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Form A

Commonwealth of Australia

Trade Practices Act 1974 — subsections 88 (1A) and (1)

EXCLUSIONARY PROVISIONS AND ASSOCIATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act and which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act.
- to make a contract or arrangement, or arrive at an understanding, where a provision of the proposed contract, arrangement or understanding would be, or might be, an exclusionary provision within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding where the provision is, or may be, an exclusionary provision within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91258 Energy Assured Limited ACN 146 921 904 (EAL).

- (b) Description of business carried on by applicant:
(Refer to direction 3)

The applicant is a non profit company limited by guarantee established to provide an energy marketing standards compliance and accreditation platform to energy retailers and marketers whose members are:

- electricity and gas retailers (**Energy Retailers**); and
- marketing companies that conduct door to door sales on behalf of electricity and gas retailers (**Energy Marketers**); and

- the Energy Retailers Association of Australia Limited (**ERAA**).

This is to be achieved through the establishment and implementation of a Code of Practice, (which incorporates a Procedures Guideline) and Complaints Process as set out in Schedule 3 (Scheme).

- (c) Address in Australia for service of documents on the applicant:
Suite 2, Level 4, 189 Kent Street, Sydney NSW 2000

2. **Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

Subject to Authorisation being granted by the ACCC, EAL members will adopt and comply with the EAL Code of Practice and Complaints Process (which comprise the Scheme for door-to-door energy marketing undertaken by members).

See **attached** copies of the EAL Constitution, proposed Code of Practice, (which incorporates a Procedures Guideline) and Complaints Process in Schedule 3.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, exclusionary provisions and (if applicable) are, or would or might be, cartel provisions:
(Refer to direction 4)

A) The EAL Code of Practice will contain a provision that requires all sales agents engaged by members to conduct door-to-door sales (**Sales Agents**) to have fulfilled particular recruitment and training and be registered and accredited under the EAL accreditation scheme (**Accreditation Provision**). An Accreditation Provision has the potential to constitute an exclusionary provision or cartel provision to the extent it restricts or limits the acquisition of goods or services (in this case the door-to-door sales services provided by Sales Agents) from a particular class of persons (in this case non-accredited Sales Agents).

B) The EAL Code of Practice will contain a provision that prevents more than one Member from engaging any one Sales Agent at the same time (**Exclusive Representative Provision**). The Exclusive Representative Provision has the potential to constitute a cartel provision to the extent it can be construed as having the purpose of directly or indirectly allocating between the members, the Sales Agents who are likely to supply Sales Agent services to those members.

C) The Code of Practice will contain a provision that provides that where an Energy Retailer contracts with a third party for the provision of door-to-door marketing services the third party provider must be a Member (**Member Provision**). The Member Provision has the potential to constitute an exclusionary provision or cartel provision to the extent it can be construed as having the purpose of preventing, restricting or limiting the acquisition of goods or services (in this

case the intermediary marketing services provided by Energy Marketers) from a particular class of persons (in this case other energy marketers that are not members).

Further discussion of these provisions appears in the **attached Submission**.

- (c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:
 - Door-to-door sales agency services.
- (d) The term for which authorisation of the provision of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The Authorisation period sought is 10 years. It is intended that the Scheme will operate for the foreseeable future to regulate the conduct of Sales Agents, and the Energy Retailers and Energy Marketers who they represent, so as to promote consumer confidence in door-to-door energy marketing. Significant investment by EAL and its members to establish the Scheme would be lost if the Scheme could not remain in place in its proposed form for the period sought. The Scheme's operation would be compromised in that the consistent application of marketing standards may be reduced thereby diminishing the ability of the Scheme to realise the public benefits which it aims to achieve.

3. Parties to the proposed arrangement

- (a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Please see **attached Schedule 1**.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Please see **attached Schedule 2**.

4. Public benefit claims

- (a) Arguments in support of application for authorisation:
(Refer to direction 6)

Please see **attached Submission**.

- (b) Facts and evidence relied upon in support of these claims:

Please see **attached Submission**.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any

restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

- The market for the retail supply of electricity and/or gas to residential and small businesses customers; and
- The market for the supply of door-to-door sales agency services to Energy Retailers by Energy Marketers and/or Sales Agents.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the contract arrangement or understanding for which authorisation is sought, in particular the likely effect of the contract arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:
(Refer to direction 8)

Please see **attached Submission**.

- (b) Facts and evidence relevant to these detriments:

Please see **attached Submission**.

