



**Code of Conduct for Marketing
Retail Energy in Victoria**

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1. Introduction

1.1 Outline

This Code of Conduct for Marketing Retail Energy aims to ensure high standards are met in the **marketing** of energy to **consumers** of less than 160 MWh per year electricity and less than 10,000 gigajoules per year gas.

The **Code** reflects the responsibility of **retailers** to all **consumers** that is crucial to maintaining and enhancing confidence in the retail energy industry. It aims to ensure that all **retailers** are bound by the same standards.

The **Code** reinforces key provisions of the Victorian *Fair Trading Act 1999* and the *Trade Practice Act 1974*, specifically those provisions covering misleading and deceptive behaviour and unconscionable conduct. Further, it supplements these legislative requirements by addressing such matters as training and auditing.

Recognising the importance of flexibility, the **Code** is designed to remain a “live” document, subject to continuous improvement through consultation with energy **retailers**, government, relevant regulatory authorities, and **consumer** organisations. The principles of transparency, integrity and inclusiveness that underpinned the development of the **Code** will inform future improvements.

The **Code** will be a licence requirement under clause 14(d) (electricity) and 15.1(f) (gas) of each licensed **retailer’s** licence and compliance will be required from all **retailers** who sell or intend to sell to consumers of less than 160MWh electricity and 10,000 gigajoules gas per year. The Essential Services Commission (the Commission) will be responsible for the implementation and administration of the **Code**, using expert advice from industry and **consumer** representatives. **Consumer** redress will continue to be provided through **retailers’** internal dispute resolution mechanisms and if not resolved internally, by the Energy and Water Ombudsman, Victoria (EWOV).

The **Code** has been designed to protect **consumers**, promote the effective transition to full retail competition and ensure uniform minimum **marketing** standards.

The Code of Conduct for Marketing Retail Energy in Victoria will take effect from 1 January 2005.

1.2 Objectives

The **Code** will:

- protect **consumers** and promote **consumer** confidence in the retail energy industry by identifying high standards of behaviour for **marketing** energy;
- promote honesty, fairness and disclosure of information to **consumers**;
- enhance efficient retail market operation by clarifying standards and promoting certainty;

- promote ongoing cooperation between the retail energy industry, regulatory authorities, EWOV and *consumer* representatives;
- reinforce that energy retail *contracts* are made with informed customer consent;
- promote industry compliance with the *Code* through regular compliance monitoring and annual reporting by the Commission;
- provide for *consumer* and industry input into the administration and continuous improvement of the *Code*; and
- remain flexible and responsive to changing patterns of *marketing* behaviour and the changing nature of the industry.

1.3 Principles

The principles of transparency, integrity and inclusiveness underpin the *Code*. The following additional principles shall guide its ongoing operation and continuous improvement:

- *consumer* protection;
- enhancement of competition;
- effective dispute resolution; and
- building and maintaining confidence in the retail energy industry.

1.4 Monitoring

Compliance with the *Code* and the *Code*'s operation shall be monitored and administered by the Commission in carrying out its duties; the Commission will formally liaise with the EWOV, Consumer Affairs Victoria and the Australian Competition and Consumer Commission. The Commission will also utilise the experience of industry and *consumer* representatives.

2. Review and Continuous Improvement of the Code

2.1 Formal review

The separate gas and electricity codes were reviewed at the end of 2003 as was the effectiveness of the Commission's Advisory Committee. This Energy Marketing Code is the outcome of that review.

The Advisory Committee made a necessary and important contribution to the development of the energy market consumer protection arrangements during the initial phase of energy retail competition. However, having regard to stakeholder submissions on the role of the committee and to the Commission's findings from its review of the effectiveness of energy retail competition, the Commission has concluded that there is not an ongoing need for the

committee to continue to assist with the oversight of the code and reviewing compliance with it by retailers.¹

2.2 Continuous improvement

The Commission shall be responsible for considering and implementing, on an on-going basis, changes to the *Code*. Changes shall only be made after consultation with industry, *consumer* groups, regulatory authorities, and *Ombudsman* schemes.²

3. Other Rights & Scope

3.1 Other rights

This *Code* supplements and shall not limit any rights a *consumer* may have under the *Trade Practices Act 1974* (Cth), the *Fair Trading Act 1999* (Vic) or any other legislation or at law, and does not affect any rights a *consumer* may have to seek redress through the court system, tribunal or other public or private dispute resolution mechanism.

3.2 Scope

This *Code* applies to the *marketing* of *contracts* by *retailers* (and their contractors or agents) to *consumers*.

