

General information: “Marketing of energy contracts to the elderly/frail aged”

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Introduction

During 2005-2006, EWON noticed a significant rise in the number and frequency of complaints about the conduct of marketers¹ selling negotiated² energy supply contracts. We found that many of the customers who contacted us with such complaints were in their seventies, eighties or nineties, with health problems that limited their ability to fully appreciate the types of contracts they were entering. Some of the health issues experienced by these frail aged customers include:

- significant hearing or visual impairment
- dementia and short-term memory loss
- a debilitating condition such as arthritis, Parkinson's disease or shingles
- chronic pain that requires constant medication
- restricted mobility due to an injury or stroke.

In addition to health issues, a number of older customers who contacted EWON advised that their literacy skills were quite minimal or they had difficulty with English.

A further characteristic that is shared by these customers is a lack of familiarity with the concept of customer choice in energy. Full retail competition for electricity and gas in New South Wales was introduced in 2002, but for much of their lives, elderly customers have only ever had a relationship with one supplier of electricity and one supplier of gas.

¹ For the purposes of this report, the terms 'marketer' and 'marketing' refer only to door-to-door and telephone marketing. Other forms of marketing, such as direct marketing by mail, are not discussed in this report.

² 'Negotiated customer contract' is terminology used in throughout both the *Electricity Supply (General) Regulation 2001* and the *Gas Supply (Natural Gas Retail Competition) Regulation 2001* to meaning an energy supply contract whose terms intended to be the subject of negotiation between the customer and the marketer. In practice, the retailer generally sets the tariffs included in such contracts in advance of an offer being extended to the customer, with all other terms and conditions of the contract outlined in a document provided to the customer prior to, or at the time of agreement.

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CASE STUDY

Vulnerable to a quick sale

Cecil, who is 94, had a stroke last year that affected his memory, and he now rarely leaves his bed. One night he received a telephone call from a marketer who said the retailer she represented would in future be collecting the money for bills from customers on behalf of Cecil's usual electricity supplier.

Cecil confirmed his details to the marketer, but then thought nothing further about it until he received a letter from the retailer in the mail, welcoming him as a customer.

EWON requested a copy of the audio file of the marketing call from the retailer. It was obvious from the recording that Cecil did not understand the purpose of the call, or what he was being asked to agree to.

Many customers reported having difficulty understanding the relationship between retailers and distributors, complex contract terms and conditions including early termination fees, the various components that make up a tariff (ie that there are some parts of a tariff that may increase during the life of a contract), automatic contract rollover when a contract reaches the end of its agreed period, and bill payment methods that may be very different from those that they have been used to with their original supplier.

Elderly people still living independently in their own homes or within an aged care community tend to be at home during the day and may be more likely to speak to marketers when they telephone or knock on their door. The frail aged may be an easy ‘target’ for marketing as their knowledge of the complexities of the energy marketplace may be limited, they might find it hard to say no to a marketer and might be prepared to listen politely to a marketer's sales presentation. They may be especially receptive to promises about saving money, particularly if they are on a limited fixed income such as an age or disability pension.

Elderly people living in public housing may be targeted by some marketers who seek to sign up multiple new customers in a single marketing visit. Some public housing tenants have complained that marketers applied pressure by stating that all the other residents of the complex had agreed to a contract, or that the customer should not miss out on receiving a special offer or discount that other residents have already benefited from.

Some frail elderly customers reported to EWON that they felt their personal safety was compromised when they opened their door to a marketer, even if they listened patiently to what the marketer was saying.

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CASE STUDY Complex information

Margaret is almost blind, and walks with the assistance of a frame. About two months ago she was visited by a young man who said that her current electricity supplier is going out of business, and everyone in the street must sign with the new retailer to ensure they are not disconnected and continue to receive their ‘discount’.

Margaret listened while the young man spoke for ten minutes about savings, the environment and tariffs, and let him see her pension card details and old bills when he asked for these.

Eventually, she agreed to sign, but admits she only understood some of what he was talking about and could not read what she was signing. Margaret has now received a final bill from her usual supplier, but her granddaughter told her it doesn’t mention anything about them going out of business.

Margaret had never heard of people selling energy contracts before, and had been with her electricity supplier for over 40 years. Margaret thought it was the right thing to give the young man her signature, but now feels confused and misled.

Knowledge of retail competition and marketing

At the outset of full retail competition in 2002 the NSW Government initiated an information campaign, including television and radio announcements, and distribution of a colour information booklet to every household, titled *Change or stay, you’ll be OK*. The booklet included a glossary of terms, detailed information about standard and negotiated contracts and contract terms and conditions, and advice on how to make a complaint.

Despite the information campaign of 2002, many of the elderly customers and their advocates who brought complaints to EWON in 2005/2006 had little or no recollection of the information conveyed by the *Change or stay* campaign.

Similarly, the majority of elderly customers and their representatives who have contacted EWON reported having no knowledge about the consumer protections afforded them under the *Marketing Code of Conduct*.

