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10 December 2010

Ramy Soussou  
General Manager EAL  
Energy Retailers Association of Australia  
Suite, 2, Level 4  
189 Kent Street  
Sydney, NSW 2000

By e-mail: [rsoussou@eraa.com.au](mailto:rsoussou@eraa.com.au)

Dear Mr Soussou

**Re: Energy Assured Limited applications for authorisation A91258 & A91259  
- interested party submissions**

I refer to the above applications for authorisation lodged with the Australian Competition and Consumer Commission (the ACCC) on 29 October 2010.

As you are aware, on 5 November the ACCC wrote to interested parties seeking submissions in relation to the application. The ACCC requested submissions be provided by 24 November 2010.

The ACCC has received submissions from the following interested parties:

- Consumer Affairs Victoria
- Consumer Utilities Advocacy Centre
- Energy and Water Ombudsman New South Wales
- Energy and Water Ombudsman Victoria
- Queensland Consumers Association
- Queensland Council of Social Service

A copy of each of these submissions is attached. All publicly available submissions are also posted on the ACCC internet site at [www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister).

Some interested parties have indicated that they intend to provide submissions but have not yet done so. These submissions will be forwarded to you as they are received.

Also attached is a list of questions the ACCC has prepared about the application for authorisation. To assist the ACCC in its consideration of the application please provide a response to these questions and any comments you wish to make about the submissions by 24 December 2010.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Neil Howes on (03) 9290 1416.

Yours sincerely



Gavin Jones  
Director  
Adjudication Branch

## **Questions for Energy Assured Limited about applications for authorisation A91258 & A91259**

### ***Interaction between the code of practice and complaints process and the existing regulatory framework and complaints processes***

The Energy Assured Limited (EAL) code of practice and complaints process will sit within an existing and proposed regulatory framework that provides for consumer protection around door to door selling and complaints processes. Paragraph 5 of EAL's submission in support of its application provides a very broad overview of how the code and complaints process sits within these regulatory frameworks.

1. Please provide more detailed information on how EAL considers that the code and complaints process will fit within the existing and proposed regulatory frameworks. For example, the extent to which the code is designed to compliment and re-enforce existing regulatory frameworks and/or require higher standards than existing regulatory frameworks.
2. Please explain how EAL and members will deal with any complaints received about conduct that could potentially breach relevant consumer laws and mechanisms that will be in place to report such potential breaches and/or systemic issues to relevant regulatory authorities.

### ***Training***

Clause 9 of the code and clause 10 of the procedures guideline set out minimum requirements for on-job and off-job training of sales agents. QCOSS submitted that the minimum requirements for training of sales agents omits crucial subject areas including: product knowledge, safety, consumer rights and privacy obligations.

3. Please provide the EAL's views about the concerns raised by QCOSS about the scope of the training requirements provided by the code.
4. Please confirm whether EAL will develop and facilitate training programs for members as indicated in clause 5.1(a)(ii) of the EAL Constitution. There is currently no mention of these programs in the code itself.

### ***Accreditation process***

EAL will administer a register of accredited sales agents under the code. Clause 5 of the procedures guideline sets out that members are responsible for ensuring that the data contained in the register is accurate and up to date. Clause 7.4 of the procedures guideline sets out that the EAL register will automatically change a sales agent's accreditation status from 'provisional' to 'approved' four weeks after the sales agent's start date in the register. Further the same clause sets out that the EAL register will automatically renew a sales agents approved accreditation status for a further 12 months unless the member advises that the sales agent has not passed the formal competence assessment.

5. Please explain why the onus is on members to advise that sales agents have not passed a formal competence assessment rather than the onus being on members to advise when sales agents have passed the formal competence assessment.

### ***Standards relating to entering into a contract with customers***

Clause 13.2 of the EAL procedures guideline requires members to have post-sale processes in place to verify and confirm with a sample of customers that they have entered into a contract and that they were satisfied with the way the sale was conducted. This validation is to occur prior to commencement of the transfer process and be “undertaken with enough customers to give the member reasonable confidence of compliance”.

In its submission QCOSS noted that all customers are contacted under the EnergySure scheme in the UK which the EAL scheme is based on. QCOSS also suggested that the focus of the contact in the EAL procedures guideline is to determine whether the customer gave consent to the contract rather than whether the customer was satisfied with the sales agent.

6. Please provide a view about QCOSS’s submission that all customers should be verified rather than just a sample. Please also provide further details about how the number of customers sampled in order to give the member reasonable confidence of compliance will be determined.
7. None of the questions concerning verification listed in clauses 13.2 seek information about whether the customer was satisfied with the way the sale was conducted. How does EAL propose to ensure that members will verify with customers who entered into a contract whether they were satisfied with the conduct of the sales agent?

### ***Monitoring on-going performance of sales agents***

Clause 11 of the code provides for sales agent competence monitoring, including a complaints handling process developed and administered by the member. Separately to this, the EAL code complaints process provides for EAL to hear complaints about both individual sales agents and EAL members. The code also provides for members to provide compliance monitoring reports to EAL. However, the code does not contain any information about the type of information that will be included in these reports or how they will be compiled. In its submission QCOSS suggested that the code should require members to undertake proactive monitoring of sales agents (rather than just relying on complaints) noting this to be a requirement of the UK scheme.

8. Please identify what proactive measures EAL and members will implement to monitor the on-going conduct of sales agents (i.e. other than responding to complaints).