4. Marketing Representatives³

4.1 Training

Retailers shall take all reasonable steps to ensure that their *marketing representatives*:

- are not a threat to any *consumer's* security;
- meet the training and testing requirements identified in Section 4.2 of this *Code*; and
- understand and comply with this *Code*.

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:

- the principles of *consumer* protection laws, such as those set out in the *Trade Practices Act 1974* and the *Fair Trading Act 1999* and in particular Part 4 Off-Business-Premises Sales and other sales of the *Fair Trading Act 1999* and other relevant legislation;

¹ See letter to Committee members, dated 12 July 2004, on esc.vic.gov.au.

² The future regulatory arrangements for the Code will be subject to discussions between the Commission, Consumer Affairs Victoria and other stakeholders during 2004/05.

³ This section is not required by the *Fair Trading Act 1999*.

- 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*.

4.2 Product and Code knowledge

Training and testing shall include:

- 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:
 - 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.
- the ability to understand and clearly explain all offers which may be made by the *marketing representative* and to substantiate any claims made by the *retailer* about the *contracts* which may be offered to *consumers* by the *marketing representative* (including the basis for any tariff or price comparisons between *retailers*);
- the principles of consumer protection laws, such as those set out in the *Trade Practices Act 1974* and the *Fair Trading Act 1999* and in particular Part 4 Off-Business-Premises Sales and other sales of the *Fair Trading Act 1999* and other relevant legislation;
- knowledge and comprehension of what is misleading, deceptive or unconscionable conduct and false representation;
- 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;
- the terms and requirements of this *Code*; and
- other areas as directed by the Commission.

4.3 Training Records

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.

The manuals and records shall be made available for independent audit as required.

5. Contact with Consumers

5.1 Contact hours

Retailers shall not for the purposes of *marketing*, unless at the prior request of the *consumer*, contact a *consumer* at the *consumer's* home.⁴

In person -

- at any time on a Sunday or a public holiday; or
- on a Saturday outside the hours of 9am to 5pm; or
- on any other day outside the hours of 9am to 8pm.

Retailers shall not for the purposes of *marketing*, unless at the prior request of the *consumer*, remain on the premises for more than an hour.⁵

By telephone –

- at any time on a public holiday; or
- on a Saturday or Sunday outside the hours of 9am to 5pm; or
- on any other day outside the hours of 9am to 8pm.

5.2 Personal contact

Marketing representatives who are undertaking negotiations in person and in the presence of a *consumer*, which may lead to a *contract* for the sale of energy or for an incidental or related purpose, not at the business premises of the *retailer*, must:⁶

- leave the premises immediately at the request of the occupier of the premises, any person acting with the actual or implied authority of the occupier, or any person with whom the negotiations are being conducted.
- on first entering into negotiations and at any time after that, on request:

⁴ Clause 62A(2) of the *Fair Trading Act 1999* defines “prior consent to visit”.

⁵ This consent must be in writing, apply only to a period of one half hour, and must not be given during any of the times mentioned in clause 5.1.

⁶ See section 62B(4) of the *Fair Trading Act 1999*.

- produce an identity card⁷ which shows:
 - the full name of the *marketing representative*;
 - a photograph of the *marketing representative*;⁸
 - the name of the *retailer* represented by the *marketing representative*;
 - the business address of the *retailer*;
 - the *retailer's* telephone number for enquiries, verification and complaints. (The telephone number must be staffed during all hours in which a *retailer* is using *marketing representatives* to contact *consumers* in person and at least 30 minutes after the time at which the *retailer* has ceased using *marketing representatives* to contact *consumers* in person);⁹ and
- inform the *consumer* that they:
 - are not permitted to remain on the premises for more than an hour unless the person with whom the negotiations are being conducted consents in writing;¹⁰ and
 - must leave the premises immediately if requested to do so.

5.3 Telephone contact

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:

- cease the negotiations immediately at the request of the prospective purchaser and refrain from contacting the prospective purchaser for 30 days afterwards for the purpose of negotiations which may lead to a *consumer* entering into a *contract*;¹¹
- provide at the earliest reasonable opportunity:¹²
 - 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;
 - the purpose of the telephone call;

⁷ Section 62D of the *Fair Trading Act 1999* requires evidence of identification.

⁸ Section 62D of the *Fair Trading Act 1999* does not require photographic identification.

⁹ Section 62D of the *Fair Trading Act 1999* does not require that the retailer's telephone number be provided.

¹⁰ This consent must be in writing, apply only to a period of one half hour, and must not be given during any of the times mentioned in clause 5.1. See section 62B(4) of the *Fair Trading Act 1999*.