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CASE STUDY Dementia

Doreen is 83 and has dementia. Before being admitted to a full-time care facility, Doreen lived with her daughter, who held the electricity account for the property in her name. Doreen’s daughter was not always at home because she works part time, but has power of attorney over her mother’s affairs.

Doreen signed up with two door-to-door marketers from different retailers within the space of a fortnight without her daughter’s knowledge. Doreen had no concept of what she was agreeing to, and her daughter says the marketers should have recognised this after a few minutes talking to her.

Doreen’s daughter is now trying to have the contracts cancelled, but is distressed that one of the retailers wants to enforce the contract and declined to speak to her without her mother’s authorisation.

Vulnerability to misleading and pressure marketing

Many elderly customers and their advocates raised similar complaints about the conduct of marketers. Examples of misleading or pressure marketing brought to the attention of EWON involved claims by marketers that:

- they are acting for ‘the Government’ or the customer’s standard electricity supplier
- the customer’s standard supplier is going out of business or merging with the retailer they represent and the customer should sign up to avoid being disconnected
- the customer’s standard supplier and the retailer they represent are both owned by the same parent company
- the customer must sign up to continue receiving their pensioner rebate or to qualify for a discount
- by signing a contract, the customer is simply indicating that they have spoken or agree to receive an ‘information package’ in the mail
- the customer needs to sign a contract to avoid future supply interruptions
- ‘nothing will change’ if the customer signs a contract, except for the colour of the company letterhead that appears on their bills
- everyone else in the building (if the customer lives in an apartment block) or the street has signed, so why don’t they?
- the offer is a one-off that cannot be repeated, and unless the customer signs that day, they will miss out on the very special offer.

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In some cases, it appeared that the marketer did not mislead or pressure the customer, but the customer or their advocate advised that the marketer should have realised that the customer had no real concept of what they were agreeing to and that therefore there was no informed consent to the contract. Some customers reported that they only agreed to the contract because they felt it was the simplest way of getting the marketer to leave their property or cease calling them on the telephone.

EWON reviewed the audio records of the telemarketing and verification telephone calls to some of the elderly customers who contacted us. In some cases it was quite apparent that the customer did not understand what was happening, and that they were agreeing to questions that they did not appear to understand. In one case the customer listened to an entire telephone sales presentation, agreed with what was put to them, ie that their energy account would be transferred to that retailer, then said at the end of the conversation: “Does this mean I’m still with [my current company]?”

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CASE STUDY Targeting of public housing tenants

Chester is an aged pensioner living in a public housing complex. He was chatting with neighbours at the front of the building when a marketer approached them and asked if they were all signed up for their ‘discount’. The marketer assured them that everyone in the area had signed up for the ‘discount’ and they should also do so not to miss out.

Caught up in the light-hearted spirit of the discussion, and at the urging of neighbours, Chester agreed to also sign. For him, the deciding factor was an offer of \$60 that he was told would be mailed out with his first bill.

Chester has now received his first bill from the new retailer, and found that his bill is slightly higher than normal. When he asked the retailer about the \$60 cash back offer, they told him this would be applied in \$15 deductions to his bills over the course of the first year.

Chester feels completely misled by the marketer’s sales pitch.

Consultation with peak bodies

In mid 2006, we met with the Sydney chapter of the Combined Pensioners and Superannuants Association (CPSA)³, the NSW Policy Coordinator of the Council on the Aging (COTA), the Milton-Ulladulla branch of the Combined Pensioners and Superannuants Association, and the Narrabeen branch of Older Men New Ideas (OMNI). We also developed and distributed copies of the EWON fact sheet [Information for seniors: Make an informed choice about energy contracts](#) to these stakeholders, obtained feedback on the fact sheet where possible, and discussed the specific consumer protections afforded by the *Marketing Code of Conduct*.

Representatives of the aged community indicated that knowledge is low regarding the allowable times for marketing and the guidelines for how marketers must conduct themselves when speaking to consumers. Some representatives expressed concern that marketing can occur as late as 8:30pm on weekdays, as many elderly people may already be in bed by this time during the colder, non-daylight saving months.

Other representatives were surprised to learn that some retailers operating in New South Wales do not offer the full range of bill payment methods, eg payment at the post office is very important to many older customers.

³ Independently of EWON's consultation meeting with them, the CPSA placed a full-page article about energy marketing and contracts in the July/August edition of their publication *The Voice*.

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CASE STUDY

Concerns about personal safety

Warren and his wife are in their eighties and were preparing for bed one night in winter when there was a knock on the door. Reluctantly, Warren opened the door because the marketer kept saying he was from the government and urgently needed to obtain Warren's signature on a document about his electricity supply.

Warren was somewhat assured by the marketer's continual reference to representing the government, but says he has never been a good reader, and did not have a close look at the documents before signing.

Warren said because of the time of the visit (around 8pm) he was keen to be rid of the marketer in case the whole thing was an elaborate way for the man to get an idea of what might be worth stealing in the house.

Warren said that signing was the quickest way he could think of to get the marketer to leave without being rude to him.

