



queensland council of social service inc
WORKING FOR A FAIR QUEENSLAND

24 November 2010

The General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

Dear General Manager,

RE: Energy Assured Ltd applications for authorisation A91258 & A91259

Queensland Council of Social Service (QCOSS) is the peak body for over 600 welfare and community sector organisations in Queensland. For over 50 years QCOSS has worked to promote social justice and exists to provide a voice for Queenslanders affected by poverty and inequality. We act as a State-wide Council that leads on issues of significance to the social, community and health sectors. We work for a Fair Queensland and develop and advocate socially, economically and environmentally responsible public policy and action by community, government and business.

QCOSS has been funded by the Department of Employment, Economic Development and Innovation for an energy consumer advocacy project in Queensland. The purpose of this project is to advocate on behalf of Queensland consumers and particularly vulnerable and low income households in relation to energy.

QCOSS welcomes the opportunity to comment on the applications for authorisation of the Energy Assured Limited (EAL) self-regulatory scheme.

The actions of door-to-door marketers have been generating concern in Queensland, with the Energy Ombudsman Queensland (EOQ) reporting a significant increase in complaints about marketing in the past year. QCOSS is particularly concerned about the impact on vulnerable groups, who are more likely to be at home during the hours that door-to-door marketing is permitted and therefore are at greater risk of exposure to unethical marketing practices. EOQ has identified a number of statements that are commonly used by marketers to mislead or coerce customers into signing contracts, suggesting that the complaints are arising from systemic issues. However, it has proved difficult to get retailers to take action on marketing issues beyond the dismissal or re-training of individual marketers.

While QCOSS is pleased that the energy retail sector is now taking steps to address marketing issues through the development of a self-regulatory scheme, we are concerned about a number of aspects of the proposed scheme. Although the scheme is based on the EnergySure Scheme which has reportedly achieved substantial improvements in door-to-door marketing in the United Kingdom, there are significant differences between the two schemes which are likely to render the

Energy Assured scheme less effective. In addition, the Energy Assured scheme appears to offer minimal protections to consumers beyond those provided by existing regulatory frameworks. Key concerns include:

- The minimum requirements for training of sales agents set out in the EAL Procedures Guidelines omit crucial subject areas, including product knowledge, safety, consumer rights, and privacy obligations. These are all minimum requirements for training under the UK EnergySure scheme.
- The Energy Assured scheme's requirements for monitoring the competence of sales agents rely heavily on complaints, whereas the UK EnergySure scheme requires members to monitor on-going job performance regularly, with the number and level of consumer complaints being included in the monitoring process. Without proactive monitoring of the performance of door-to-door sales agents it is doubtful that the EAL scheme would lead to significant improvements in identifying incompetent or rogue agents.
- Although the Energy Assured scheme requires sales agents to pass an annual assessment of competence, the accreditation procedures place the onus on members to advise that an agent has not passed the assessment. If they do not do so, the agent's Approved status is automatically renewed. This undermines the basis for registration of sales agents.
- The focus of the EAL scheme is on sales agents and components of the UK EnergySure scheme that place obligations or incentives on energy retailer members to improve marketing practices have not been included in the EAL Code of Practice or Procedures Guideline. For example, the EnergySure Code requires that contract forms are designed in such a way that their purpose cannot be concealed from customers. There is no such provision in the EAL Code.

The UK EnergySure Code also requires that members take all reasonable steps to contact customers within 14 days of entering into a contract, to confirm that the customer has understood the transaction, received necessary information, and is content with the way in which the sale was conducted. If the customer is not content to have entered a contract, there is a requirement that the member takes all reasonable steps to end the contract. The scheme therefore penalises members whose agents have not acted appropriately with the loss of the sale. Although the EAL Procedures Guideline requires members to have post-sale procedures in place, it is worded in a way that suggests only a sample of customers need to be contacted and the minimum verification questions appear to be intended to confirm the customer's consent to the contract, not to elicit information about whether the customer was satisfied with the conduct of the sales agent.

- There is no redress for consumers where a member or sales agent has breached the EAL code, and no provision for consumers to seek a review if they are not satisfied with the handling of their complaint. Consequently, there is little reason for customers to use the scheme, since they would be more likely to obtain a satisfactory resolution by complaining to their jurisdictional energy ombudsman.

- There is some inconsistency between sections of the document setting out the EAL complaints process. However, it appears from the wording of clause 4.1 of the complaints process and clause 14.1 of the Code of Practice that the scheme does not allow consumers to make complaints about EAL members, although they may be able to make complaints about agents.
- The sanctions that may be imposed on EAL members who have been found to have breached the Code are weak. It is not until the fifth occasion that a member has had a sanction imposed for breaching the Code that stakeholders and the public can be informed. The terms state that the Code Manager and/or Panel may inform the public that a sanction has been imposed on a member by publishing the information on the EAL website. This is unlikely to reach a wide audience.

QCOSS considers that developing standardised training for sales agents and tracking of agents through a registration process may improve the overall standard of door-to-door energy marketing. However, given the low standards for training and competence monitoring set out under the Energy Assured scheme, QCOSS does not have confidence that the benefits arising from the EAL training and accreditation procedures will be substantial. The complaints process is greatly inferior to the avenues already available to consumers who are unhappy with the conduct of a sales agent. There also appears to be little incentive for EAL members to take other action to improve the standard of door-to-door marketing. Thus the public benefits likely to arise from the Energy Assured scheme are minimal.

The only significant public detriment that QCOSS foresees arising from the Energy Assured scheme is the potential for customers who want to complain about the actions of a marketer or retailer to be diverted away from more effective complaints handling bodies, such as energy ombudsman schemes. It could be argued that this is not an important consideration, since consumers will retain the right to complain to ombudsmen and regulators. However, it is possible that some consumers will not pursue a complaint beyond the EAL process. Given the low level of public benefit likely to result from the scheme, it is possible that this will in fact be outweighed by the potential detriment.

QCOSS notes also that the ACCC's guidelines for developing voluntary industry codes of conduct recommend consultation with stakeholders, including consumer groups. To the best of our knowledge, this has not occurred during the development of the EAL Code. QCOSS believes that it may be beneficial if EAL's founding members were to undertake further work in consultation with stakeholders to strengthen the proposed code before any application for authorisation is approved.

If you would like any further information or to clarify any aspect of this submission, please contact me on 07 3004 6918.

Yours sincerely



Linda Parmenter
Manager, Low Income Consumer Advocacy Team