7. Contracts, arrangements or understandings in similar terms

- (a) This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding:

- (b) Is this application to be so expressed?

This application is expressed to be made in relation to the contract, arrangement or understanding that any new member makes in agreeing to be bound to the EAL Constitution, the Code of Practice and Complaints Process.

- (c) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

Not applicable.

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

(Refer to direction 10)

Please see **attached Schedule 1**.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Other Energy Marketers and Energy Retailers.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the applicant seeking authorisation to provide additional information in relation to this application:

Ramy Soussou
General Manager EAL
Energy Retailers Association of Australia
Suite 2, Level 4
189 Kent Street
Sydney NSW 2000
Ph: (02) 9241 6556
Fax: (02) 9251 5425
Email: rsoussou@eraa.com.au

Dated..... 29 OCTOBER 2010

Signed by/on behalf of the applicant



.....
(Signature)

RAMY SOUSSOU

.....
(Full Name)

ENERGY RETAILERS ASSOCIATION OF AUSTRALIA

.....
(Organisation)

GENERAL MANAGER

.....
(Position in organisation)

Form B

Commonwealth of Australia

Trade Practices Act 1974 — subsections 88 (1A) and (1)

AGREEMENTS AFFECTING COMPETITION OR INCORPORATING RELATED CARTEL PROVISIONS: APPLICATION FOR AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974* for an authorisation:

- to make a contract or arrangement, or arrive at an understanding, a provision of which would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act).
- to give effect to a provision of a contract, arrangement or understanding that is, or may be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which is also, or may also be, an exclusionary provision within the meaning of section 45 of that Act).
- to make a contract or arrangement, or arrive at an understanding, a provision of which would have the purpose, or would or might have the effect, of substantially lessening competition within the meaning of section 45 of that Act.
- to give effect to a provision of a contract, arrangement or understanding which provision has the purpose, or has or may have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

(Strike out whichever is not applicable)

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of Applicant:
(Refer to direction 2)

A91259

Energy Assured Limited ACN 146 921 904 (EAL).

- (b) Short description of business carried on by applicant:
(Refer to direction 3)

The applicant is a non profit company limited by guarantee established to provide an energy marketing standards compliance and accreditation platform to energy retailers and marketers whose members are:

- electricity and gas retailers (**Energy Retailers**); and
- marketing companies that conduct door to door sales on behalf of electricity and gas retailers (**Energy Marketers**); and

- the Energy Retailers Association of Australia Limited (**ERAA**).

This is to be achieved through the establishment and implementation of a Code of Practice, (which incorporates a Procedures Guideline) and Complaints Process as set out in Schedule 3 (Scheme).

- (c) Address in Australia for service of documents on the applicant:
Suite 2, Level 4, 189 Kent Street, Sydney NSW 2000

2. **Contract, arrangement or understanding**

- (a) Description of the contract, arrangement or understanding, whether proposed or actual, for which authorisation is sought:
(Refer to direction 4)

Subject to Authorisation being granted by the ACCC, EAL members will adopt and comply with the EAL Code of Practice and Complaints Process (which comprise the Scheme for door-to-door energy marketing undertaken by members).

See **attached** copies of the EAL Constitution, proposed Code of Practice, (which incorporates a Procedures Guideline) and Complaints Process in Schedule 3.

- (b) Description of those provisions of the contract, arrangement or understanding described at 2 (a) that are, or would or might be, cartel provisions, or that do, or would or might, have the effect of substantially lessening competition:
(Refer to direction 4)

A) The EAL Code of Practice will contain a provision that requires all sales agents engaged by members to conduct door-to-door sales (**Sales Agents**) to have fulfilled particular recruitment and training and be registered and accredited under the EAL accreditation scheme (**Accreditation Provision**). An Accreditation Provision has the potential to constitute an exclusionary provision or cartel provision or to substantially lessen competition to the extent it restricts or limits the acquisition of goods or services (in this case the door-to-door sales services provided by Sales Agents) from a particular class of persons (in this case non-accredited Sales Agents).

B) The EAL Code of Practice will contain a provision that prevents more than one Member from engaging any one Sales Agent at the same time (**Exclusive Representative Provision**). The Exclusive Representative Provision has the potential to constitute a cartel provision or to substantially lessen competition to the extent it can be construed as having the purpose of directly or indirectly allocating between the members, the Sales Agents who are likely to supply Sales Agent services to those members.

