

11 February 2010

Mr Richard Chadwick
General Manager, Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Vic 3000

By email: richard.chadwick@accc.gov.au; gavin.jones@accc.gov.au;
adjudication@accc.gov.au

Dear Mr Chadwick,

Energy Assured Limited applications for authorisation A91258 & A91259

We refer to your letter of 4 February 2011 (**Letter**).

1 Amendments to the EAL Scheme and underlying documentation

- 1.1 Having regard to that Letter, EAL has reviewed the structure and operation of the EAL Scheme and made wholesale changes to the underlying documentation that supports it. Enclosed with this letter are the following revised documents:
- (1) Code of Practice;
 - (2) Procedures Guideline; and
 - (3) Complaints Process.
- 1.2 These documents form part of EAL's applications for authorisation A91258 & A91259. As EAL has significantly amended the structure of these documents, particularly the Code of Practice, it has not tracked the changes made to them. Please let us know if the ACCC would be assisted by us providing comparison versions.
- 1.3 Many of the changes to the documentation formalise procedures that had already been agreed and envisaged by EAL and its members (and already outlined to the ACCC in previous submissions). Over the last week, the EAL membership spent significant resources on devising and redrafting the documentation, as fully as possible in the timeframe provided, to address the various outstanding issues and concerns raised by the ACCC.
- 1.4 EAL was given the impression that the ACCC considered the original application for authorisation and supporting EAL Scheme documentation to be sufficient. Before

submitting a formal application for authorisation, EAL submitted a draft application to the ACCC four weeks prior to submitting its formal application. In an email dated 5th October 2010, the ACCC advised that “We’ve reviewed the draft application and it appears that it contains almost everything we would need to consider in it as a formal application”. Whilst we appreciate that the ACCC was not in a position to make any substantive pre-determination as to the Scheme documentation the subject of the applications, had EAL anticipated that the ACCC would have wholesale concerns with the adequacy of the documentation, EAL would have undertaken refinements before submitting that documentation in its original application for authorisation.

2 Public benefit

- 2.1 In responding to this Letter, EAL repeats and relies on the correspondence and submissions made by EAL in the course of these applications for authorisation. In particular, EAL relies upon the public benefits identified in its previous submissions.
- 2.2 EAL submits that the ACCC must consider the EAL Scheme that is before it. Whether or not the EAL Code is ideal or the preferred system of self-regulation is not a matter that goes to the likely public benefit of the arrangement that is before it.
- 2.3 That said, EAL takes the ACCC’s feedback extremely seriously and has, in an effort to further enhance the EAL Scheme, sought to address the concerns raised by the ACCC about elements of the EAL Scheme that were identified in the Letter. Part 3 of this letter sets out EAL’s specific response to that feedback.
- 2.4 Nonetheless, EAL is strongly of the view that even absent the amendments to the documentation provided today, the EAL Scheme will realise the public benefits identified in its earlier submissions. Most significantly, the regime for the establishment and operation of the EAL Register, together with the associated recruitment, training, monitoring and disciplining of Sales Agents is a wholly new and significant initiative that will, in and of itself, clearly deliver enhancements to member compliance, consumer confidence, consumer choice and competition in the energy industry.
- 2.5 Given it is unlikely to have more than negligible anti-competitive or other detriments, EAL submits that the ACCC should be able to foresee a “likely” net public benefit from the introduction of the EAL Scheme.

3 “Outstanding Concerns”

- 3.1 Using the headings adopted by the ACCC in the annexure to its Letter, EAL briefly comments on the manner in which the EAL Scheme addresses those concerns.

Consumer Awareness

- 3.2 The ACCC’s concerns are addressed comprehensively in clauses 2.4, 2.5 and 10 of the Code of Practice.

The Scheme's Complaints and Sanctions processes

Competence complaints received by members about agents

- 3.3 The ACCC's concerns are addressed comprehensively in clauses 8 and 15 of the Code of Practice.

Consumer's right to seek recourse to the energy ombudsmen

- 3.4 The ACCC's concerns are addressed comprehensively in clauses 10.2(11), 13.1 and 23.1(10) of the Code of Practice.

EAL Complaints Process- who can bring a complaint against a member

- 3.5 Regulators, Ombudsmen and other Members may bring a complaint and seek a sanction against a Member under the Complaints Process as set out in clause 20.1 of the Code of Practice and also in the Complaints Process.
- 3.6 Whilst a consumer or consumer group may not lodge a complaint against a Member under the Complaints Process, such parties can make a complaint to an Ombudsman or regulator or the Code Manager. These parties then do have standing to make a complaint and seek a sanction under the Complaints Process.
- 3.7 Consumers and consumer groups also have specific recourse to complain about the conduct of Sales Agents under an Energy Retailer's Sales Complaints Handling Process. Those complaints must be referred, investigated and escalated in accordance with the Code of Practice.

EAL Complaints Process- composition of the complaints panel

- 3.8 The ACCC's concerns are addressed comprehensively in clause 4 of the Code of Practice.

Sanctioning EAL Members

- 3.9 The ACCC's concerns are addressed comprehensively in clauses 4.8, 4.18 and 4.20 of the Complaints Process.

Monitoring sales agents behaviour

Post-sale verification process with customers

- 3.10 The ACCC's concerns are addressed comprehensively in clause 14 of the Code of Practice.

Other monitoring of sales agents behaviour

- 3.11 The ACCC's concerns are addressed comprehensively in clause 14 and 17 of the Code of Practice.

Member self-reporting of compliance

- 3.12 The ACCC's concerns are addressed comprehensively in clause 19 of the Code of Practice.

Annual independent compliance audits

- 3.13 The Code of Practice comprehensively addresses how the audit process will work in clause 18.
- 3.14 EAL does not intend to provide the complete Audit Reports produced from the Compliance Audit to relevant regulators or the EAL Board.
- (1) The information contained in the Audit Reports are commercial-in-confidence. Since the Board is comprised of industry participants, this is not practical. Even if it was adopted, it would be unlikely to contribute to improve the effectiveness of the audit process.
 - (2) Energy Retailers must already submit to regulatory audits pursuant to their retail licence conditions such that benefits of regulatory scrutiny are already being realised. Providing the Audit Reports to the regulator would not, EAL submits, improve the effectiveness of the Compliance Audits or deliver any significant public benefit.
- 3.15 Nonetheless, the relevant regulators and EAL Board will be provided with a consolidated report of the results of the compliance audits under clause 18.6 of the Code of Practice.

Dealing with possible regulatory breaches by members

- 3.16 Clause 3.2(5) of the Code of Practice requires the Code Manager to notify the relevant EAL Member if the Code Manager is of the view that the Member might have breached a regulatory requirement.
- 3.17 Whilst the Code of Practice does not oblige the Code Manager to report the suspected contravention to the regulator, licence conditions of Energy Retailers generally require them to report non-compliance with relevant regulations to the regulator. As such, the Code of Practice will be likely to still achieve the outcome of improved regulator enforcement by assisting with the detection and enhancement of the rate of reporting of regulatory breaches.

EAL Membership criteria

- 3.18 It has not been possible to amend the EAL Constitution in the timeframe. However, if the ACCC requires it, EAL would be willing to amend the EAL Constitution to address the ACCC's concerns so that EAL membership will not be refused unless:
- (1) the applicant does not meet the conditions for membership (being relevant registrations and payment of application fee);
 - (2) the applicant is insolvent (or equivalent); or

- (3) the applicant is currently under a period of suspension from participating in the EAL Scheme as a result of being sanctioned under the Complaints Process.

Training requirements

- 3.19 The ACCC's concerns are addressed comprehensively in clause 12.2 of the Code of Practice.

Distinction between energy retailer members and energy marketer members

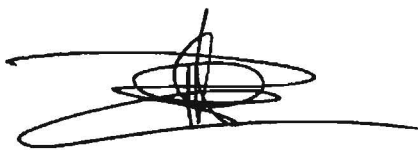
- 3.20 The ACCC's concerns have been addressed through amendments throughout the Code of Practice.

4 Way forward

- 4.1 In response to the ACCC's suggestion in its Letter that it will require time to consider EAL's changes to the EAL Scheme documentation, EAL has worked extremely hard to provide this response in a very short timeframe. EAL requests that the ACCC take the changes made to the EAL Scheme documentation into account in making its draft determination.
- 4.2 As discussed at our meeting on 31 January 2011, EAL would appreciate the opportunity to meet with the ACCC at its earliest convenience to discuss this response and the appropriate way forward. Given the timeframe, EAL suggests that that meeting should occur as soon as possible.

If there is any further information you require or we can provide any assistance. Please do not hesitate to contact us.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Ramy Soussou', with a stylized, circular flourish at the end.

