGL in issuing Mr TW his bills after the actual reading date as set out below:

- Supply period 21 April 2008 to 12 May 2008 - invoice date of issued 08/09/2008.
- Supply period 13 May 2008 to 10 July 2008 - invoice date of issued 08/09/2008.
- Supply period 11 July 2008 to 0 Sept 2008 - invoice date of issued 10/09/2008.

All invoices indicate an actual meter reading was performed.

The AGL Hardship program advised his Financial Counsellor that Mr TW is not eligible for hardship program because the matter is with credit management.

Credit management advised they can offer a six month or possibly eight month arrangement and that Mr TW is not eligible for hardship program because he has previously paid account in full. (Section 5.2 Estimation, Section 5.3 Bill smoothing, section 5.4 Adjustments and Section 6.2 Undercharging).

ISSUES:

- ***Ongoing communication needs not appropriately addressed:***

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the Retail Code is “enhanced consumer protection for customers in vulnerable circumstances” and **Clause 4.2** of the **Marketing Code** requires training and testing to include

“customer service skills including dealing with consumers with special needs and those without or with limited English language skills”.

The requirement in **Clause 4.2 (p)** of the **Retail Code** that the retailer include on the customer’s bill, details, in relevant languages, of interpreter services, could not have assisted Mr TW who is unable to read or write in his own language.

The failure of the companies to obtain an interpreter when it was clear or ought to have been clear that Mr TW was having difficulty communicating with the company may be a breach of the Codes.

- ***Breach of requirement that the retailer assess reasons for person’s inability to pay:***

Pursuant to **Clause 11.1** of the **Retail Code**, responsibility falls on the consumer to inform the retailer of any difficulties in paying a bill. Mr TW attempted to satisfy this requirement but due to AGL’s apparent failure to assist Mr TW in his communications with AGL, this requirement was rendered difficult for him to satisfy.

As it turns out, it appears that even when Mr TW’s Financial Counsellor assisted Mr TW with his case, AGL still failed in its obligation to act on the information it had to hand which would have led it to believe that Mr TW was experiencing repeated difficulties in paying his account or required payment assistance.

It is clear from AGL conduct in delaying the issue of its bills (itself a potential breach of **Clause 3.2** of the **Retail Code**), that it caused Mr TW’s hardship and yet, AGL still failed to deal with Mr TW’s hardship appropriately and in accordance with **Clause 11.2** of the **Retail Code**.

Case 11

Gender Female
Age 45
Country of Origin..... Sudan
Language Dinka (interpreter required)
Literacy Unable to read or write English or any other language
Accommodation Private Rental
Income Centrelink
Company..... Red Energy

Background Ms TK was born in Sudan. She has five children.

PROBLEM:

Red Energy as part of a door knock campaign came to her door and told her it was “from the Government”. Red Energy also told her it was taking over all the area and that because of this her bills would be cheaper. She was not informed of the cooling off period. Ms TK has stated that she was never given a contract and nor has she ever signed a contract with Red Energy, Ms TK is very clear she did not sign anything.

At present her Electricity account is \$1,300. She has found that Red Energy rates are a lot higher. She would like to go back to Red Energy, her TRU Energy supplier, as she found it was cheaper.

ISSUES:

- ***Explicit Informed Consent:***

Given the alleged misrepresentations made by Red Energy's representative, including that it is 'from the government', it is 'taking over the area' and 'its rates are cheaper', Red Energy failed to obtain Ms TK's *explicit informed consent* when it procured her entry into the supply contracts. This may be a breach of **Clause 7.1** of the **Marketing Code**. It also indicates a failure to 'use best endeavours to ensure that information provided to consumers is truthful and when supplied directly to individual consumers, also relevant to that consumer's circumstances and that they do not omit important information that should be disclosed' as required by **Clause 6.2** of the **Marketing Code**.

- ***Breaches of the FTA:***

Contact Sale provisions –

Under section 61 of the Act, Red Energy is required to obtain the consumer's signature on the sale contract and to leave a copy of this with her. Given that Ms TK did not approve the transfer, it appears that it may be in breach of this provision.

The contact sale provisions are specifically reinforced in **Clauses 5.1 and 6.2** of the **Marketing Code**.