C) The Code of Practice will contain a provision that provides that where an Energy Retailer contracts with a third party for the provision of door-to-door marketing services the third party provider must be a Member (**Member Provision**). The Member Provision has the potential to constitute an exclusionary

provision or cartel provision or to substantially lessen competition to the extent it can be construed as having the purpose of preventing, restricting or limiting the acquisition of goods or services (in this case the intermediary marketing services provided by Energy Marketers) from a particular class of persons (in this case other energy marketers that are not members).

Further discussion of these provisions appears in the **attached Submission**.

(c) Description of the goods or services to which the contract, arrangement or understanding (whether proposed or actual) relate:

- Door-to-door sales agency services.

(d) The term for which authorisation of the contract, arrangement or understanding (whether proposed or actual) is being sought and grounds supporting this period of authorisation:

The Authorisation period sought is 10 years. It is intended that the Scheme will operate for the foreseeable future to regulate the conduct of Sales Agents, and the Energy Retailers and Energy Marketers who they represent, so as to promote consumer confidence in door-to-door energy marketing. Significant investment by EAL and its members to establish the Scheme would be lost if the Scheme could not remain in place in its proposed form for the period sought. The Scheme's operation would be compromised in that the consistent application of marketing standards may be reduced thereby diminishing the ability of the Scheme to realise the public benefits which it aims to achieve.

3. **Parties to the proposed arrangement**

(a) Names, addresses and descriptions of business carried on by other parties or proposed parties to the contract or proposed contract, arrangement or understanding:

Please see **attached Schedule 1**.

(b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Please see **attached Schedule 2**.

4. **Public benefit claims**

(a) Arguments in support of authorisation:
(Refer to direction 6)

Please see **attached Submission**.

(b) Facts and evidence relied upon in support of these claims:

Please see **attached Submission**.

5. Market definition

Provide a description of the market(s) in which the goods or services described at 2 (c) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

(Refer to direction 7)

- The market for the retail supply of electricity and/or gas to residential and small businesses customers; and
- The market for the supply of door-to-door sales agency services to Energy Retailers by Energy Marketers and/or Sales Agents.

6. Public detriments

- (a) Detriments to the public resulting or likely to result from the authorisation, in particular the likely effect of the contract, arrangement or understanding, on the prices of the goods or services described at 2 (c) and the prices of goods or services in other affected markets:

(Refer to direction 8)

Please see **attached Submission**.

- (b) Facts and evidence relevant to these detriments:

Please see **attached Submission**.

7. Contract, arrangements or understandings in similar terms

This application for authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings or proposed contracts, arrangements or understandings, that are or will be in similar terms to the abovementioned contract, arrangement or understanding.

- (a) Is this application to be so expressed?

This application is expressed to be made in relation to the contract, arrangement or understanding that any new member makes in agreeing to be bound to the EAL Constitution, the Code of Practice and Complaints Process.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which authorisation is sought and those contracts, arrangements or understandings that are stated to be in similar terms:

(Refer to direction 9)

N/A

- (ii) Where the parties to the similar term contract(s) are known — names, addresses and descriptions of business carried on by those other parties:

Please see **attached Schedule 1**.

- (iii) Where the parties to the similar term contract(s) are not known — description of the class of business carried on by those possible parties:

Other Energy Marketers and Energy Retailers.

8. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Trade Practices Act 1974*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

9. Further information

- (a) Name and address of person authorised by the applicant to provide additional information in relation to this application:

Ramy Soussou
General Manager EAL
Energy Retailers Association of Australia
Suite 2, Level 4
189 Kent Street
Sydney NSW 2000
Ph: (02) 9241 6556
Fax: (02) 9251 5425
Email: rsoussou@eraa.com.au

Dated..... 29 OCTOBER 2010

Signed by/on behalf of the applicant



(Signature)

RAMY SOUSSOU

(Full Name)

GENERAL MANAGER

(Position in Organisation)

Submission in support of Application for Authorisation

Energy Assured Limited Door-to-Door Energy Sales Self-Regulatory Scheme

Introduction

The following submission has been prepared to support the Application for Authorisation by Energy Assured Limited (**EAL**) made under subsection(s) 88 (1A)/88 (1) of the *Trade Practices Act 1974*.

EAL seeks authorisation so that its members can implement a self-regulated regime to direct and facilitate the door-to-door marketing of energy in Australia.

Background

1 Energy Assured Limited and its Members

1.1 EAL is a non profit company limited by guarantee, whose founding members are:

- (1) the Energy Retailers Association of Australia Limited (**ERAA**);
- (2) Australian Power & Gas Pty Ltd; and
- (3) AGL Energy Limited.