Clause 12.2(4)(d) of the code requires sales agents to provide customers with information about the members’ competence monitoring process when entering into a contract with customers. Clause 11.1(2) of the code requires members to develop an information pack for sales agents to provide customers when undertaking “sales activities”.

9. Please confirm whether this information pack will be provided to all customers contacted by the sales agent or only those with whom a contract is entered into.

### ***Monitoring of compliance with the code by members***

Clause 13 of the code sets out that EAL will monitor members' compliance with the code on a regular basis through reviews of monitoring reports provided by and agreed to with the member. In addition clause 13 of the code requires members to submit to an independent compliance audit on a yearly basis.

10. Please confirm who will set the scope of what is provided in the monitoring reports provided by members and the type of information that EAL envisages would be expected to be provided in these reports. For example, will the competence monitoring records referred to in clause 11 of the code be included in these reports? What other types of information will be included in these reports?
11. Will the annual report of the independent auditor be provided to the code manager and disseminated more broadly, for example, to relevant regulators?
12. Will the annual report of the independent auditor be made publicly available, either in full or in summary form?
13. To what extent does EAL intend to report on the outcomes of its compliance monitoring function more generally?

### ***Complaints to EAL about sales agents***

The EAL complaints process provides for a process by which complaints about sales agents will be dealt with. This appears to be a separate complaints process to that which members are required to establish under clause 11 of the code. Any person may make a complaint about a sales agent.

14. Please provide further information on how the process for complaining to EAL about sales agents will work. For example, how will customers be made aware of their right to lodge a complaint with EAL. What information will customers be given about where and how to lodge a complaint.
15. How will the EAL complaints process in relation to sales agents fit with the complaints handling process required to be established by the member under clause 11.1(1) of the code?
16. At the time of lodging a complaint to either a member or EAL will customers be made aware of their right to seek recourse to the relevant energy ombudsman?
17. Please advise whether EAL intends to report on the number and nature of complaints about sales agents received by it to regulators and/or publicly.

QCOSS have noted that customers cannot seek a review if they are not satisfied with the handling of their complaint by EAL.

18. Please provide a view about the concerns raised by QCOSS that customers will not be able to seek a review of their complaint.

Clause 3.7 of the EAL complaints process states that EAL will review a complaint to determine whether there has been a breach of the code. The same clause also states that if EAL is satisfied that the code has been breached it will decide whether the breach warrants the deregistration of the sales agent.

19. Please outline the criteria that EAL will use to determine whether a complaint about a sales agent warrants deregistration of the sales agent.

### ***Complaints to EAL about members***

The EAL complaints process provides for a process by which complaints about members will be dealt with. EAL members, the auditor, the energy ombudsmen, any regulatory body or the government may lodge a complaint about an EAL member. A complaint may result in a sanction being imposed on a member.

20. Are individual consumers able to make complaints about members under this process?

QCROSS submitted that the sanctions provided for under the complaints process are not strong enough noting that stakeholders and the public would not be informed about a breach until the fifth sanction and that information published on the EAL website about breaches was unlikely to reach a wide audience.

21. Please provide a view about the concerns raised by QCROSS.

### ***Governance arrangements for dealing with complaints***

Complaints made under the EAL complaints process will be dealt with by an independent code manager and code panel. The code panel will be composed of four individuals with a variety of professional backgrounds.

22. Please explain the types of persons that you anticipate will comprise this panel. For example, will it be drawn from representatives of energy retailers, consumer organisations and parties with experience in dispute resolution.

### ***Promotion of the code and the EAL complaints process***

The ACCC considers that for a code to be effective it is vital that consumers are aware of the standard of behaviour that are governed by the code and the recourse available to them if they consider that these standards have not been met.

The ACCC notes that the code, the procedures guideline and complaints process is primarily drafted so as to provide guidance to members and sales agents. EAL have not provided any detail about how information about sales agents obligations under the code will be disseminated to the public.

Clause 11.1(2) of the code states that sales agents will provide customers with an information pack when undertaking sales activities.

23. Please advise what information will be included in these packs. For example will the pack include information about the standards that sales agents have to comply with in dealing

with consumers, as detailed in clause 12 of the code, and how to make a complaint to a member, EAL and/or the relevant energy ombudsman (and which complaint mechanism would be appropriate in each set of circumstances)?

24. Will information about the standards that sales are required to comply with and complaints processes be in a standardised format such that information provided in information packs is consistent across members?
25. If EAL does not propose to develop a standardised information pack to be given to all customers who are approached by sales agents then how does EAL propose to make customers aware about the standards that sales agents have to comply with under the code and of the complaints avenues open to them if they consider that the standards have not been met.
26. Please also provide further information about how EAL proposes to promote the code and the complaints process more broadly.

### ***EAL membership***

Clause 7.1 of the EAL constitution states that any licensed energy retailer or energy marketer will be entitled to become a member of EAL. In order to become a member of EAL an energy retailer or marketer must pay a joining fee, annual subscription and a registration fee. EAL will determine the amount of these fees which may differ depending on the class of the member. EAL will determine whether to approve or reject an application but it does not have to provide reasons for refusing an application.

27. Please give an indication on the fees it is anticipated that will be payable by a retailer or energy marketer on becoming a member of EAL.
28. Please explain why EAL does not have to give reasons for rejecting an application for membership.
29. Please provide details of any dispute processes for applicants who are refused membership by EAL.

### ***Consultation in developing the code***

A number of consumer groups have raised concerns that they were not consulted in the development of the code.

30. Please provide details of the consultation process that was undertaken with members and other interested stakeholders such as consumer groups, and regulatory bodies in developing the code.