Ramy Soussou
Acting Chief Executive Officer



Energy Assured Limited Code of Practice

INTRODUCTION

This Code sets out a self-regulatory framework for the conduct of Sales Activities by Energy Retailers and Energy Marketers that engage in door to door sales that are Members of EAL. It is aimed at improving the standard and effectiveness of door-to-door marketing of energy thereby reducing Sales Complaints and promoting consumer confidence.

In this Code:

Part 1 sets out various preliminary operational matters, including the roles of EAL, the Code Manager, and the Code Panel.

Part 2 establishes a register for the accreditation of Sales Agents and a scheme for the disciplining and deregistration of Sales Agents for failure to comply with EAL Standards.

Part 3 establishes:

- (1) a scheme for the recruitment of Sales Agents by Members;
- (2) a scheme for the training and assessment of Sales Agents by Members;
- (3) a scheme for the monitoring of Sales Agents conduct by Members;
- (4) a scheme for the handling of Sales Complaints received about the conduct of Sales Agents by Members;
- (5) a regime for categorising and recording breaches of the EAL Standards by Sales Agents by Members;
- (6) a regime for the monthly reporting on the performance of Sales Agents and compliance with the Code by Members;
- (7) a regime for the annual independent audit of the performance of Members pursuant to the Code; and
- (8) a process for sanctioning Members for failure to comply with the Code.

Part 4 establishes a set of standards for the conduct of Sales Agents when undertaking Sales Activities.

This Code operates together with the following documents:

- (1) the EAL Procedures Guideline; and

The Procedures Guideline sets out the procedures, principles and processes that underpin the Code for registering and maintenance of Sales Agents on the EAL Register and recruiting, training and assessing Sales Agents.
- (2) the EAL Complaints Process.

The Complaints Process is separate to the Sales Complaint Handling Process. If a consumer or other person has a complaint about the conduct of a Sales Agent, they can utilise the Sales Complaints Handling Process operated by the relevant Energy Retailer under this Code. Sales Agent deregistration and complaints about Members in relation to their compliance with the Code are governed by the separate Complaints Process document.

PART 1: PRELIMINARY

1 Commencement and Interpretation

1.1 Commencement

This Code commences 3 months after the date that authorisation is granted by the Australian Competition and Consumer Commission pursuant to section 88 of the *Competition and Consumer Act 2010* (Cth) in respect of this Code.

1.2 Definitions

Capitalised Words appearing in this Code have the meaning given to them in the Dictionary at the end, or defined in **bold** in the body, of this Code.

1.3 Inconsistency with laws

This Code applies to the extent that it is consistent with Applicable Laws. If this Code is inconsistent with any Applicable Law, that law will apply to the extent of the inconsistency.

2 Role of Energy Assured Limited

2.1 EAL has been established to administer the Code. It was established to achieve the same objects as the Code seeks to achieve.

2.2 The governance structure and procedures of EAL are set out in the EAL Constitution.

2.3 EAL will consult on and participate in decision making on matters set out in this Code.

2.4 EAL will promote the Code by:

- (1) displaying information about the Code and its members on its website, including the information set out in clause 10.2 and copies of this Code, the Procedures Guideline and Complaints Process;
- (2) communicating about the progress of the Code with Stakeholders at Stakeholder meetings and through correspondence;
- (3) promoting the Code to relevant consumer associations at industry roundtables, consumer forums and through email correspondence;
- (4) requiring Members to undertake marketing activities, including those set out in clause 10 and providing Members with marketing material that promotes the Code to consumers; and
- (5) undertaking any other promotional, marketing or advertising campaign necessary or worthwhile to ensure that the Code becomes visible and understood amongst Stakeholders and consumers.

2.5 EAL will publish an Annual Report on its website. The Annual Report will, at a minimum, address the following matters:

- (1) a report from both the Chairman of EAL and the Code Panel;
- (2) an overview of the Code;
- (3) an overview of the Compliance Audits undertaken;
- (4) statistics of complaints made against Sales Agents and Members under the Complaints Process, such as the number of complaints made during the year, the outcome of those complaints (i.e. sanctions imposed) and the number of appeals heard (to the extent that they are not confidential); and

- (5) outcomes or recommendations of any Code review.

3 Role of Code Manager

3.1 A Code Manager has been appointed by EAL to carry out the administration and day-to-day supervision of the Code. The Code Manager is independent to the Members.

3.2 The Code Manager:

- (1) oversees the operation of the EAL Register;
- (2) oversees the promotion of the Code;
- (3) develops appropriate training material on the Code so Members are fully aware of their obligations;
- (4) monitors Energy Retailers' compliance with the Code and Procedures Guideline;
- (5) notifies Members if they are of the view that the Member may have contravened an Applicable Law (such notification not to constitute legal advice);
- (6) ensures that corrective action is taken where Members fail to meet their obligations under the Code;
- (7) receives and refers Sales Complaints about the conduct of Sales Agents to Members;
- (8) investigates complaints about the conduct of Members;
- (9) may issue guidelines from time to time to assist Members and Sales Agents to comply with the Code; and
- (10) in combination with the Code Panel, administers complaints and sanctions in accordance with the Complaints Process.

4 Role and composition of the Code Panel

4.1 The Code Panel is independent to the Members and the Code Manager and must be composed of four individuals with a variety of professional backgrounds, none of whom have been engaged by a Member in the previous two years or have any actual or potential conflict of interest. Panel members will be appointed by EAL and consist of:

- (1) one person with relevant experience, at a senior level, in the energy retailing industry;
- (2) one person with relevant experience, at a senior level, in a regulatory or government body that administers consumer laws or marketing codes that govern door-to-door sales activities;
- (3) one person with relevant experience, at a senior level, in a consumer advocacy; and
- (4) one person with current legal qualifications, preferably in the energy industry.

4.2 Each Panel Member will hold office for a term of three years and will be eligible for re-appointment for one further term of two years.

4.3 The Code Panel must elect a Chairman.

4.4 A single member of the Code Panel will consider a complaint made against Members at first instance where a serious Sanction is proposed to be imposed pursuant to the Complaints Process.

4.5 The Code Panel will hear appeals against sanctions imposed on Members and Sales Agents under the Complaints Process.

- 4.6 The Code Panel will meet on a quarterly basis with the Code Manager to:
- (1) review the strategic operations of the Code and put forward recommendations or improvements;
 - (2) determine the appropriate requirements for the scope of the Code review; and
 - (3) review quarterly progress reports prepared by the Code Manager under clause 5.6.

5 Review of the Code

- 5.1 The Code will be reviewed at least every two years by an independent entity with legal or auditing expertise capable of assessing the effectiveness of the Code and familiar with the energy industry (**Independent Firm**).
- 5.2 The scope of the review will be determined by EAL, the Code Manager and the Code Panel. The review will be conducted in consultation with Stakeholders.
- 5.3 The Independent Firm will have access to matters considered by the Code Panel, the EAL Register, monthly reports, Audit Reports, Annual Reports and any other information necessary for the Independent Firm to assess and make recommendations on the effectiveness of the Code.
- 5.4 The Independent Firm must produce a report with a list of recommendations.
- 5.5 The report, recommendations and criteria used to select adopted recommendations will be provided to Stakeholders. Where a recommendation is not adopted, EAL will provide details as to why the recommendation was not adopted.
- 5.6 It is an obligation on the Code Manager to provide quarterly progress reports to the EAL Board and the Code Panel on the progress of the adoption of the recommendations.
- 5.7 For the purposes of this clause 5, the review of the Code cannot make recommendations that change the objectives as set out in the EAL Constitution.

PART 2: SALES AGENTS

6 EAL Register

- 6.1 The EAL Register will be created and administered by the Code Manager.
- 6.2 Members must:
- (1) register all Sales Agents engaged by it on the EAL Register; and
 - (2) manage their Sales Agents and operate and access the EAL Register,
- in accordance with the Procedures Guideline.

7 Obligations of Sales Agents

- 7.1 Members must ensure that Sales Agents:
- (1) comply with the EAL Standards;
 - (2) only conduct Sales Activities on behalf of the Member with which they are currently registered on the EAL Register; and
 - (3) only undertake Sales Activities in accordance with their Accreditation Status (summarised below as follows) and the Procedures Guideline:

Accreditation Status	Description	Duration of Status	Privileges
Provisional	Applies to new Sales Agents pending completion of training and passing Competency Assessment	Between four and six weeks	Can undertake Sales Activities under supervision by an Experienced Sales Agent after Off-job Training and Off-job Assessment have been successfully completed Can display EAL Logo
Approved	Sales Agent has passed Formal and Annual Competency Assessment by an approved Assessor	1 year	Can undertake Sales Activities Can display EAL Logo
Development	Sales Agent has not passed Competency Assessment or has committed a Level 2 Breach under the Code of Practice and is undergoing further training.	Up to 15 Business Days	Can undertake Sales Activities under supervision by an Experienced Sales Agent Can display EAL Logo
Suspended	Sales Agent suspended from undertaking Sales Activities pending outcome of investigation and determination of Deregistration Application as a result of an alleged Level 3 Breach under the Code of Practice.	Up to 15 Business Days or until the Deregistration Application is finally determined	Cannot undertake Sales Activities or display EAL Logo
Deregistered	Agent has been deregistered in accordance with the Complaints Process	5 Years	Cannot undertake Sales Activities or display EAL Logo
Inactive	Sales Agent on authorised leave	Up to 3 Months	Cannot undertake Sales Activities or display EAL Logo
Active	Sales Agent returned from leave but not yet re-taken and passed Competency Assessment	Generally up to 10 Business Days	Can undertake Sales Activities under supervision by an Experienced Sales Agent Can display EAL Logo
Leaver	Sales Agent is no longer engaged by Member or is "Inactive" for more than 3 months	Unspecified	Cannot undertake Sales Activities or display EAL Logo

8 Discipline of Sales Agents

8.1 If a Member discovers that a Sales Agent is not meeting the EAL Standards, the Member must:

- (1) notify the Sales Agent of the failure; and
- (2) if appropriate, implement a period of re-training or development.