- ***Misleading & Deceptive Conduct :***

Red Energy, through its agent or representative, has clearly engaged in misleading and deceptive conduct in breach of **section 9** of the **FTA** and **Clause 6.2** of the **Marketing Code**. For instance, it indicates a failure to 'use best endeavours' to ensure that information provided to consumers is truthful and when supplied directly to individual consumers, also relevant to that consumer's circumstances and that they do not omit important information that should be disclosed' as required by **Clause 6.2** of the **Marketing Code**.

The particular misrepresentation made also evidences a failure (or disregard) for the requirement under **Clause 4.2** of the **Marketing Code** that training and testing include 'the consumer's right to freely choose a retailer'.

Case 12

Gender 2 - Females
Aged 34 and 35 Widows sharing house
Country of Origin..... Sudan
Language Dinka (interpreter required)
Literacy Unable to read or write English or any other language
Accommodation Private Rental
Income Centrelink
Company..... Red Energy –Gas and Electricity

PROBLEM:

Both women were born in Sudan. Ms AM does not speak English and Ms MM's English is limited.

They were approached by Red Energy as part of a door knock campaign. They were told by Red Energy's representative that he or she was from the Government and that it was converting the area to Red Energy. They were also told that their bills would be cheaper than through Red Energy.

Ms AM was encouraged to sign a contract even though she did not understand anything she was signing. They were not told of the cooling off period. They wish to go back to Red Energy because they have found the bills higher with Red Energy.

Currently, the women owe \$387.93 on their gas account and \$242.35 on their electricity account.

ISSUES:

▪ **Explicit Informed Consent:**

Given the misrepresentations made by Red Energy's representative, including that it is 'from the government', it is 'taking over the area' and its 'rates are cheaper', together with the failure of the company to obtain an interpreter when it knew or ought to have known of the women's difficulties in communicating in English, Red Energy failed to obtain Ms AM and MM's *explicit informed consent* when it procured their entry into the supply contracts. This is a clear breach of **Clause 7.1** of the **Marketing Code**. Moreover, it shows a failure by the retailer to 'use words and images that promote consumer comprehension' and to 'use best endeavors to ensure that information provided to consumers is truthful and when supplied directly to individual consumers, also relevant to that consumer's circumstances and that they do not omit important information that should be disclosed' as required by **Clause 6.2** of the **Marketing Code**.

▪ **Breaches of the FTA:**

Contact Sale provisions –

Under section 61 of the Act, Red Energy is required to provide a cooling off notice on the front page of the sale contract together with a form that the consumer can use to cancel the contract. The contact sale provisions are specifically reinforced in **Clauses 5.1 and 6.2** of the **Marketing Code**.

Whether or not this notice was provided, given their difficulties in communicating in English, it was appropriate in the circumstances to verbally advise Ms AM and Ms MM through an interpreter of this right in accordance with **Clause 6.2** of the **Marketing Code** referred to above.

▪ **Unconscionable conduct :**

Given the particular vulnerability of the women in having a limited understanding of English, it appears that Red Energy may have engaged in unconscionable conduct in breach of **section 8 of the FTA** and thereby may have breached **Clause 6.2 of the Marketing Code** which explicitly reinforces the requirement not to engage in such conduct.

- **Misleading & Deceptive Conduct:**

Moreover, Red Energy, through its agent or representative, may have engaged in misleading and deceptive conduct in breach of **section 9 of the FTA** and **Clause 6.2 of the Marketing Code**. The particular misrepresentation made also evidences a failure (or disregard) for the requirement under **Clause 4.2 of the Marketing Code** that training and testing include ‘the consumer’s right to freely choose a retailer’.

Furthermore, whether or not the retailers failed to provide the relevant cooling off notices and documentation, the failure by it to bring the women’s attention to the existence of a cooling off period in circumstances where Ms AM had difficulty reading, was arguably misleading and deceptive and likely is in breach of **section 9 of the FTA**.

Case 13

Gender Male
Age Unknown (35-44)
Country of Origin..... Sudan
Language Dinka (interpreter required)
Literacy Unable to read or write English or any other language
Accommodation Private Rental
Income Centrelink
Company..... AGL

PROBLEM:

Mr AA has been ringing AGL constantly trying to apply for the concession to be applied to his account.