¹¹ See Section 68A of the *Fair Trading Act 1999*.

¹² The following items are not required by the *Fair Trading Act 1999*.

- the *retailer's* telephone number for enquiries, verification and complaints. (This telephone number must be staffed during all hours in which a *retailer* is using *marketing representatives* to contact *consumers* by telephone and at least 30 minutes after the time at which the *retailer* has ceased using *marketing representatives* to contact *consumers* by telephone); and
- on request, provide the name of the field or telesales agency, if any, that the *marketing representative* is employed by.¹³

5.4 No contact lists¹⁴

Retailers shall keep records of *consumers* who have requested that they not be contacted for *marketing* purposes and, at the request of the *consumer*, provide written confirmation that the *consumer* has been placed on the No Contact list.

Retailers shall take all reasonable steps to comply with these requests and shall not contact the *consumer* for the purpose of *marketing* in the medium in which the request was made, or in any other medium for which the *consumer* provides contact details (i.e. in person at the service address, by email, by telephone or by post).

No Contact lists shall include the name and address of the *consumer*. In the event that the *consumer* changes address the No Contact request may be removed from the list.

Retailers shall respect no canvassing signs.

5.5 Visit records¹⁵

To enable the identification of *marketing representatives* and to assist in dealing with enquiries and complaints, *retailers* will ensure that *marketing* records are maintained detailing the following information about personal visits made by *marketing representatives* to *consumers*:

- the premises visited at which contact with a *consumer* was made;
- the dates and times of such visits including the time at which the visit concluded; and
- the names of *marketing representatives* conducting *marketing* at the relevant time and place.

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.

¹³ This item is not required by the *Fair Trading Act 1999*.

¹⁴ This clause is not required by the *Fair Trading Act 1999*.

¹⁵ This clause is not required by the *Fair Trading Act 1999*.

5.6 Telephone records¹⁶

To enable the identification of *marketing representatives* and to assist in dealing with enquiries and complaints, *retailers* shall ensure *marketing* records are maintained detailing the following information about telephone contacts made by *marketing representatives* with *consumers*:

- where the *marketing representative* initiates the call to the *consumer*, the telephone number called in which contact with a *consumer* was made;
- the time and dates of calls; and
- the names of *marketing representatives marketing* at the relevant time.

These records are to be kept for one year after the date of the call and shall be made available for independent audit as required.

6. Information & Conduct

6.1 Clear language¹⁷

Information that this *Code* requires to be provided to *consumers* shall be written in plain English and designed to be readily understood by *consumers*.¹⁸

6.2 Conduct

Recognising that it is in the interests of both *consumers* and *retailers* that *consumers* understand the terms on which they are being offered the supply of electricity and/or gas from the *retailer*, and are able to provide their *explicit informed consent* to any offer made by a *retailer*, *retailers* shall:

- not engage in misleading or deceptive conduct;
- not engage in unconscionable conduct;
- not make false or misleading representations;
- ensure that all relevant facts are provided and are not exaggerated;
- use words and images that promote *consumer* comprehension;
- 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*

¹⁶ This clause is not required by the *Fair Trading Act 1999*. However, the *Fair Trading Act 1999* requires that explicit informed consent records for telephone marketing agreements must be kept for twelve months.

¹⁷ Section 163 of the *Fair Trading Act 1999* requires consumer contracts to be “easily legible”, in a minimum 10 point font and “clearly expressed”.

¹⁸ It is noted that Section 6.1 of the *Code* requires that the marketer ensure that it has received consumer consent prior to transfer. This must be taken into account by marketers when dealing with a consumer who may not be able to read English.

circumstances and that they do not omit important information that should be disclosed;

- ensure that any comparisons made by a *retailer* are clear, factually correct and easily understood by *consumers* and that they do not omit important information that should be disclosed; and
- ensure that the inclusion of rebates and/or concessions is made clear to *consumers* and any prices that exclude rebates and concessions be disclosed.

For the purpose of avoiding any confusion:

- *retailers* must comply with all legislative and regulatory requirements which govern their *marketing* conduct, including but not limited to the *Trade Practices Act 1974*, the *Fair Trading Act 1999* and all requirements of the Commission; and
- the requirements of this Section and Section 6.3 apply to *marketing* in any form or by any technology by *retailers of contracts to consumers*.

6.3 Contract information

A *retailer* must provide the following information to a *consumer* before entering into a *contract*:

- the type, frequency of bills and payment methods the *consumer* will receive;
- the details of all applicable prices, charges,¹⁹ 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, address²⁰ 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;²¹
- 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*;²² and

¹⁹ Subject to the retailer being aware of all charges which may apply to that customer or customer premises.