8.2 If a Sales Agent has failed to comply with the EAL Standards and a Level 2 Breach is attributed to the Sales Agent under clause 15, the Member must:

- (1) notify the Sales Agent of the failure;

- (2) implement a period of re-training or development; and
 - (3) change the Sales Agent's status in the EAL Register from "Approved" to "Development" for the period of re-training.
- 8.3 If it is alleged that a Sales Agent has failed to comply with the EAL Standards such that if established, a Level 3 Breach would be attributed to the Sales Agent under clause 15, the Member must:
- (1) notify the Sales Agent of the allegation; and
 - (2) change the Sales Agent's status in the EAL Register from "Approved" to "Suspended" for the duration of and, if applicable, pending the outcome of a Deregistration Application.
- 8.4 Members must establish written procedures that detail the specific disciplinary action to be taken against a Sales Agent for various breaches of the EAL Standards that reflect this clause 8.
- 8.5 A Member must make a Deregistration Application in accordance with the Procedures Guideline where:
- (1) a Sales Agent has failed to comply with the EAL Standards and a Level 3 Breach is attributed to the Sales Agent under clause 15; or
 - (2) the Member is of the view that the Sales Agent no longer meets the EAL Standards in a manner that cannot be remedied by re-training and development.
- 8.6 Any Deregistration Application by a Member will be reviewed and determined by the Code Manager in accordance with the Complaints Process.
- 8.7 In determining whether to deregister the Sales Agent, the Code Manager will consider:
- (1) whether or not there is sufficient evidence to establish that the Sales Agent has breached the EAL Standards; and
 - (2) the extent of the breach, or cumulative breaches of the EAL Standards.
- 8.8 If a Sales Agent is deregistered, the deregistration will last for a period of five years after which time, the Sales Agent may apply for a new registration and again engage in Sales Activities.
- 8.9 If a Sales Agent is not deregistered then the Accreditation Status of the Sales Agent will be returned to the last Accreditation Status that they were issued with before their suspension.
- 8.10 The Code Manager will record in writing his or her reasons for the determination, and provide a copy of these reasons to the both the Member and the Sales Agent, at the addresses provided for in the Deregistration Application in accordance with the Complaints Process.
- 8.11 Either the Sales Agent or the Member may appeal the determination to one member of the Code Panel in accordance with the Complaints Process.

PART 3: MEMBERS

9 Rights and Obligations of Members

- 9.1 Members must promote the Code in accordance with clause 10.
- 9.2 Members must ensure that Sales Agents engaged by them comply with clause 7.
- 9.3 Members must comply with the processes for the operation, maintenance and registration of Sales Agents on the EAL Register as determined in the Procedures Guideline and this Code.

- 9.4 Members must only engage Sales Agents to conduct Sales Activities that:
- (1) are registered under the EAL Register and have attained an appropriate Accreditation Status in accordance with clause 7.1(3) and the Procedures Guideline;
 - (2) have been recruited in accordance with clause 11; and
 - (3) have been trained and assessed in accordance with clause 12 and the Procedures Guideline.
- 9.5 Members must handle Sales Complaints in accordance with clause 13.
- 9.6 Members must monitor the compliance of Sales Agents with the EAL Standards in accordance with clause 14.
- 9.7 Members must categorise and record breaches of the EAL Standards by Sales Agents in accordance with clauses 15 and 16.
- 9.8 Members must continually monitor, report on, and submit to audits on, the extent of their compliance with the Code in accordance with clauses 17, 18 and 19.
- 9.9 Members that fail to comply with this Code will be subject to disciplinary procedures for non-compliance in accordance with clause 20.
- 9.10 Where an Energy Retailer engages an Energy Marketer to conduct Sales Activities on its behalf:
- (1) the Energy Marketer provider must be a Member; and
 - (2) both the Energy Retailer and the Energy Marketer must comply with this Code, to the extent it applies to Members.
- 9.11 Members must comply with any standards/guidelines set by the Code Manager.
- 9.12 Members must comply with the EAL Standards.

10 Promotion of the Code

- 10.1 Each Member must promote this Code by:
- (1) ensuring that their representatives are aware of the Code and its contents and that Sales Agents have a copy of the Code with them when performing Sales Activities;
 - (2) making copies of the Code available to consumers on request via email or post;
 - (3) displaying information about the Code on its website, including at least the information set out in clause 10.2;
 - (4) displaying the EAL Logo prominently on Sales Agent ID badges;
 - (5) ensuring that Sales Agents provide detailed information about the Code (**EAL Marketing Material**) when:
 - (a) they enter into an energy supply contract; or
 - (b) on the consumer's request;
 - (6) ensuring that as part of its post-sale procedures that they verify with the consumer that they were made aware of the Code and its purpose.
- 10.2 For the purposes of clause 10.1(5), the EAL Marketing Material that promotes the Code to the consumer must clearly state the following information:

- (1) that the Energy Retailer (and the Energy Marketer that represents them, if applicable) is a Member of EAL and have adopted and will comply with the Code;
- (2) why the Code was established;
- (3) a summary of the EAL Standards- i.e. what the consumer can expect from Sales Agents;
- (4) how the consumer can make a complaint or provide feedback about a Sales Agent under the EAL Code;
- (5) how a Sales Complaint will be treated by the Energy Retailer;
- (6) the implications if a Sales Agent is found to have breached the EAL Standards i.e. the disciplinary procedures under clause 8 and the Complaints Process;
- (7) that the Sales Agent has been recruited and trained in accordance with the EAL Code;
- (8) the Members of EAL;
- (9) contact details of the Energy Retailer;
- (10) the EAL website address;
- (11) that the Code operates separately to the energy Ombudsman scheme applying in the consumer's State or Territory and that they may separately utilise that scheme if they wish to; and
- (12) the role of the Code Manager and Code Panel.

10.3 In order to comply fully with the EAL Standards and Applicable Laws, the Member is likely to have to provide additional information to the consumer. This additional information must not be inconsistent with the information contained in the EAL Marketing Material.

11 Recruitment

11.1 Members must only engage Sales Agents that:

- (1) have sufficient knowledge and skills;
- (2) have sufficient relevant experience and training with supporting references; and
- (3) have an appropriate demeanour and present themselves in a respectable manner,

to enable them to suitably perform the role of a Sales Agent, noting the important role that Sales Agents play as the 'public face' of the industry.

11.2 Members must only engage Sales Agents that have:

- (1) passed a 100-point identification check;
- (2) provided proof of address; and
- (3) passed a criminal history check or a criminal history check is pending, in accordance with clause 12.1(2).

11.3 If a Sales Agent has been previously registered on the EAL Register to another Member, the Member proposing to engage the Sales Agent may contact that Member to ascertain the Sales Agent's competency.

12 Training and Competency Assessment

12.1 A Member may only permit a Sales Agent to engage in Sales Activities on its behalf:

- (1) where the Sales Agent has successfully completed a Formal Competency Assessment by an approved Assessor; or
- (2) if the Member has deployed the Sales Agent in the field as part of On-job Training, or on a probationary basis pending a satisfactory criminal history check (or other) being obtained, where the Sales Agent is appropriately supervised until the Formal Competency Assessment has occurred.