Mr AA has also constantly informed AGL he is having problems with paying the account. Yet to date AGL has not offered him any assistance or applied the concession.

ISSUES:

- ***Breach of requirement that the retailer assess reasons for person’s inability to pay:***

Pursuant to **Clause 11.1 of the Retail Code**, responsibility falls on the consumer to inform the retailer of any difficulties in paying a bill. This was clearly met by Mr AGL in this instance.

Unfortunately, it appears in this case that AGL has failed to respond to Mr AA’s situation in accordance with **Clause 11.2 of the Energy Code** as it has not undertaken any steps to prevent Mr AA from falling into hardship.

Case 14

Gender Female

Age 55

Country of Origin..... Australia

Accommodation Renting

Income Centrelink – Disability Pension since 2002

Company..... Victoria Electricity

Background: Ms CW has been a victim of domestic violence for 32 years. As a result of this long period of domestic violence, which included physical and financial abuse, Ms CW experiences social isolation and has very low self esteem. She also has a learning disability and her reading and writing skills are very basic, she has difficulty reading and understanding bills and other correspondence. She is unable to comprehend the complexity of a contract without assistance. In addition to Ms CW's financial burden she is the carer for her six year old grandson who requires a high level of support because he is currently being assessed at the Children's Hospital for an intellectual disability; Asperser's Syndrome.

PROBLEM:

Ms CW was originally with TRU Energy for both her gas and electricity supply. As a result of a door to door sale late in the evening, Ms CW was pressured to sign a transfer to Victoria Electricity without having the contract explained to her, nor was she advised of any cooling off period. Ms CW is being billed by both TRU Energy and Victoria Electricity for gas supply. The Metering Installation Registration Number (MIRN) on the Victoria Electricity gas account is different to the MIRN number on the TRU Energy data base.

At the time of the door to door sale, Ms CW advised the representative from Victoria Electricity that she could not read or write. Notwithstanding this, Ms CW's vulnerable condition would have been clearly evident when she responded to questions at the door.

ISSUES:

- ***Explicit Informed consent and the Marketing Code:***

Given Ms CW's limited reading and writing skills and her inability to comprehend complex contracts, Victoria Electricity could not have obtained her *explicit informed consent* when it procured the transfer, as required by **Clause 7.1** of the **Marketing Code**. Moreover, the case shows a failure by the retailer to 'use words and images that promote consumer comprehension' as required by **Clause 6.2** of the **Marketing Code**.

There appears to be a fundamental failure by Victoria Electricity, when presented with a consumer who it knew suffered from a disadvantage to use its 'best endeavours' to ensure that Ms CW understood and consented to the transfer of supply, prior to Victoria Electricity taking any step to so transfer her, per **Clause 7.1** of the **Marketing Code**.

- **Breaches of the FTA:**

Contact Sale provisions –

Under the contact sale provisions of the Act, Victoria Electricity is required to:

- (c) provide a cooling off notice on the front page of the sale contract together with a form that the consumer can use to cancel the contract (section 61);
- (d) obtain 'prior consent' to visit a person's residence after 8.00pm at night (section 62A); and
- (e) provide the client with a copy of the Sale Contract (section 61).

These provisions are specifically reinforced by **Clauses 5.1** and **6.3** of the **Marketing Code**.

Whether or not Victoria Electricity failed to provide the relevant cooling off notices and documentation, the failure by it to bring Ms CW's attention to the existence of a cooling off period in circumstances where she had difficulty reading, may amount to misleading and deceptive conduct in breach of **section 9 of the FTA** and **Clause 6.2** of the **Marketing Code**. Certainly it highlights a failure on the part of Victoria Electricity to 'use best endeavours to ensure that information provided to consumers is truthful and when supplied directly to individual consumers, also relevant to that consumer's circumstances and that they do not omit important information that should be disclosed' as required by **Clause 6.2** of the **Marketing Code**.

- **Unconscionable and misleading and deceptive conduct:**

Given the particular vulnerability of Ms CW, Victoria Electricity knowledge of the disadvantages she experiences and the pressure from Victoria Electricity that Ms CW felt, it appears that Victoria Electricity may have engaged in unconscionable conduct in breach of **section 8 of the FTA** and **Clause 6.2** of the **Marketing Code** which specifically reinforces this provision.