1.2 EAL's other members will be licensed electricity and gas retailers (**Energy Retailers**) and marketing companies that conduct door to door sales on behalf of electricity and gas retailers (**Energy Marketers**). It is anticipated that a vast majority of Energy Retailers and Energy Marketers in Australia will become members of EAL (initially those active within the jurisdictions participant in the National Electricity Market and extending to the Northern Territory and Western Australian in the future).

1.3 All Australian Energy Retailers and Energy Marketers will be eligible to become a member of EAL. It is proposed that each member will be required to comply with the EAL Code of Practice and the EAL Complaints Process (copies of which form Schedule 3 to the Application for Authorisation).

2 Objects

2.1 EAL has been established to:

- (1) establish, implement and manage an agreed standard for the door-to-door marketing activities by its members in respect of gas and electricity supply contracts to consumers (**Scheme**);
- (2) develop and facilitate training programs to provide members with the knowledge and capabilities to maintain the competence standards required by the Scheme and to, in turn, deliver their own on-going training of door-to-door sales agents (**Sales Agents**);
- (3) administer a register of accredited Sales Agents;
- (4) develop and implement procedures and processes to monitor and assess the conduct and activities of Sales Agents to ensure compliance with the Code of Practice; and
- (5) manage a complaints process and to implement appropriate sanctions where a Sales Agent or member is found to have breached the Code of Practice.

3 Energy Retailing in Australia

- 3.1 There are approximately 18 Energy Retailers in Australia licensed to sell electricity and/or gas to 11 Million households and small businesses.
- 3.2 The sale of electricity and gas to small business and residential customers in Australia occurs through a number of sales channels including door-to-door, telephone, face-to-face and online. Often new energy supply contracts are entered into as a result of unsolicited sales or where a customer moves premises.

4 Door-to-Door Marketing

- 4.1 Door-to-door marketing of small customer energy supply contracts is generally conducted by Sales Agents, engaged directly by an Energy Retailer or, more typically, indirectly through an Energy Marketer.
- 4.2 There are approximately 1600 Sales Agents operating in Australia at any one time.
- 4.3 There are approximately 16 Energy Marketers currently operative in Australia.

5 Regulatory Framework

- 5.1 Door-to-door sales are specifically regulated by State and Territory fair trading legislation and, more generally, by the consumer protection provisions contained in the *Trade Practices Act 1974* (Cth).
- 5.2 Additionally, in each jurisdiction, it is generally a condition of an Energy Retailer's retail licence that the Energy Retailer comply with various industry specific energy marketing codes of conduct applicable in that jurisdiction.
- 5.3 From 2011, State fair trading regimes will be superseded by the Australian Consumer Law which to some degree also variously regulates door-to-door selling.

6 Road to Self Regulation

- 6.1 Despite the regulatory regimes already in place and soon to be effective, there is still some perception that door-to-door marketing of energy lacks the necessary level of regulation to ensure the integrity of sales and marketing activities in the energy retail industry.
- 6.2 Whilst Sales Agent screening is undertaken during the recruitment process and training of Sales Agents conducted by Energy Retailers or Energy Marketers, it is acknowledged that the training is not standardised throughout the industry and that additional support and consistent training for Sales Agents is desirable. There is also no accreditation or uniform monitoring system applying to Sales Agents that actively facilitates compliance with the applicable regulations and codes.
- 6.3 EAL has been established through the participation of members of the ERAA in an industry working group, created in response to recent media attention and State regulator scrutiny of door-to-door sales practices in the energy retail industry.
- 6.4 Among other interested State government bodies, the Office of the Victorian Minister for Energy has specifically asked that ERAA establish a voluntary self-regulatory code of conduct for the door-to-door marketing of energy. It has requested that it:
 - (1) contain a clear definition of, and guidance on, what constitutes misleading conduct;
 - (2) contain firm and effective remedies against parties who fail to comply with the code of conduct; and
 - (3) be sufficiently broad in scope so as to apply to retailers' third party providers of marketing services.

- 6.5 The structure of the Scheme and Code of Practice framework has been developed from a similar scheme that has been in operation in the United Kingdom since 2002, known as EnergySure. Since its introduction, EnergySure has delivered a significant reduction in customer complaints about the conduct of door-to-door energy salespeople.