12.2 In order to pass a Formal Competency Assessment, a Member must ensure that a Sales Agent undertakes Off-job Training on at least the following matters:

- (1) the operation of the Code, in particular, the monitoring, Sales Complaint, disciplinary procedures and Complaints Process as well as the operation of the EAL Register;
- (2) the EAL Standards;
- (3) the legislative and regulatory obligations applying to the supply of energy in the jurisdiction in which the Sales Agent is to operate, including consumer rights;
- (4) information about the Member necessary to fulfil the role;
- (5) product knowledge and sales techniques to effectively perform the role;
- (6) changes in the market and to products/services;
- (7) respecting consumer privacy, ethnicity and diversity;
- (8) recognition and treatment of vulnerable consumers;
- (9) safety as it relates to the consumer and the Sales Agent;
- (10) the role of the Energy Ombudsman;
- (11) examples as to what constitutes misleading, deceptive or unconscionable conduct and false representation (inclusive of coercion and harassment) in the energy industry; and
- (12) what the Sales Agent must give to and disclose to the consumer.

and must:

- (13) be compliant with relevant equal opportunities employment legislation;
- (14) be linked to an industry standard of competence test;
- (15) include a probationary period for all new recruits;
- (16) include defined monitoring procedures to ensure consistency of training delivery; and
- (17) be effective and up to date.

12.3 A Member must ensure that a new Sales Agent also undertakes On-job Training before it can pass a Formal Competence Assessment.

Sales Complaint Handling and Competence Monitoring

13 Sales Complaints Handling Process

- 13.1 Energy Retailers must have an internal Sales Complaint handling process for receiving, recording and actioning Sales Complaints:
- (1) received from consumers, Stakeholders and other Members; and
 - (2) referred by the Code Manager,
- that, at a minimum, meets the requirements of this clause 13.
- 13.2 An Energy Retailer must investigate each Sales Complaint received by it within 5 Business Days of receiving the complaint and deal with the Sales Complaint in accordance with relevant legislation and the Energy Retailer's internal practices.
- 13.3 The Energy Retailer must provide feedback to the complainant on the outcome of the Sales Complaint within 21 days of receiving the Sales Complaint.
- 13.4 The Energy Retailer must provide consumers with the appropriate contact details for the relevant energy ombudsman should the Sales Complaint not be resolved to the consumer's satisfaction.
- 13.5 For each Sales Complaint, the Energy Retailer must record at least:
- (1) the date of the incident;
 - (2) the date of the Sales Complaint;
 - (3) the reason for the Sales Complaint;
 - (4) a date and description of how the Sales Complaint was resolved; and
 - (5) the corrective action taken, if required, including disciplinary action taken against the Sales Agent and the Sales Agent's details.
- 13.6 Where it is proven, upon investigation of a Sales Complaint, that a Sales Agent has breached the EAL Standards:
- (1) the breach must be attributed a Level 1, Level 2 or Level 3 Breach in accordance with clause 15;
 - (2) disciplinary action must be taken against the Sales Agent in accordance with clause 8; and
 - (3) the breach will be recorded in the Competence Register.

14 Competence Monitoring

- 14.1 An Energy Retailer must have procedures in place to monitor and record, on an ongoing basis, its Sales Agents' compliance with the EAL Standards (**Competence Monitoring**) which must include but is not limited to:
- (1) an independent Post Sale Verification Procedure that is done on all consumers that Enter into a contract with the Energy Retailer;
 - (2) random field assessments of Sales Agents by an Assessor conducted for at least one day every two months; and
 - (3) an annual Formal Competence Assessment in accordance with the Procedures Guideline.

- 14.2 Where it is proven, upon an investigation of conduct arising from Competence Monitoring, that a Sales Agent has breached the EAL Standards:
- (1) the breach must be attributed a Level 1, Level 2 or Level 3 Breach in accordance with clause 15;
 - (2) disciplinary action must be taken against the Sales Agent in accordance with clause 8; and
 - (3) the breach will be recorded in the Competence Register.

15 Levels of Breaches of EAL Standards

- 15.1 For the purposes of clause 13.6 and 14.2, if a Sales Agent breaches the EAL Standards, the breach must be categorised as a Level 1, Level 2 or Level 3 Breach depending on the severity of the breach.
- 15.2 In determining the appropriate Level that is to be attributed to a breach by a Sales Agent, an Energy Retailer must take into account the following matters:
- (1) the seriousness of the breach;
 - (2) whether the breach has been repeated by the Sales Agent;
 - (3) whether the breach is part of a persistent course of different breaches recorded against the Sales Agent; and
 - (4) any mitigating or aggravating circumstances that warrant considering appropriating a different Level of breach.
- 15.3 For the purposes of clause 15.1:
- (1) A breach of an EAL Standard will be a **Level 1 Breach** where the breach is minor. A minor breach would occur where there is a technical compliance failure or behaviour of a Sales Agents generally arising from poor procedures, where either a warning or some simple coaching or re-training is the most appropriate remedy. Examples of conduct which would constitute a Level 1 Breach include (but are not limited to):
 - (a) Sales Agent did not have their ID badge visible when contacting a consumer;
 - (b) Sales Agent failed to provide consumer with complete details of the EAL scheme;
 - (c) Sales Agent failed to record contact information on walk sheets;
 - (d) Sales Agent was not courteous or respectful to a consumer.
 - (2) A breach of an EAL Standard will be a **Level 2 Breach** where it is a serious or persistent breach. A serious breach will occur where the breach arises is more than a technical or superficial breach of the EAL Standards and that breach involved was central to the role of a Sales Agent or disclosures by a Sales Agent. Examples of conduct which would constitute a Level 2 Breach include (but are not limited to):
 - (a) two Level 1 Breaches in different months in the course of three consecutive months;
 - (b) advising a consumer that they could only have the marketing information if they signed a contract; or
 - (c) advising a consumer that they will not incur early termination fees from their existing retailer, or that these would be waived by their existing retailer if they switch;

- (d) promising the consumer a discount that does not apply to that particular consumer;
 - (e) advising a consumer that the Sales Agent had signed other people up in the street and named the customers.
- (3) A breach of an EAL Standard will be a **Level 3 Breach** where it amounts to wilful or gross misconduct. Wilful or gross breaches are breaches of the EAL Standards that warrant dismissal and cannot be remedied through re-training.. Examples of conduct which would constitute a Level 3 Breach include (but are not limited to):
- (a) two Level 2 Breaches in different months in the course of six consecutive months;
 - (b) forgery and fraud;
 - (c) taking advantage of an individual, whom a reasonable person could tell was not capable of making an informed decision, for example an elderly person;
 - (d) intentionally engaging in misleading or deceptive conduct; or
 - (e) entering a consumer's premises without permission.

16 Competence Record Register

- 16.1 An Energy Retailer must operate a Competence Record Register that records all established breaches of the EAL Standards arising from Sales Complaints and the Competence Monitoring Process (**Competence Record**).
- 16.2 Each Competence Record must contain:
- (1) details of the Sales Agent that breached the EAL Standards;
 - (2) the date of the breach and the date of the incident;
 - (3) the date that the Level of breach was attributed;
 - (4) the State or Territory in which the breach occurred;
 - (5) the Level of breach attributed under clause 15;
 - (6) the section(s) of the EAL Standard breached; and
 - (7) a brief description of the breach.
- 16.3 Competence Records must be retained for a minimum of two years on the Competence Record Register.
- 16.4 The Competence Record Register will be reviewed by the Code Auditor in the course of the annual Compliance Audit.
- 16.5 Members must monitor the Competence Record Register on a regular basis to identify, investigate and address systemic issues.

Reporting and Audit

17 Constant vigilance

- 17.1 A Member must have a clear governance and control framework to monitor and encourage compliance with the Code on an ongoing basis.

- 17.2 Members must respond promptly to questions from the Code Manager relating to their Code compliance.
- 17.3 Members must utilise the results of Sales Complaint Handling, Competence Monitoring and Compliance Audit processes set out in this Code to pro-actively manage Code compliance.

18 Compliance Audit

- 18.1 Each Energy Retailer must submit to a Compliance Audit on a yearly basis. The Compliance Audit will be conducted by the Code Auditor.
- 18.2 The scope of the Compliance Audit and procedures to be tested will be determined by EAL in consultation with the Code Auditor. In particular and at a minimum, the Compliance Audit will cover:
- (1) issues relating to contacting and contracting with consumers and ethical conduct of Sales Agents;
 - (2) the adequacy of recruitment, training, assessment and monitoring of Sales Agents;
 - (3) the adequacy of Sales Complaint handling processes;
 - (4) the consistency and accuracy of the Member's categorisation of breaches of the EAL Standards in accordance with clause 15;
 - (5) the sufficiency of record keeping and reporting.
- 18.3 The Compliance Audit may include random checks on Members and surprise field checks on Sales Agents. Otherwise, the Code Auditor will give reasonable notice of a Compliance Audit to the Energy Retailer.
- 18.4 Energy Retailers must give the Code Auditor access to the information necessary for the purposes of the Compliance Audit unless to do so would cause the Member to breach any law or the terms of any agreement to which it is a party.
- 18.5 The Code Auditor will prepare a detailed report of findings for each Energy Retailer (**Audit Report**). The Audit Report will be provided to the Energy Retailer that was the subject of the Audit Report and the Code Manager. Each Audit Report will:
- (1) detail the procedures and documentation that were reviewed;
 - (2) set out the results of the review;
 - (3) identify areas of non-compliance; and
 - (4) prescribe action plans agreed with the Energy Retailer to address areas of non-compliance by the Energy Retailer.
- 18.6 A consolidated report of the results of all Compliance Audits will be prepared by the Code Auditor and provided to the EAL Board, Members, the Code Panel and relevant Stakeholders, summarising:
- (1) the extent and type of breaches of the EAL Standards;
 - (2) the procedures and documentation that were reviewed; an outline of any major or important instances of non-compliance;
 - (3) corrective measures that have been prescribed to address compliance issues; and
 - (4) any other relevant observations.