²⁰ This must be a street address, not a post box address. This amendment has been made for consistency with the *Fair Trading Act 1999*

²¹ This amendment results from a recommendation made by the Marketing Code Advisory Committee.

- whether the *marketing representative* will receive a commission or fee from the retailer if the customer enters into a *contract*.²³

A *retailer* must provide the *consumer* with a reasonable opportunity to consider this information before entering into the *contract*.

To the extent not otherwise required by the *Fair Trading Act 1999*,²⁴ a *retailer* shall send the following information to a *consumer* within 2 business days of entering into a *contract* with the *consumer*, unless this information has previously been supplied to the *consumer*:

- the full terms, conditions and applicable costs of the *contract* including the period of the *contract*;
- advice to the *consumer* that they have a right to cancel the *contract*, and a *retailer* contact point which the *consumer* may require for further information, or to cancel the *contract*;
- Government energy assistance schemes which may be available to the *consumer*;²⁵
- how to make a complaint to, or enquiry of, the *retailer* and details of the Energy and Water Ombudsman, Victoria;²⁶ and
- the existence and general scope of this *Code* and how to access *Code* compliance procedures.²⁷

6.4 Electronic commerce information²⁸

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 6.3 of the *Code*, prior to entering into the *contract* and shall supply such information required by Section 6.3 via email to the *consumer* immediately after entering into the *contract*.

²² For telephone marketing agreements, the explicit informed consent provisions of section 67D of the *Fair Trading Act 1999* requires that “all matters relevant to the consent of the purchaser” and the right to cancel must be disclosed.

²³ This amendment results from a recommendation made by the Marketing Code Advisory Committee.

²⁴ Where the Contact Sales provisions under Division 2 of the *Fair Trading Act 1999* require contractual information to be provided at the time of contract entry.

²⁵ This item is not required by the *Fair Trading Act 1999*.

²⁶ This item is not required by the *Fair Trading Act 1999*.

²⁷ This item is not required by the *Fair Trading Act 1999*.

²⁸ Division 3 of Part 4 of the *Fair Trading Act 1999* applies to e-sales and requires the seller to pre-disclose the price and other charges, any cancellation rights, and the full name of the seller and either the business address or the telephone number. This information must also appear in any agreement subsequently made (see section 69 of *Fair Trading Act 1999*).

6.5 Off retailer business premises contracts²⁹

Retailers must comply with Part 4 of the *Fair Trading Act 1999* 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.

In addition to complying with relevant sections of Division 2 of Part 4 of the *Fair Trading Act 1999* 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 **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**.³⁰

7. Consumer Consent

7.1 Consumer transfer³¹

A **retailer** shall not transfer a **consumer** to itself from another **retailer** without that **consumer's explicit informed consent**. This consent must be able to be verified as required by guidelines set by the Essential Services Commission.³²

Retailers and their **marketing representatives** shall use their best endeavours to ensure that the **consumer** understands and consents to the transfer of supply, prior to the **retailer** taking any step to so transfer the **consumer**.

7.2 Consent audit – audit process³³

Each calendar year the retailer shall contact a sample of customers who have entered into a market contract with that retailer.

The contact shall seek the customer's confirmation that:

- he or she understands that he or she has entered into a contract;

²⁹ The *Electricity Industry Act 2000* and the *Gas Industry Act 2001* have been amended resulting in the following clauses of the *Fair Trading Act 1999* not applying in certain circumstances: 61(g), 67E(1), 67E(3)(c), 67H, 67I, 67J, 67K, 67L, and 67M.

³⁰ The protections of Part 4 of the *Fair Trading Act 1999* do not apply to a body corporate. See section 59(d).

³¹ This clause is not required by the *Fair Trading Act 1999*. However, for telephone marketing agreements, the explicit informed consent provisions of section 67D apply.

³² Related clauses of the Commission's Codes and Guidelines, 4.1 Transfer Code, 22.1 Retail Code and 4.1 Confidentiality and Explicit Informed Consent Guideline. The addition of this footnote results from a recommendation made by the Marketing Code Advisory Committee.

³³ This amendment results from a recommendation made by the Marketing Code Advisory Committee. Consent Audits are not required by the *Fair Trading Act 1999*.

- he or she has consented to the contract; and
- he or she understands the cooling-off period that exists on entering into a contract.

The sample size shall be sufficient to provide a 95% confidence level (+/-5% confidence interval).

The customers contacted as part of the audit process must be selected randomly.