Proposed Scheme

7 Scheme Membership and Compliance

- 7.1 The founding members have agreed to be bound by the EAL Constitution. Other proposed Energy Retailer and Energy Marketer members listed in Schedule 1 will also become members of EAL by agreeing to be bound by the EAL Constitution. A copy of the EAL Constitution is included in Schedule 3 to the Application for Authorisation.
- 7.2 Clause 6 of the EAL Constitution provides that clauses of the Constitution that require members to comply with the EAL Code of Practice and Complaints Process do not come into effect unless and until the Company and its Members are granted authorisation to give effect to those clauses by the Australian Competition and Consumer Commission pursuant to section 88 of the Trade Practices Act 1974 (Cth).
- 7.3 Subject to authorisation being granted, Members will be required to comply with the EAL Code of Practice (and underlying Procedures Guideline). Clauses 13 and 14 of the Code of Practice deploy an enforcement regime to sanction members for failure to comply with the Code of Practice and incorporate the EAL Complaints Process with which Members are also required to comply.

8 Code Manager and Code Panel

- 8.1 An independent manager has been appointed by EAL to carry out the administration and day-to-day supervision of the Code of Practice (**Code Manager**).
- 8.2 The Code Manager will:
- (1) oversee the operation of the EAL Register;
 - (2) monitor member compliance with the Code of Practice and Procedures Guideline;
 - (3) ensure that corrective action is taken where members fail to meet their obligations under the Code of Practice; and
 - (4) in combination with the Code Panel, administer complaints and sanctions in accordance with the Complaints Process.
- 8.3 A committee of four individuals with a variety of professional backgrounds will be appointed by the EAL Board (**Code Panel**). The Code Panel will be independent to the members and the Code Manager. The Code Panel hears appeals from Members and Sales Agents in relation to sanctions imposed by the Code Manager under the Complaints Process. The Code Panel will also regularly meet with the Code Manager to review the strategic operations of the Code and put forward recommendations or improvements.
- 8.4 The Code Manager and Code Panel members will not be employees or officers of EAL members.
- ### 9 EAL Standards
- 9.1 Standards for the proper and ethical conduct of Sales Agents when entering into a contract with a consumer, making contact with a consumer and otherwise dealing with consumers when undertaking sales activities (**EAL Standards**) will apply to all Sales Agents operating under the Scheme. Members must ensure that all Sales Agents engaged by them comply with the EAL Standards.

10 Central Register

- 10.1 A central database will be established to record the details and accreditation status of each Sales Agent (**EAL Register**). If a Sales Agent is not registered on the EAL Register and has not attained an appropriate accreditation status, they may not undertake sales activities on behalf of any member.
- 10.2 If a Sales Agent does not comply with the EAL Standards and their non-compliance cannot be remedied by retraining and development, a member may request the Code Manager to deregister the Sales Agent. If a Sales Agent is deregistered, the deregistration will last for a period of 5 years.

11 Recruitment

- 11.1 Members will be required to have processes in place to ensure that the Sales Agents they engage have met the vetting requirements prescribed under the Code of Practice, inclusive of appropriate referencing, proof of identification and criminal history checks.

12 Training and Competence Assessment

- 12.1 Members must ensure that Sales Agents undertake on-job and off-job training to appropriate levels of competency and undertake a formal competence assessment in accordance with the Code of Practice before permitting the Sales Agent to undertake sales activities.
- 12.2 Members must also ensure that Sales Agents are re-assessed each year to confirm that they still meet satisfactory levels of competence.

13 Competence Monitoring

- 13.1 Members must operate a competence monitoring process for the receipt, investigation and resolution of complaints received about the conduct of Sales Agents and must apply a consistent Code-prescribed approach to the treatment of complaints and determining the appropriate disciplinary action to be taken by a member.

14 Compliance Monitoring

- 14.1 An independent body (which will be a registered firm of auditors) will be engaged by EAL to review Member compliance with the Code of Practice (**Code Auditor**).
- 14.2 Members must submit to an annual audit, administered by the Code Auditor, to identify all or any gaps in Code of Practice compliance, and put in place corrective measures to address compliance gaps.

15 Complaints Process

- 15.1 Any complaint made about the conduct of a member will be considered by the Code Manager in accordance with the Complaints Process.
- 15.2 Any decision to sanction a member must be made by the Code Manager or by the Code Manager and a member of the Code Panel where the proposed sanction is more than a category 1 sanction (as set out in the Complaints Process).
- 15.3 Any complaint made about the conduct of a Sales Agent will be considered and determined by the Code Manager in accordance with the Complaints Process.
- 15.4 Where sanctions have been imposed, a member or Sales Agent may appeal the sanction to the relevant members of the Code Panel in accordance with the Complaints Process.