19 Monthly Reporting

- 19.1 Each Energy Retailer must prepare a report each month about its compliance with the Code (**Monthly Report**).
- 19.2 Each Energy Retailer must provide the Monthly Report to the Code Manager within 14 days of the end of each month about its compliance with the Code in that month. The Code Manager may, at the request of an Energy Retailer, extend the deadline for the provision of a Monthly Report by up to 7 additional days.
- 19.3 The scope of the Monthly Reports will be agreed to between the Energy Retailer and the Code Manager but must include at least:
- (1) the number of Sales Agents on the EAL Registry registered to the Energy Retailer;
 - (2) relevant indicators of the extent to which the EAL Register is being maintained by the Energy Retailer;
 - (3) the number of consumers contacted by, or on behalf of, the Energy Retailer in the month by State, based on walk sheet data;
 - (4) details of Sales Complaints received in the month including but not limited to for each Sales Complaint:
 - (a) the date of the incident;
 - (b) the date of the Sales Complaint;
 - (c) the State in which the incident occurred;
 - (d) the date the Sales Complaint was resolved;
 - (e) whether the Sales Complaint was recorded in the Competence Register and the Level of Breach attributed to the Sales Complaint;
 - (5) any new Competence Record for the month; and
 - (6) progress made to implement action items arising from any Compliance Audit or Sanction imposed under the Complaints Process.
- 19.4 The Code Manager will assess the Competence Records provided by Energy Retailers under clause 19.3(5) to:
- (1) ascertain whether or not all Energy Retailers are consistently applying the Level 1, Level 2 and Level 3 Breaches to Sales Complaints received; and
 - (2) identify whether or not any Energy Retailer is recording higher rates of Sales Complaints,
- which, in turn, will inform investigative action taken by the Code Manager.

Code Compliance

20 Enforcement of the Code on Members

- 20.1 Any complaint made about the conduct of a Member in contravention of this Code by a Member, Auditor, Ombudsman, regulator or regulatory body will be reviewed and determined by the Code Manager in accordance with the Complaints Process.
- 20.2 The Code Manager may determine to Sanction a Member in accordance with the Complaints Process where:

- (1) the Member has materially infringed the Code and it is not possible to resolve the matter satisfactorily;
 - (2) there is evidence of a serious and persistent failure of the Member to observe the Code; or
 - (3) the Code Manager has previously warned the Member of an infringement and has given sufficient notice that continued non-compliance will result in Sanctions.
- 20.3 Where a complaint is made about the conduct of an Energy Retailer that engages with an Energy Marketer, and upon investigation it is found that the breach is attributable to the Energy Marketer, then the Code Manager or Code Panel (as the case may be) may determine that either:
- (1) both the Energy Retailer and Energy Marketer is subject to the Sanction; or
 - (2) a different Sanction is imposed on the Energy Marketer as is to the Energy Retailer; or
 - (3) only the Energy Marketer receives the Sanction.
- 20.4 Where the proposed Sanction is more significant than a category 1 Sanction (as set out in the Complaints Process), one member of the Code Panel must approve the Sanction in accordance with the Complaints Process before it can be imposed.
- 20.5 The Sanction that the Code Manager decides to impose will take into account the costs of compliance for Members by ensuring that any action required is proportionate to the issue that it seeks to remedy. As far as the law allows, the Code Manager will take account of the circumstances of the case and the attitude of the Member when considering action.
- 20.6 Unless immediate action is required, before a Sanction is imposed, the Code Manager will provide an opportunity for the Member to discuss the circumstances of the case and, if possible, resolve points of difference. Following that discussion or where immediate action is required, the Code Manager will issue a notice of breach on the Member, which shall record, in writing, his or her reasons for the determination and include a copy of all documents and information supplied to or obtained by him or her in reaching that determination.
- 20.7 Where the Code Manager has imposed sanctions, the Member may appeal to the relevant members of the Code Panel in accordance with the Complaints Process.

PART 4: EAL STANDARDS

21 Compliance with all laws

- 21.1 Members, their agents/contractors and all Sales Agents must comply with all applicable licence conditions and Applicable Laws.

22 Entering into a Contract

- 22.1 Sales Agents must:

- (1) take appropriate steps to ensure that the consumer has the authority to enter into a contract for the energy supplied at the premises;
- (2) explain the essential provisions of the terms of supply, so as to ensure that the consumer understands what they are committing themselves to;
- (3) take reasonable steps to ensure that the consumer has understood:
 - (a) that they are entering into a contract to transfer their energy supply to the Energy Retailer;

- (b) details of all applicable processes, charges, tariffs and service levels that will apply to the consumer, inclusive of the declaration that the price offered is inclusive of all costs, including GST;
 - (c) the length of the cooling off period as prescribed under the Applicable Laws;
 - (d) the existence of a right of cancellation and the actions necessary to cancel or terminate the contract, inclusive of any charges or benefits forgone;
- (4) provide the consumer with:
- (a) the full name, address and telephone number of the Energy Retailer that the Sales Agent represents;
 - (b) the Sales Agent's name, Company ID Number and SIDN;
 - (c) a copy of the contract and any documentation required to be provided to the consumer in accordance with Applicable Laws; and
 - (d) information about the Energy Retailer's Sales Complaint Handling Process.

22.2 Energy Retailers must:

- (1) ensure that they provide Sales Agents with documents and information that are required to be provided to consumers under the Applicable Law; and
- (2) design agreement forms and supporting documentation so that the consumer clearly understands the terms of the contract that they are entering into.
- (3) ensure that they have in place post-sale procedures, to verify and confirm to a consumer that they have entered into a contract and that the consumer was satisfied with the way the sale was conducted.

23 Consumer Contact

23.1 Sales Agents must:

- (1) only make sales calls between the times allowed under the Applicable Laws, unless it is at the consumer's request, in relation to which a record must be kept of the consumer consent provided;
- (2) respect a consumer's premises where there is a notice that clearly states that the Sales Activity is not allowed;
- (3) as soon as possible on making contact, identify themselves, the Member they represent and their purpose;
- (4) not misrepresent themselves or the purpose of their visit;
- (5) produce an identity card, which clearly displays the Member's name, the Sales Agent's name and photograph, an expiry date for validity of the card, and the EAL Logo;
- (6) take account of the consumer's personal circumstances;
- (7) immediately cease contact with a consumer who clearly indicates that contact is inconvenient, unwelcome or inappropriate;
- (8) if contact is ceased record that the consumer is not to be contacted in accordance with Applicable Laws;

- (9) provide the Member's contact number to a consumer on request; and
- (10) provide the consumer with a copy of EAL marketing material in accordance with clause 10.

23.2 Energy Retailers must maintain records, including the date and the approximate time of contact with the consumer to allow the subsequent identification of the Sales Agent involved in a particular Sales Activity. This will assist in dealing with any Competence Complaint or query. Records are to be maintained for a minimum period of two years.

24 Ethical Conduct

24.1 Sales Agents must:

- (1) be courteous and professional;
- (2) not provide the consumer with information that is misleading or deceptive or misrepresents the consumer's rights and obligations, in particular over potential savings or false assumptions;
- (3) not engage in unconscionable conduct;
- (4) not engage in the use of high-pressure tactics (such as coercion and harassment);
- (5) ensure a consumer's privacy is maintained;
- (6) not exploit a person's inexperience, vulnerability, credulity or loyalties;
- (7) ensure that safety is maintained for themselves and the consumer; and
- (8) not commit forgery or fraud.

24.2 Sales Agents can only conduct Sales Activities on behalf of the Member with whom they are currently registered on the EAL Register.