The audit must be conducted during periods of marketing activity, whereby the retailer will contact the randomly selected customers no more than 14 days after the date of their contract.

The retailer shall ensure that the representative conducting the audit is not auditing a contract that the representative initiated with the consumer.

If in response to the consumer audit process, the consumer indicates that they did not understand that they had entered into the contract, or did not consent to the contract and wishes to terminate it, the retailer will:

- ensure that the contract is terminated;
- request the consumer to supply to the retailer any information about the marketing activities of the retailer which may suggest failures in the methods, systems or knowledge of marketing representatives; and
- audit the marketing activities of the marketing representative who marketed the terminated contract. This audit shall examine the previous five consumer contracts generated by the marketing representative before the terminated contract, and the five consumer contracts generated after the terminated contract. Contracts in this case are contracts that are market contracts and were formed off the business premises of the retailer.

If the response of the consumer alone, or in combination with the responses of other consumers, suggests on reasonable grounds failures in the methods, systems or marketing representatives engaged by the retailer, the retailer shall take all reasonable steps to remedy the failures and to ensure that they do not recur.

7.3 Consent audit – records³⁴

Retailers shall ensure that records are kept of their compliance with these provisions including records of:

- **consumer** contacts and the response of **consumers** to such contact, including any responses which may suggest failures in the **retailer's** methods, systems or **marketing representatives**;

³⁴ This clause is not required by the *Fair Trading Act 1999*. However, for telephone marketing agreements, the explicit informed consent provisions of section 67D, including record keeping requirements, apply.

- the steps taken by the *retailer* to remedy such failures and ensure that they do not reoccur;
- the termination of *contracts* pursuant to these provisions; and
- the methods by which the *retailer* has selected the random sample.

These records are to be kept for one year after the date on which the *consumer* contact was made and shall be made available for independent audit on request.

7.4 Sales to minors and “authorised” consumers³⁵

The *retailer* will take reasonable steps to conduct *contract* negotiations with a person who has the authority to enter into a *contract* for electricity supplied to the actual site.

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*.

8. Commencement of Retail Service³⁶

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.

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.

9. Marketing and Consumer Information³⁷

Retailers shall not represent that they are conducting market research when a purpose of the contact with the *consumer* is an attempt to encourage the customer enter into a *contract* with the *retailer*.

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 *Privacy Act 1988*. *Retailers* will also comply with any relevant Guideline issued by the Commission.

³⁵ This clause is not required by the *Fair Trading Act 1999*.

³⁶ This clause is not required by the *Fair Trading Act 1999*.

³⁷ This clause is not required by the *Fair Trading Act 1999*.

10. Dispute Resolution³⁸

10.1 Dispute resolution - internal

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 4269 – 1995). This process will be provided at no cost to *consumers*.

If a *consumer* complaint is not resolved internally in a manner acceptable to the *consumer*, the *retailer* shall:

- 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.

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.

10.2 Dispute resolution - external

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.

10.3 Dispute resolution - information

Retailers shall:

- make available information which:
 - 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.

³⁸ This clause is not required by the *Fair Trading Act 1999*.

11. Definitions

In this *Code*:

body corporate means a company.

Code means this Code of Conduct for Marketing Retail Energy in Victoria.

consumer means consumers of less than 160 MWh per year electricity or less than 10,000 gigajoules per year gas, includes prospective purchasers of less than 160 MWh per year electricity or less than 10,000 gigajoules per year gas, and includes individuals and bodies corporate.

contract means an agreement for the supply of electricity and/or gas between a *retailer* and a *consumer*.

deemed in respect of a contract means a contract deemed to apply between a *consumer* and a *retailer* under the *Electricity Industry Act 2000* and/or *Gas Industry Act 2001*.

Energy Retail Code means the Code of that name setting out terms and conditions relevant to contracts for the supply or sale of energy effective 1 January 2005.

explicit informed consent has the same meaning as in the relevant *retailer's* retail licence.

marketing includes advertising, sales promotion, public relations and negotiations which may or do lead to a contract being made between the *retailer* and the *consumer*.

marketing representatives includes the staff, agents, representatives, contractors or persons acting on behalf of a *retailer*, who are engaged in marketing and or selling the *retailer's contracts*.

retailer means a person who holds a retail energy licence issued by the Essential Services Commission.

standing offer means an offer made by a *retailer* as contemplated by section 35 of the *Electricity Industry Act 2000* and/or by section 42 *Gas Industry Act 2001*.

In addition:

- the singular includes the plural and vice versa; and
- persons shall include companies, corporations, public bodies and other bodies corporate.