Public Benefits

It is submitted that the proposed Scheme, the key elements of which are identified above, will have significant public benefits that far outweigh any anti-competitive detriment. The key public benefits of the Scheme are set out below.

16 Improved standards of door-step marketing of energy, consumer protection and consumer confidence

16.1 Through rigorous recruitment, training, assessment and accreditation regimes aimed at instilling and enforcing the EAL Standards, the quality of doorstep marketing of energy can be expected to improve significantly.

16.2 High standards of door-step marketing of energy are likely to contribute to:

- (1) lower rates of inappropriate or unwelcome contacts between Sales Agents and consumers;
- (2) a more professional approach to the selling and marketing of energy contracts; ;
- (3) better overall experiences for consumers;
- (4) fewer complaints to regulators and Ombudsman in relation to the conduct of Sales Agents; and
- (5) improved customer confidence.

16.3 Also contributing to better levels of consumer protection and consumer confidence are:

- that a member cannot engage a Sales Agent that does not have the appropriate level of accreditation. Therefore rogue, previously deregistered within the last 5 years or unregistered Sales Agents will be prevented from undertaking sales activities for members;
- that Sales Agents are monitored through a central database and through a complaints and competence monitoring process that ensures that Sales Agents are retrained or disciplined if complaints are received about them in a standardised way across the industry.
- that appropriately accredited Sales Agents will wear a badge with the EAL Logo to signify that they comply with the EAL Standards and are accredited;
- that Sales Agents are recruited with regard to preserving consumer security, ensuring that they are of appropriate demeanour, and have not previously been in serious breach of the Code of Practice within the last 5 years ;
- in addition to the training and assessment that must be undertaken for a new Sales Agent, members must also conduct yearly assessments of their Sales Agents and, if necessary, provide ongoing training as required. This process allows the member to take a more proactive approach in the prevention of marketing complaints by ensuring that Sales Agents do not adopt poor habits over time. Absent the Code and the Register there is no obligation on Members to follow any re-training process.

16.4 In the United Kingdom EnergySure has achieved significant public benefits evidenced by:

- reduced consumer complaints;
- improved response rates to consumer complaints;
- uniformity in customer treatment and response to consumer complaints; and
- improved standards in consumer dealings.

17 More informed customer choice

17.1 Standardised training and competency assessments required under the EAL scheme will ensure consumers receive the highest quality of information on energy contracts offered by Sales Agents. Under the EAL scheme customers will be better informed about their available energy supply choices.

18 Improved competition at retail level

18.1 The AEMC has previously stated that energy is a traditionally “low involvement” decision. Incumbent Energy Retailers often have the benefit of limited consumer engagement in retailer choice and so often avoid customer attrition. Door-to-door sales have a high profile role in the energy industry as they are seen to drive customer switching, enabling new entrant retailers to build market share.

18.2 To the extent that door-to-door sales techniques and standards can be improved, it is envisaged that customer switching will be encouraged. Incumbents will be encouraged to compete to avoid losing customers and other retailers will be encouraged to enhance their customer offerings to entice consumers to switch.

19 Standardised national regime and continuous improvement

19.1 The proposed Scheme will facilitate the streamlining of processes and create uniformity in the selection, recruitment, training and competence of Sales Agents industry and nation-wide. This will in turn promote certainty and consistency.

19.2 The Scheme will provide clear parameters for compliance which will supplement current processes and assist members to comply with their legal, regulatory and ethical obligations in conducting door-to-door sales activities.

19.3 From an administration and monitoring perspective, this, together with the central register facility and standardised compliance audits, is expected to promote compliance efficiencies within the industry.

19.4 The Code Manager’s role in overseeing the Scheme, monitoring compliance and imposing sanctions where appropriate will lead to ongoing improvements in door step marketing activities.

20 Reduced regulatory costs

20.1 The Scheme provides for detailed competence monitoring, compliance monitoring and enforcement to ensure compliance with the Code of Practice and EAL Standards. This self-regulated Scheme can be expected to reduce the administration and enforcement costs incurred by government bodies, especially those involved in the oversight of state-based energy codes of conduct by:

- (1) reducing the number of complaints received by Ombudsmen and regulators and therefore the administration, investigation and resolution of those complaints; and
- (2) removing some of the burden to undertake monitoring and enforcement action themselves.

20.2 The annual EAL compliance audit described in part 14 may, in fact, largely replace the requirement for regulatory bodies to undertake compliance audits themselves.