DICTIONARY

In this Code:

- (1) **Accreditation Status** means one of the levels of accreditation that may be attained by a Sales Agent as set out in the Procedures Guideline;
- (2) **Annual Report** means a report prepared by EAL under clause 2.5;
- (3) **Applicable Law** means all rules, regulations, codes, statutes, guidelines, licences, legislation, orders in council, tariffs, proclamations, directions or standards that relate to the marketing, sale and supply of energy;
- (4) **Assessor** means an individual that has met the qualifications set out in the Procedures Guideline;
- (5) **Code Auditor** means an independent body (which will be a reputable firm of auditors) engaged by EAL to review Member compliance with the Code;
- (6) **Code Manager** means the individual appointed by EAL to carry out the day to day administration and management of the Code whose role is set out in clause 3;
- (7) **Code** means this Code of Practice and any documents incorporated in it, including the Complaints Process and, if applicable, Procedures Guideline;

- (8) **Code Panel** means the panel of four people who are independent of EAL, the Code Manager and the Members whose role is set out in clause 4;
- (9) **Competence Record Register** means the record that is used to measure Levels of breaches that are recorded against a Sales Agent under clause 16;
- (10) **Complaints Process** means the EAL Complaints Process that sets out the process for accepting, investigating and assessing complaints made against Sales Agents for deregistration and Members in relation to their compliance with the Code and the imposition of Sanctions for non-compliance with the Code. The Complaints Process is separate to the Sales Complaint Handling Process operated by an Energy Retailer to handle Sales Complaints about Sales Agents;
- (11) **Compliance Audit** means a formalised audit conducted by the Code Auditor on individual Member compliance with the Code;
- (12) **Deregistration Application** means an application made to the Code Manager requesting that a Sales Agent be deregistered from the EAL Register;
- (13) **EAL** means Energy Assured Limited;
- (14) **EAL Logo** means the EAL logo that demonstrates that the Sales Agent complies with this Code;
- (15) **EAL Register** means the database register of Sales Agents accredited under the EAL Scheme which is administered and monitored by EAL;
- (16) **EAL Scheme** means the training and accreditation scheme for Sales Agents;
- (17) **EAL Standards** means the standard for the conduct of Sales Activities as set out in clauses 21 to 24;
- (18) **Energy Marketer** means a company that engages in Sales Activities on behalf of Energy Retailers;
- (19) **Energy Retailer** means an entity that holds a valid licence or similar authorisation, issued by the relevant government regulator, to retail electricity and/or gas in the State or Territory to which the retail licence relates;
- (20) **Formal Competency Assessment** means an assessment of the competency of the Sales Agent to comply with the EAL Standards that must be undertaken by a Sales Agent before they can achieve or maintain an Accreditation Status that enables them to conduct Sales Activities unsupervised;
- (21) **Level 1, 2 or 3 Breach** means a breach of the EAL Standards that has been categorised in accordance with clause 15.3;
- (22) **Marketing Codes** means the relevant jurisdictional Marketing Codes that govern door-to-door sales in the retail energy market;
- (23) **Member** means an Energy Retailer or Energy Marketer that has signed the EAL Constitution and in doing so, agreed to adhere to this Code;
- (24) **Off-job Training** means a classroom-based Sales Agent induction program which should be conducted in a formal environment by an individual that is qualified to provide such training;
- (25) **On-job Training** means field training undertaken by a Sales Agent under the supervision of an experienced Sales Agent;
- (26) **Procedures Guideline** means the procedural rules that underlie this Code with which Members must comply in order to comply with this Code;

- (27) **Post Sale Verification Procedure** a procedure whereby a consumer is communicated with after they have entered into a new energy supply contract and before the customer is transferred to the new Energy Retailer to verify and confirm that the consumer has entered into a new energy supply contract and that the consumer was satisfied with the way that the sale was conducted. As a minimum, the Post Sale Verification Procedure must involve asking the consumer the following verification questions:
- (a) Do you understand that you are changing from your current retailer to retailer, YYY, Could you please confirm that you accept our offer and agree to proceed with the switch request from your current retailer to YYY for the retail supply of electricity and/or gas to your premises?
 - (b) Do you understand that you have a "X business day cooling off period" in which you can cancel this Agreement without incurring any exit fees?
 - (c) Do you understand that you should receive one more final bill from your current retailer and that the next one will be from "retailer YYY"?
 - (d) Has the Sales Agent provided you with information on the Energy Assured Code of Practice?
- (28) **Sales Activities** means the face-to-face marketing of energy supply to consumers;
- (29) **Sales Agent** means any individual authorised by a Member who solely represents a Member (and/or a Member's associated companies) for the purposes of engaging in Sales Activities where the principal function of such individual is to market energy supply alone or energy supply and other domestic utility services to domestic consumers;
- (30) **Sales Complaint** means a complaint made by a consumer, energy Ombudsman, relevant regulator, government agency or other interested party about a Sales Agent's Sales Activities;
- (31) **Sales Complaints Handling Process** means the process for handling Sales Complaints established by an Energy Retailer under clause 13;
- (32) **Sanction** means disciplinary action or any other sanction imposed on a Member under the Complaints Process;
- (33) **Stakeholders** means energy Ombudsmen and relevant regulators or government agencies; and
- (34) **SIDN** means the Sales Agent Identification Number allocated to a Sales Agent when they are first registered on the EAL Register.

CODE

COMPLAINTS PROCESS

SEPTEMBER 2010

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PART 1

1. Definitions

Agents – persons who engage in the door-to-door sale of energy supply to consumers who are registered and whose names are or were at some point noted on the Register.

Appellant – for Part 3, the Appellant is the EAL Member or Agent appealing the decision of the Code Manager under that Part, and for the purposes of Part 4 is the Complainant or EAL Member appealing the decision of the Code Manager or Panel Member.

Appeal – for Part 3, the Appeal is Form B completed by the Appellant, together with security for the costs of the Appeal as provided by Part 5, delivered to the Code Manager within 10 Business Days of the date of delivery to the Appellant of the reasons for determination; for Part 4, the Appeal is the Notice of Appeal Form E completed by the Appellant, together with security for the costs of the Appeal as provided by Part 5, delivered to the Code Manager within 10 Business Days of the date of Service of the Notice of Breach.

Auditor – a person engaged to review EAL Members' compliance with the Code.

Business Day - means a day not being a Saturday, a Sunday or a public holiday in the jurisdiction in which the Sales Agent conducts Sales Activities.

Code – The Code of Practice to which Agents and EAL Members are bound.

Code Manager – the person appointed by EAL for this role or his or her delegate.

Complainant – the person making the Complaint.

Complaint – For Part 3, the Complaint is in Form A completed by the Complainant, together with any additional materials and information received by or in the possession of Code Manager. For Part 4, the Complaint is Form C completed by the Complainant, together with any information and documents received by or in the possession of the Code Manager or single Panel Member determining the Complaint.

Complaints Process – this Complaints Process.

Date of Service – is deemed to be three (3) days after the Notice of Breach is posted, faxed or emailed to the EAL Member.

Deregistration – the deregistration of an Agent from the Register for a period of 5 years.

Notice of Appeal – A notice by which an EAL Member appeals a breach and/or Proposed Sanction, being Form E.

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

EAL Members – Energy Retailers and Energy Marketer's that are or were at the relevant time subject to the Complaints Process.

Energy Marketer –suppliers of Agents to Licensed Energy Retailers who are either or were at some point EAL Members.

Energy Retailer – Licensed Energy Retailers who are or were at some point EAL Members.

Form A – the template marked 'Form A' of which is annexed to the Complaints Process.

Form B - the template marked 'Form B' of which is annexed to the Complaints Process.

Form C - the template marked 'Form C' of which is annexed to the Complaints Process.

Form D - the template marked 'Form D' of which is annexed to the Complaints Process.

Form E - the template marked 'Form E' of which is annexed to the Complaints Process.

Ombudsman – an Ombudsman of the Commonwealth, State or Territory.

Panel – a Panel comprised of no fewer than 4 members, appointed by EAL for the purposes of the Complaints Process.

Panel Member – a member of the Panel.

Panel Member(s) – a single Panel Member or 3 Panel Members, whichever is by context appropriate.

Proposed Sanction – the Sanction determined by the Code Manager or Panel Member(s) as provided for in this Complaints Process.

Register – a register of names, details and accreditation status of Agents that the Code Manager is required to maintain.

Responsible Energy Marketer – the Energy Marketer responsible for engaging the Agent the subject of the Complaint.

Responsible Energy Retailer – the Energy Retailer responsible for engaging the Agent the subject of the Complaint.

Sanction – Sanctions 1-6.

Sanctions 1-6 – the Sanctions listed in Schedule A.

Service – delivery of the Notice of Breach in accordance with clauses 4.24 - 4.25.

PART 2

2. To whom does the Complaints Process apply?

2.1 The Complaints Process applies to Agents and EAL Members.

2.2 The Complaints Process will be enlivened:

- (a) where a Sales Agent has breached the EAL Standards and it is appropriate to make a Deregistration Application in accordance with parameters set out in the Code; and
- (b) where an EAL Member has breached the Code and it is appropriate to seek a Sanction against the EAL Member pursuant to the Code and this Complaints Process.