Case 15

Gender Male

Age 25-34

Country of Origin..... Ethiopia

Language Amharic (interpreter required)

Literacy Unable to read or write English or any other language

Accommodation Private rental

Income Centrelink

Company..... TRU Energy

PROBLEM:

Mr YK has recently separated from his wife. He rang TRU Energy and asked that the account be split into two. He was told that TRU Energy could not do that. He then received the accounts addressed solely in his name.

He rang TRU Energy and was informed that he is now fully liable for the accounts. He kept on asking TRU Energy why? A balance of \$1,253.38 was from a previously joint account with his wife.

At present Mr YK has been unemployed for eight weeks and is still sorting out Centrelink benefits.

The case was immediately transferred to EWOV as both gas and electricity were going to be cut off.

ISSUES:

- ***Breach of requirement that the retailer assess reasons for person’s inability to pay:***

Pursuant to **Clause 11.1** of the **Retail Code**, responsibility falls on the consumer to inform the retailer of any difficulties they have in paying a bill. In Mr YK’s case, this requirement was clearly impossible to meet given that he could not read his bills to know that he was behind in his payments.

Unfortunately, it appears in this case that TRU Energy failed to act on the information it had to hand which would have led it to believe that Mr YK was experiencing repeated difficulties in paying his account or required payment assistance. Had such a belief been formed, TRU Energy would have been required, in accordance with Clause 11.2 to undertake a number of steps that may have prevented Mr YK from falling into hardship.

- ***Ongoing communication needs not appropriately addressed:***

Clearly the conduct of TRU Energy in this instance was confusing, particularly for someone who has difficulty communicating in English.

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the Retail Code is “enhanced consumer protection for customers in vulnerable circumstances” and **Clause 4.2** of the **Marketing Code** requires training and testing to include “customer service skills including dealing with consumers with special needs and those without or with limited English language skills”.

The failure of the company to obtain an interpreter when it was clear or ought to have been clear that Mr YK was having difficulty communicating with the company may be a breach of the Codes.

Case 16

Gender Male
Age 35 - 44
Country of Origin..... Ethiopia
Language Amharic (interpreter required)
Literacy Unable to read or write English or any other language
Accommodation Private Rental
Income Centrelink
Companies AGL and Victoria Electricity

PROBLEM:

Mr MI came to Australia as a refugee. When he moved into his current premises the estate agent connected the gas to AGL and his electricity to Victoria Electricity. However, at present he gets two gas bills from AGL.

AGL was phoned and informed the financial counselling service that the hot water was on one meter and the rest of the gas used was on another meter that is why the client was receiving two gas accounts. Both accounts had the same account number on them.

Mr MI cannot read and write and identifies the accounts only by the symbols on the accounts. He thought that when he paid one account, he had paid all of the gas accounts. He was not aware that he had two accounts.

He was also not aware that he could apply to get a concession on his accounts.

His electricity had been connected to Victoria Electricity. When the account was looked at he was paying for Green Energy charges. When questioned he had no idea what this was or what it meant.

ISSUES:

- ***Capacity to contract***

Mr MI's estate agent had no capacity to bind Mr MI to a contract without appropriate authority from Mr MI and his *explicit informed consent*. **Clause 7.4** of the **Marketing Code** which places an onus on the retailer to take reasonable steps to conduct contract negotiations with the person who has authority to enter into the contract at the site may apply.

- ***Explicit informed consent***

This case potentially highlights issues relating to the failure of the retailers in each case to obtain the explicit informed consent of the person being bound to the contract. That is, if Mr MI is to be considered liable under the utility contracts, then the *explicit informed consent* of Mr MI, rather than his estate agent, should have been obtained. Given that Mr MI does not read or write English, neither AGL nor Victoria Electricity could have obtained his informed consent if Mr MI did not have an interpreter present when the contracts were signed.

- ***Ongoing communication needs not appropriately addressed:***

The requirement in **Clause 4.2 (p)** of the **Retail Code** that the retailer include on the customer's bill, details, in relevant languages, of interpreter services, may not have assisted Mr MI who is unable to read in his own language. The existence of two bills for one account would have been difficult for anyone to understand, let alone someone who cannot read and write English.