20.3 Additionally, EAL, as a representative body for the door-to-door energy marketing industry, can act as a central point of contact for regulators, readily disseminate information and guidance pertaining to regulatory matters and changes to its members, and accordingly facilitate ongoing regulatory compliance.

Public Detriments

The parties to this Application for Authorisation submit that the Scheme will have little, if any, impact on competition. The Scheme is open to all Energy Retailers and Energy Marketers. Similarly the participation of all Sales Agents is encouraged. Provided they comply with the membership conditions and EAL Standards, all participants will be on a level playing field. In the event that a participant fails to comply, any decision to sanction the member or Sales Agent will be made by independent decision-makers.

In respect of the “Accreditation Provision” outlined in the Application for Authorisation, there may be a perception that requiring members to deal only with Sales Agents that are registered and accredited under the Scheme would unreasonably restrict the ability of Sales Agents to engage in door-to-door sales activities in the energy industry by preventing a large portion of Energy Retailers and Energy Marketers from dealing with Sales Agent that are not registered and accredited. However, there would be no such appreciable restriction as the Scheme is open to any person seeking to engage in door-to-door sales activities as a Sales Agent (provided they pass criminal history and reference checks and do not have a history of frequent or substantial infringements of the EAL Code of Practice). Additionally, the deregistration of a Sales Agent is not indefinite. A Sales Agent will be eligible for re-registration in 5 years. As such it would be difficult to demonstrate any real limitation on the acquisition of door-to-door sales services from Sales Agents. In any event, any limitation would positively improve the delivery of the public benefits to the extent that it improves the standard of door-to-door energy marketing and promotes consumer confidence and choice as discussed above in parts 16 and 17.

In respect of the “Exclusive Representative Provision”, there may be a perception that to require a Sales Agent to only represent one member at any one time would be to allocate Sales Agents between members in a restrictive manner that inhibits the free and competitive movement of Sales Agents in the market. However, it is the mechanics of the Scheme that require this state of affairs. The EAL Register cannot operate appropriately and the necessary competence monitoring and training cannot occur if more than one member is responsible for a Sales Agent at any one time. To not impose this requirement would be to significantly hamper the administration of the Scheme and its ability to deliver the public benefits outlined above. In any case, given any Sales Agent is eligible to become a Scheme participant and be engaged by any member and given that a Sales Agent is free to leave the engagement of a member at any time, there can be little impact on the allocation of Sales Agents.

As for the “Member Provision”, there may be a perception that requiring an Energy Retailer member to only engage Energy Marketers that are members to undertake sales activities on its behalf would unreasonably exclude Energy Marketers that are not members of the Scheme. Arguably if a large proportion of Energy Retailers are members and they cannot engage non-member Energy Marketers, this may diminish the Energy Marketer’s customer base. On the other hand, given any Energy Marketer is eligible to become a member of EAL, this requirement would be unlikely to have any meaningful impact on the manner in which the services of Energy Marketers are acquired by members. Additionally, without this provision, an Energy Retailer member cannot ensure that it is complying with the Code of Practice. If it does not engage an Energy Marketer that is also a member there is no mechanism for ensuring that the member is engaging Sales Agents that are accredited on the EAL Register and recruited, trained and assessed accordingly. Absent a fully compliant membership, the ability of the Scheme to achieve the consumer benefits and other public benefits outlined above would be significantly reduced.

A member or Sales Agent that fails to comply with the Code of Practice may face sanctions. The sanctions may affect a member’s ability to claim association with EAL, result in poor publicity or deregistration and, for a Sales Agent, could result in deregistration. The imposition of a sanction could hamper the ability of an Energy Retailer, Energy Marketer or Sales Agent to engage in door-to-door marketing in the future as the lack of association may discourage customers from engaging with them. This could accordingly affect their ability to compete in that channel of distribution. However:

- all members and Sales Agents are on a level playing field with respect to eligibility for the Scheme and the requirement to comply with the Scheme;
- to not sanction a member and/or Sales Agent for failure to comply would significantly diminish the ability of the Scheme to promote compliance and accordingly achieve the public benefits outlined above; and

- it is envisaged that the imposition of sanctions that meaningfully affect a person's ability to operate in the door-to-door energy sales sector will be extremely rare. The Complaints Process indicates that the removal of member and Sales Agent privileges will only occur in extreme cases of misconduct where the justification for the punishment outweighs any effect on competition.