PART 3

3. Complaints about Agents

Lodging a Complaint

- 3.1** Complaints shall be delivered to the Code Manager.
- 3.2** If the Complaint does not warrant the Deregistration of an Agent or the issue of a Sanction against an EAL Member, then the Code Manager shall refer the Complaint to the relevant Energy Retailer.
- 3.3** On receiving a Complaint about an Agent, the Responsible Energy Retailer shall consider the Complaint in accordance with its internal processes. If the Responsible Energy Retailer considers that it is appropriate to Deregister an Agent, the Responsible Energy Retailer, or Energy Marketer, may apply to the Code Manager for the Agent to be Deregistered.
- 3.4** Applications to Deregister an Agent shall be in Form A.

Review of Complaint by Code Manager

- 3.5** The Code Manager shall forward to the Agent all documents and information supplied to or obtained by him or her in relation to the Complaint.
- 3.6** The Code Manager may seek additional information or evidence in relation to the Complaint from the Responsible Energy Retailer, Energy Marketer, Agent or any other source.
- 3.7** The Code Manager shall exercise his or her discretion reasonably and determine on the evidence before him or her:
 - (a) if there is sufficient evidence to establish that the Agent breached the Code; and

- (b) if satisfied that there has been a breach of the Code, whether the breach of the Code or cumulative breaches of the Code warrant the Deregistration of the Agent; or
- (c) if not satisfied that the Agent has breached the Code, then he or she shall dismiss the Complaint.

3.8 In making a determination referred to in clause 3.7, the Code Manager shall have regard to previous decisions made about the deregistration of Agents so as to promote consistency of treatment of Agents under this Complaints Process.

3.9 The Code Manager shall make the determinations referred to in clause 3.7 within 10 Business Days of receiving the Complaint and in accordance with any policy formulated by EAL for the purposes of this Part.

3.10 The Code Manager shall notify the parties of his or her determination(s) at the addresses provided in the Complaint or at any other address provided by the parties.

3.11 The Code Manager shall record in writing his or her reasons for the determination, and provide a copy of these reasons to the parties to the Complaint.

Deregistration of Agents

3.12 The Code Manager only may Deregister an Agent.

Appeal

3.13 The Responsible Energy Retailer, Energy Marketer and/or Agent may appeal the determination made pursuant to clause 3.7 to a single member of the Panel (**the Panel Member**).

3.14 The Appellant shall deliver the Appeal to the Code Manager within 10 Business Days of the date of delivery to the Appellant of the reasons for determination.

- 3.15** The Appeal shall not be deemed to have been delivered unless and until the prescribed sum has been paid, as provided in Part 5.
- 3.16** The Code Manager shall refer the Appeal to the Panel Member for determination and the Panel Member shall determine the appeal within 10 Business Days of his or her receipt of the Appeal from the Code Manager.
- 3.17** The Code Manager and Panel Member may, at his or her absolute discretion, grant an extension of time to the Appellant to provide further information.
- 3.18** The Appeal shall be on one or more of the following grounds, but no other:
- (a) the Code Manager's discretion exercised pursuant to clause 3.7 was not exercised reasonably,
 - (b) the Appellant was denied natural justice, or
 - (c) new and material evidence has come into the possession of the Appellant at a time such that it was not possible for the new and material evidence to be provided to the Code Manager for his or her consideration prior to the Code Manager's determination of the Complaint.
- 3.19** Appeals are conducted and determined on the parties' written submissions, and information and documents provided by the parties, the Code Manager or from any other source.
- 3.20** The Code Manager and/or Panel Member may seek additional information or evidence in relation to the Complaint from the Responsible Energy Retailer, Energy Marketer, Agent or any other source.
- 3.21** The Panel Member shall follow any policy formulated by EAL for the purposes of this Part.
- 3.22** The Panel Member shall consider the Complaint *de novo* insofar as it is relevant to the ground of appeal.

- 3.23** The Panel Member shall uphold the determination of the Code Manager or substitute his or her determination for that of the Code Manager.
- 3.24** The Panel Member shall advise the Code Manager of the determination within 10 Business Days.
- 3.25** The Panel Member's determination with respect to the grounds raised in the Appeal is final. For the sake of clarity, there is no further appeal.
- 3.26** The Panel Member shall record in writing his or her reasons for the determination.
- 3.27** The Code Manager shall notify the parties of the determination of the Appeal at the address in the Appeal or at any other address provided by the parties.

PART 4

4. Complaints Against EAL Members

Lodging a Complaint

- 4.1 Complaints against EAL Members may be made by EAL Members, the Auditor, the Ombudsman, any regulator or regulatory body or the government.
- 4.2 The Code Manager may initiate a Complaint.
- 4.3 All Complaints shall be in Form C.
- 4.4 Complaints shall be delivered to the Code Manager.

Review of Complaint by Code Manager

- 4.5 The Code Manager may seek additional information or evidence in relation to the Complaint from the Complainant, EAL Member or any other source.
- 4.6 The Code Manager shall exercise his or her discretion reasonably and determine on the evidence before him or her:
 - (a) if there is sufficient evidence to establish that the EAL Member breached the Code; and
 - (b) whether the breach of the Code or cumulative breaches of the Code warrant a Sanction .
- 4.7 If the Code Manager is not satisfied that the EAL Member has breached the Code, then he or she shall dismiss the Complaint.
- 4.8 In making a determination referred to in clause 4.6 and 4.7, the Code Manager shall have regard to:
 - (a) previous decisions made about the Sanctioning of EAL Members so as to promote consistency of treatment of EAL Members under this Complaints Process; and
 - (b) any previous Sanctions imposed on the particular EAL Member in the past two years.

- 4.9 The Code Manager shall make the decisions referred to in clause 4.6-4.7 within 10 Business Days of receiving the Complaint.
- 4.10 The Code Manager shall follow any policy formulated by EAL for the purposes of this Part.
- 4.11 The Code Manager shall record in writing his or her reasons for the determination, and provide a copy of these reasons to the parties to the Complaint.
- 4.12 The Code Manager shall complete the Notice of Breach in Form D.
- 4.13 The Code Manager shall Serve on the EAL Member a Notice of Breach in Form D, together with a copy of the reasons and all documents and information supplied to or obtained by him or her in relation to the Complaint.

Sanction 1

- 4.14 The Code Manager may, at his or her discretion, determine to impose Sanction 1 on the EAL Member without seeking approval from the Panel.
- 4.15 The EAL Member may appeal the determination of the Code Manager to impose Sanction 1 to a single member of the Panel (**the Panel Member**) in accordance with this Complaints Process.
- 4.16 The determination of the Panel Member is final.

Sanctions 2 - 6

- 4.17 If the Code Manager determines that Sanctions 2 – 6 may be imposed, the Code Manager shall refer the Complaint to a single Panel Member to issue the Notice of Breach to the EAL Member.
- 4.18 The Panel Member shall review the Complaint *de novo* before determining whether or not to issue a Notice of Breach to the EAL Member. The Panel Member shall have regard to:
- (a) previous decisions made about the Sanctioning of EAL Members so as to promote consistency of treatment of EAL Members under this Complaints Process; and

- (b) any previous Sanctions imposed on the particular EAL Member in the past two years.

4.19 In issuing the Notice of Breach, the Panel Member shall have all the powers and responsibilities of the Code Manager as provided by clauses 4.5-4.12, except that the Panel Member shall determine the Complaint within 10 Business Days of his or her receipt of the Complaint. The Panel Member shall then remit the Notice of Breach and the Panel Member's reasons to the Code Manager for Service.

Cascading Sanctions

4.20 Notwithstanding any other provision of Part 4 of this Complaints Process, the Code Manager, Panel Member or Panel Members (as the case may be) may only determine to impose or impose:

- (a) Sanction 5 on a Member if a Sanction 1, 2, 3 or 4 has been imposed previously on that Member; and
- (b) Sanction 6 on a Member if a Sanction 1,2,3, 4 or 5 has been imposed previously on that Member.

Energy Retailer and Energy Marketer responsible for the same breach

4.21 A Complaint may be made about an Energy Retailer and the Energy Marketer that represents the Energy Retailer for a breach of the Code by the Energy Marketer.

4.22 In such a case, the Code Manager, Panel Member or Panel Members (as the case may be) may determine to impose a different Sanction on the Energy Retailer to that imposed on the Energy Marketer.

Failure to Respond to a Notice of Breach Constitutes Acceptance of the Proposed Sanction

4.23 An EAL Member which is Served with a Notice of Breach and who fails to deliver to the Code Manager within 10 Business Days of the Date of Service of the Notice of Breach a Notice of Appeal in Form E (**the Appeal**) shall be deemed to accept the Proposed Sanction in the Notice of Breach. The Notice of Appeal shall be delivered to the Code Manager by post, fax or email.

- 4.24** The Code Manger shall Serve the Notice of Breach on the EAL Member by forwarding the Notice of Breach by ordinary pre-paid post to the registered office of the EAL Member and/or to any other postal address, electronic address or fax number provided by the EAL Member.
- 4.25** EAL Members shall ensure that their contact details for Service are given to the Code Manager and are at all times up to date. The Code Manager may rely on these contact details when arranging Service.