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the Retail Code is "enhanced consumer protection for customers in vulnerable circumstances" and **Clause 4.2** of the **Marketing Code** requires training and testing to include "customer service skills including dealing with consumers with special needs and those without or with limited English language skills".

The failure of the company to obtain an interpreter when it was clear or ought to have been clear that Mr MI was having difficulty communicating with the company may be a breach of the Energy Codes.

- ***Breach of requirement that the retailer assess reasons for person's inability to pay:***

Pursuant to **Clause 11.1** of the **Retail Code**, responsibility falls on the consumer to inform the retailer of any difficulties they have in paying a bill. In Mr MI's case, this requirement was clearly impossible to meet given that he could not read his bills to know that he was behind in his payments.

Unfortunately, it appears in this case that AGL failed to act on the information it had to hand which would have led it to believe that Mr MI was clearly experiencing repeated difficulties in paying his account or required payment assistance. Had such a belief been formed, AGL would have been required, in accordance with **Clause 11.2** to undertake a number of steps that may have prevented Mr MI from falling into hardship.

Case 17

Gender Female
Age 45
Country of Origin..... Vietnam
Accommodation
Income
Company..... Energy Australia

PROBLEM:

Ms JA is a volunteer at the Footscray Community Legal Centre.

In October 2008, Ms JA and her mother had just arrived home and were getting out of their car when they were approached by a man who asked them about their utility bills. Ms JA advised the man that they were not interested in a 'sale' and he responded that he was not trying to sell anything.

The man went on to say that everyone on her street was receiving the electricity, gas and water from the same supplier and that the companies they had signed up to were currently acting as the 'middle man'. He informed Ms JA that the people in her area were not receiving the discounts from these companies that they were supposed to. He emphasised this point more than once. This point, and the fact that the man was from "Energy Australia", which was on his badge, led Ms JA to believe that he was a representative of an energy regulator.

Aside from being confused, Ms JA was curious, so she pulled out her energy bill and showed it to him. He said "you are paying a lot for this bill". In response to this Ms JA explained that her electricity company had not billed her for the previous six months and this was why the bill was so high. However, he went on to say that the bill didn't include the discount that she was meant to be getting. He said that the discount rate was four per cent in the first year, six per cent in the second year and seven per cent in the third year, leading Ms JA to believe that she was being ripped off by her energy provider. However, he then said that "Energy Australia will provide you with these discount rates if you pay your bills in time and we also give our customers two movie tickets to Hoyts". It was at that point that Ms JA realised that the representative was trying to get her to transfer her electricity provider.

ISSUES:

- **Misleading and deceptive conduct**

This case clearly highlights the misleading and deceptive conduct that representatives of energy retailers may engage in, to get people to transfer their electricity retailer. Such conduct, if proven, is clearly in breach of **section 9** of the **FTA** and **Clause 6.2** of the **Marketing Code**. Moreover, it evidences a failure in the training and testing of representatives that is supposed to be undertaken by retailers pursuant to **Clause 4** of the **Marketing Code**.

In this case, it was only because Ms JA was well aware, through her work experience, of the tactics used by retailers that she did not get persuaded by the retailer's representative. Even as someone who is well aware of the issues, she was initially persuaded by the representations made and believed that the representative was from a regulator and was there to assist her. For someone who is new to the country and not aware of the sale tactics used by representatives, and are unable to read the contract or ask questions to get answers to any concerns they may have, it is no wonder that such sale tactics result in people continually transferring between providers.

Case 18

Gender Female
Age 38
Country of Origin..... Sudan
Language Dinka (interpreter required)
Literacy Unable to read or write English or any other language
Accommodation Public Housing
Income Centrelink
Company..... TRU Energy

Background: Has been on Centrelink since arriving in Australia in 2007 and has six children.

PROBLEM:

Ms AA received two bills with an issue date of 07 October 2008. Both bills are in Ms AA's name and have the same address, but a different property number (34 and 34A). The account numbers on the bills are different. Only one bill has a National Measurement Institute (NMI) number, usage and account number. The second bill has usage information missing.