Additionally, the decision to impose sanction rests with the Code Manager and the Code Panel. As indicated above, the Code Manager and Code Panel are independent of the members. As such, decisions made under the Complaints Process are insulated from potential boycotting or blacklisting of members or Sales Agents. Additional protection is provided by the appeal mechanism under the Complaints process that permits an aggrieved member or Sales Agent to request that a first instance decision be reviewed.

One additional possible detriment of the Scheme is that the requirement that members implement new compliance measures in adhering to the Scheme could, in turn, potentially result in members incurring additional costs. However, it is submitted that it is likely that Energy Retailers and Energy Marketers would have been required to incur compliance costs in any event given a possibility of additional regulatory requirements being imposed by legislation absent the Scheme. Furthermore, any increase in member costs should be weighed against the reduction in public regulatory costs arising out of the self-regulated regime as discussed above in part 20.

Schedule 1

Parties or proposed parties to the contract or proposed contract, arrangement or understanding

1 Founding Members

Name	Address	Description of Business
Energy Retailers Association of Australia Limited	Suite 2, Level 4 189 Kent Street Sydney NSW 2000	Peak representative body for retailers of gas and electricity in the national energy markets
AGL Sales Pty Limited	Level 22 120 Spencer Street Melbourne VIC 3000	Electricity Retailer/ Gas Retailer
Australian Power and Gas Pty Ltd	Level 9 341 George Street Sydney NSW 2000	Electricity Retailer/ Gas Retailer

2 Proposed Members

Name	Address	Description of Business
AIDA Sales & Marketing Pty Ltd	Suite 301, Level 3 The Wave 89 Surf Parade Broadbeach QLD 4218	Energy Marketer
Appco Group Energy Pty Ltd	Level 1 429 Church Street Richmond VIC 3121	Energy Marketer
Country Energy	PO Box 718 Queanbeyan NSW 2620	Electricity Retailer/ Gas Retailer
The Comunicom Group Pty Ltd	Suite 502, Level 5 46-56 Kippax Street Surry Hills NSW 2010	Energy Marketer
CPM Australia Pty Ltd	420 Burwood Highway Wantirna VIC 3152	Energy Marketer
Energy Australia	570 George Street Sydney NSW 2000	Electricity Retailer/ Gas Retailer
Lumo Energy Australia Pty Ltd	Level 3 565 Bourke Street Melbourne VIC 3000	Electricity Retailer/ Gas Retailer
Momentum Energy Pty Ltd	Level 12 628 Bourke Street Melbourne VIC 3000	Electricity Retailer/ Gas Retailer
Multiple Stories Pty Ltd trading as Aegis Direct	PO Box 340, Abbotsford VIC 3067	Energy Marketer
Neighbourhood Energy Pty Ltd	Level 7	Electricity Retailer/ Gas Retailer

	50 Pitt Street Sydney NSW 2000	
Origin Energy Retail Ltd	Level 21 360 Elizabeth Street Melbourne VIC 3001	Electricity Retailer/ Gas Retailer
Red Energy Pty Ltd	2 William Street East Richmond VIC 3121	Electricity Retailer/ Gas Retailer
Sales Force Australia Pty Ltd	Innovation Place, Level 17 100 Arthur Street North Sydney NSW 2060	Energy Marketer
Sales Marketing and Real Technologies (SMART) Pty Ltd	Level 3 554 Church Street Richmond VIC 3121	Energy Marketer
Simply Energy	Level 14, Como Office Tower, 644 Chapel Street South Yarra VIC 3141	Electricity Retailer/ Gas Retailer
TRUenergy	Level 33 385 Bourke Street Melbourne VIC 3000	Electricity Retailer/ Gas Retailer

It is proposed that additional Energy Retailers and Energy Marketers will become parties to the contract or proposed contract, arrangement or understanding in the future.

Schedule 2

Parties on whose behalf the application is made

Name	Address	Description of Business
Energy Retailers Association of Australia Limited	Suite 2, Level 4 189 Kent Street Sydney NSW 2000	Peak representative body for retailers of gas and electricity in the national energy markets
AGL Sales Pty Limited	Level 22 120 Spencer Street Melbourne VIC 3000	Electricity Retailer/ Gas Retailer
Australian Power and Gas Pty Ltd	Level 9 341 George Street Sydney NSW 2000	Electricity Retailer/ Gas Retailer

Schedule 3

Proposed contract, arrangement or understanding

- 1 EAL Constitution**
- 2 EAL Code of Practice**
- 3 EAL Procedures Guideline**
- 4 EAL Complaints Process**
- 5 EAL Complaints Process Flowchart**