Recording of marketing calls and visits

Although some energy retailers use their in-house staff to conduct marketing, we understand that most energy retailers outsource their marketing to specialist marketing firms, some of which are based interstate. Retailers have advised EWON that prior to being allowed to commence marketing on their behalf, the marketers must complete training approved by the retailer that ensures they are aware of the [Marketing Code of Conduct](#) and other relevant New South Wales-specific regulatory instruments.

The *Marketing Code of Conduct* requires that a marketer maintain records of the names and telephone numbers of customers they market to, and the times of such calls. In addition to this, a marketer must record that part of a telephone discussion between the marketer and a customer during which the customer accepts the terms and conditions of the contract.

However, door-to-door marketers are not required to record anything they say to the people they visit. This makes it difficult to establish what was actually discussed when a dispute later arises. To alleviate this and to facilitate the resolution of disputes over consent, some retailers conduct 'verification' phone calls with customers who choose to enter into a contract with a door-to-door marketer while the marketer is still present.

During such calls, the customer is asked a series of questions (generally by a third party representative of the retailer) to establish that the customer fully understands what they are agreeing to. These telephone calls are generally recorded. These audio records have been invaluable for EWON's investigation of complaints, as they provide a record of whether the customer was aware of what they were agreeing to at the time of the contract sign-up. However, retailers are not currently required under the *Marketing Code* or any other regulatory instrument to make verification calls to customers who have agreed to enter a market contract.

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Do Not Call Register

The Commonwealth [Do Not Call Register](#), administered by the Australian Communications and Media Authority (ACMA), commenced operation in May 2007 and had received more than 200,000 registrations within a week of opening to the public. Energy telemarketers will have to ‘wash’ their call lists through the Register at least every 30 days. It is possible that this might result in retailers shifting the focus of their marketing to forms such as direct mail, doorknocking, and ‘up selling’ of negotiated energy supply contracts during inbound calls to their call centres.

Protections against door-to-door marketing

Customers who do not wish to be contacted by door-to-door energy marketers can place a sign at or near their front door which says ‘Do Not Call’, ‘No Canvassing’, ‘No Marketers’ or the like. Under the *Marketing Code of Conduct*, door-to-door marketers must abide by such signs. (Hardware stores or the like may stock these types of signs).

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Retailers’ policies on marketing to the elderly

EWON understands that one retailer has made a policy decision not to market to customers over a certain age. However, EWON believes that a no-marketing policy towards older customers over a designated age is not appropriate for the following reasons:

- a customer does not cease to be capable of making an informed choice just because they are above a designated age
- it can be perceived as being discriminatory as it would prevent those elderly consumers who want to change retailers from doing so
- marketers would generally still have to make contact by door-knocking or telemarketing to establish the age of the customer, thus risking upsetting the customer if the marketer informs them they cannot proceed with the marketing sale.

EWON Marketing Forum

On 30 November 2006, representatives of most NSW-licensed energy retailers attended a forum on Marketing facilitated by EWON. Representatives of consumer groups, the Independent Pricing and Regulatory Tribunal (IPART), the Office of Fair Trading and the Energy Retailers Association of Australia, made presentations. The Forum aimed to stimulate discussion about what aspects of door-to-door and telemarketing have contributed to the rise in complaints from frail aged and vulnerable customers and their advocates, and how these issues can be avoided in future. As an outcome of the forum one retailer offered to facilitate an industry working group on the issue. EWON understands that the Victorian retailers’ working group on marketing is intending to widen discussion nationally.

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Issues arising for consideration by the energy retailer industry and/or the government regulators

The spike in marketing complaints concerning the elderly referred to above has highlighted for EWON the following issues:

1. *Training and supervision of marketers.*

EWON acknowledges that the best possible training may not prevent ‘rogue’ marketers from deliberately deceiving and misleading a customer if a marketer’s sole aim is to sign up as many customers as possible within a short period of time before they resign or are terminated. Nevertheless, the complaints EWON has received indicate that it is difficult for some marketers to balance meeting sign-up quotas and delivering information to customers in a way that is both ethical and sensitive to the customer’s ability to fully understand what they are being asked to agree to. It is the responsibility of retailers to ensure that the training and supervision of marketers receive minimises as far as possible the risk of ‘rogue’ behaviour.

2. *Verification calls.*

EWON notes that some retailers include a verification call to customers who are entering into a supply agreement with a door-to-door marketer as a step in their sign-up process. Such calls offer the customer an opportunity to think about what they are agreeing to (particularly if they are not simply being asked to answer ‘yes’ to a series of questions). The records of these calls also add integrity to the sign-up in case of a dispute arising at a later stage regarding the customer’s informed consent. An industry-agreed standard for verification calls would be welcomed by EWON.

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3. *Times of marketing.*

As outlined above, feedback from elderly customers and their advocates indicates that during non daylight saving months, visits from door-to-door marketers and calls from telemarketers after 6pm are often unwelcome, and can be perceived as intimidating. Residents of retirement villages have complained to EWON that door-to-door marketers knocking on doors after 6pm have caused some customers already in bed to have to get up to answer the door. Consideration might be given to an industry-agreed standard for early evening marketing during non-daylight saving months.