Ms AA, through an interpreter, says she does not understand why she has received two bills both of which are in her name. Ms AA is unable to read and write in English and is also illiterate in her own native language. Due to language difficulties, client first presented at a financial counselling outreach service where other members of her community were able to interpret for her. TRU Energy was contacted by the Financial Counsellor, prompting it to investigate the matter.

Later TRU Energy confirmed there are two meters to the one property (two NMI numbers, one service connected on the 05/06/2008 and the other service connected on the 16/06/2008) and each meter services separate parts of the property. TRU Energy advised customer is liable for both bills and customer is now incurring two supply charges (about \$160 pa extra as a consequence of the second meter).

ISSUE:

- **Lack of informed consent:**

Given Ms AA's limited English language skills which should have been apparent to TRU Energy and the apparent failure by this company to communicate with her through an interpreter, it has failed to obtain Ms AA's *explicit informed consent* when it procured her entry into the supply contract. This conclusion is further supported by the improbability of anyone giving informed consent to having two meters connected to their property with two separate supply charges. TRU Energy's failure to obtain Ms AA's explicit informed consent may be a breach of **Clause 7.1** of the **Marketing Code**.

- ***Breach of requirement that the retailer assess reasons for person's inability to pay:***

Unfortunately, it appears in this case that TRU Energy have failed to act on the information it had to hand which would have led it to believe that Ms AA was experiencing difficulties in paying her account or required payment assistance. Had such a belief been formed, TRU Energy would have undertaken an energy audit in accordance with **Clause 11.3** of the **Retail Code** and so determined the reason for Ms AA's hardship.

Case 19

Gender **Female**
Age **38**
Country of Origin..... **Sudan**
Language **Dinka (speaks very little English)**
Literacy **Unable to read or write in English and own language**
Accommodation **Public Rental**
Income **Centrelink**
Company..... **AGL**

Background: Client arrived in Australia five years ago as a refugee. She has four children under 12 years of age

PROBLEM:

Ms CW came to the service after trying to constantly ring AGL concerning her large electricity accounts. It had her on a payment plan of \$50 per fortnight.

She had been told by AGL that it suspected that something was not working properly and that she needed to have someone look at her appliances and wiring. AGL also informed her that she would have to pay \$80 for someone to come to do this and to pay for any work which needed doing. When she came for her appointment Ms CW was concerned that she did not have any way of paying this \$80 and any extra costs which may be incurred.

Only after this service intervened was the client given a reduction in payments and a referral for an energy audit. AGL also said it had told her to check her meter and she should have done this and rang it with this information.

The Financial Counsellor tried to explain to her how to check the meter and how to check whether her appliances were working correctly but because of language difficulties and lack of knowledge of how appliances worked was unable to communicate this.

On review of her accounts she was being charged day rates for hot water. The solution may have been to flick the switch to night rate but the client could not understand how to do this.

ISSUES:

- ***Ongoing communication needs not appropriately addressed:***

AGL in this instance appears to have not conducted its communications with Ms CW in an appropriate manner.

While the Codes do not specifically state that retailers are required to obtain the assistance of an interpreter if there are communication difficulties between the retailer and the customer, the emphasis throughout the Codes is clearly on providing full information to consumers throughout their dealings with the company in a manner that is appropriate to the consumer. For instance, one of the stated reasons for the Retail Code is “enhanced consumer protection for customers in vulnerable circumstances” and **Clause 4.2** of the **Marketing Code** requires training and testing to include “customer service skills including dealing with consumers with special needs and those without or with limited English language skills”.

The failure of the company to obtain an interpreter when it was clear or ought to have been clear that Ms CW was having difficulty communicating with the company may be a breach of the Energy Codes.

- ***Breach of requirement that the retailer assess reasons for person’s inability to pay:***

Pursuant to **Clause 11.1** of the **Retail Code**, responsibility falls on the consumer to inform the retailer of any difficulties they have in paying a bill. In this case, it is clear that Ms AA drew her concerns to AGL but that it failed to act appropriately in relation to this information. In particular, all it did was exacerbate the stress that Ms CW was already feeling about being unable to pay her account and fail to take the steps required of it in accordance with **Clause 11.2** of the **Retail Code**.