Appeal

- 4.26** To appeal a determination of the Code Manager or Single Panel Member under this Part, the Appellant shall deliver to the Code Manager a copy of the Appeal within 10 Business Days of the Date of Service of the Notice of Breach.
- 4.27** The Appeal shall not be deemed to have been delivered unless and until the prescribed sum has been paid, as provided in Part 5.
- 4.28** The EAL Member may appeal the Proposed Sanction as follows:
- (a) an appeal against Sanction 1 is made to a single Panel Member,
 - (b) an appeal against Sanction 2 is made to a single Panel Member or 3 Panel Members at the election of the Appellant, and
 - (c) an appeal against Sanctions 3 to 6 is made to 3 Panel Members.
- 4.29** The Code Manager shall refer the Appeal to the Panel Member(s) for determination and the Panel Member(s) shall determine the Appeal within 10 Business Days of his, her or their receipt of the Appeal.
- 4.30** The single Panel Member who is responsible for the issue of a Notice of Breach or any other determination on appeal shall not be one of the three (3) Panel Members dealing with the Appeal.
- 4.31** The Code Manager or Panel Member(s) may, at his, her or their discretion, grant an extension of time to the Appellant to provide further information.

4.32 The Appeal shall be on one or more of the following grounds, but no other:

- (a) the Code Manager or Panel Member's discretion was not exercised reasonably,
- (b) the Appellant was denied natural justice, or
- (c) new material evidence has come into the possession of the Appellant at a time such that it was not possible for the new material evidence to be provided to the Code Manager or Panel Member for their consideration prior to the Code Manager's determination of the Complaint.

4.33 Subject to clause 4.32, appeals are conducted and determined on the parties' submissions, information and documentation provided by the parties and the Code Manager or from any other source.

4.34 At his, her or their discretion, the Panel Member(s) and/or Code Manager may determine that the determination of the Appeal be conducted by a hearing in person or by teleconference if the Sanction is of sufficient gravity to warrant such a hearing. Legal representation is not permitted at the hearing, but legal assistance is permitted.

4.35 The Code Manager and Panel Member(s) shall follow any policy formulated by EAL for the purposes of this Part.

4.36 The Panel Member shall consider the Complaint *de novo* insofar as it is relevant to a ground of appeal in the Appeal.

4.37 The Panel Member(s) may seek additional information or evidence in relation to the Complaint from the Responsible Energy Retailer, Agent or any other source.

4.38 The Panel Member(s) shall uphold the determination of the Code Manager or Panel Member for the Proposed Sanction, or substitute his, her or their determination for that of the Code Manager or Panel Member.

- 4.39** The determination of the Appeal by the Panel Member(s) is final. For the sake of clarity, there is no further appeal.
- 4.40** The Panel Member(s) shall inform the Code Manager of the outcome within 5 Business Days of determining the Appeal.
- 4.41** The Panel Member(s) shall record in writing his, her or their reasons for the determination.
- 4.42** The Code Manager shall notify the parties of the determination of the Appeal at the address provided in the Appeal or at any other address provided by the parties.

PART 5

5. Costs of the Appeal

- 5.1** Appeals shall be accompanied by cash or a cheque drawn in favour of “Energy Assured Limited” for the prescribed sum set out in Schedule B.
- 5.2** The Code Manager may, following a request by an Appellant, agree to waive the sum payable under clause 5.1 on hardship grounds.
- 5.3** The Panel Member(s) determining the Appeal may determine in his, her or their absolute discretion that the Appellant is liable for EAL's reasonable costs of conducting the appeal and the quantum of those costs, taking into account again any request by an Appellant for a waiver or reduction of the costs on hardship grounds.
- 5.4** If the Complaint is dismissed on appeal, the Appellant will not be liable for the costs of the appeal, and any monies paid to EAL for the costs of the appeal will be returned to the Appellant.
- 5.5** If the Complaint is not dismissed on appeal, the Code Manager shall issue a tax invoice for the costs of the appeal as determined by the Panel Member(s).
- 5.6** EAL Members and Agents agree and undertake to pay to EAL the costs of conducting the appeal as determined by the Panel Member(s) within twenty eight (28) days of receiving a tax invoice from EAL.

PART 6

6. Miscellaneous

- 6.1** EAL Members shall be bound by any determination of the Code Manager and/or Panel Member(s) made pursuant to the Complaints Process.
- 6.2** In making a Complaint or Appeal, Complainants and Appellants warrant that:
- (a) the information and facts provided in and to be inferred from the Complaint and the Appeal and during the course of the Complaints Process are accurate and true to the best of their knowledge and are not misleading in any material way;
 - (b) information provided to the Code Manager or Complaints Panel may be communicated, published, recorded and audited or used in any other way provided for by the Complaints Process, and an authority to use the information has been obtained from the relevant person.
- 6.3** An EAL Member which submits a Form A warrants that:
- (a) the EAL Member has made all reasonable attempts to contact the Agent to notify him or her of the Complaint and provided the Agent with a reasonable opportunity to respond to the Complaint; and
 - (b) the EAL Member has submitted with Form A the Agent's response to the Complaint, by providing a copy of any written response by the Agent, and if the response of the Agent is not in writing, by providing particulars of the response.
- 6.4** If a Code Manager's or Panel Member(s) determination to Deregister an Agent or EAL Member is struck down by a Court, then the Deregistration will be automatically substituted for a period of Deregistration one day less than the period struck down by the Court, and if that new shorter period of Deregistration is not upheld by the Court, the period of Deregistration will

be deemed to be a period reduced by one day continuously until the period of Deregistration is upheld by the Court. For the sake of clarity, a determination of Permanent Deregistration may, by virtue of this clause, be notionally substituted by Temporary Deregistration. Similarly, for the purposes of Part 4, if a Sanction involving Deregistration for 1 day is struck down by the Court, then the Sanction will be automatically substituted for Sanction 5, and will continue to be automatically substituted for a Sanction one level lower than that struck down by the Court until the Sanction is upheld.

6.5 Decisions by the Code Manager and members of the Panel are presumed to be reasonable and objective.

6.6 The costs of the appeal include the travel costs of the Panel Member(s).

6.7 Agents and EAL Members acknowledge that they have:

- (a) no right of action in any court or jurisdiction; and
- (b) no right to damages or any form of compensation or indemnity against EAL or any officer or subcontractor of EAL as a consequence of any costs of any nature which the Agent or EAL member may incur (including, but not limited to, legal costs) in answering the Complaint; or
- (c) any losses or damages of any nature (including claims based on defamation, negligence and breach of privacy) which the Agent or EAL member may incur directly or indirectly due to actions or omissions of the Code Manager or Panel Member(s) arising out of or in connection to the Complaints Process, including but not limited to findings and Sanctions imposed by the Code Manager or a member of the Panel.

6.8 The Code Manager and Panel Member(s) shall use their best endeavours to meet the time-limits set out in the Complaints Process, but may extend

the time-limits if they have a reasonable excuse. Failure to meet any time-limits does not invalidate acts or omissions undertaken pursuant to or incidental to the Complaints Process.

- 6.9** Time is of the essence for delivery of any Appeal. However, the Code Manager and/or Panel Member(s) may, at their absolute discretion, determine the Appeal if he, she or they believe there were reasonable grounds for the Appellant failing to comply with the relevant time-limit.
- 6.10** The Code Manager shall maintain a record of all correspondence and documents relating to Complaints and the determination of Complaints (including on appeal) for a period of 2 years.
- 6.11** The Code Manager and/or Panel Member(s) may refer a Complaint to a government agency where appropriate.
- 6.12** Any person providing information to the Code Manager and/or Panel Member(s) pursuant to the Complaints Process agrees and understands that the information may be communicated, recorded and audited in accordance with the Complaints Process.
- 6.13** EAL Members shall ensure that their contact details for Service of a Notice of Breach and the receipt of reasons, determinations and other correspondence are given to the Code Manager and are up to date at all times.
- 6.14** For the sake of clarity, the determination of the Code Manager to Deregister an Agent remains in force until the Panel Member determines otherwise on appeal.

SCHEDULE A

Sanction	Description	Terms
Sanction 1	The EAL Member provides a written undertaking that the breach will not be repeated.	The EAL Member to be required to provide evidence of how he, she or it has or will comply with the undertaking.
Sanction 2	Require an independent Code Auditor to carry out an audit of the area of activity where the breach occurred.	The EAL Member to be required to pay the costs of the auditor.
Sanction 3	Issue a formal letter of admonishment to the EAL Member and inform the board of EAL that the letter of admonishment has been issued and the section of the Code that has been breached, but without identifying the EAL Member.	
Sanction 4	Issue a formal letter of admonishment to the EAL Member and inform the board of EAL that a letter of admonishment has been issued, the section of the Code that has been breached and an identification of the EAL Member.	
Sanction 5	Issue a formal letter of admonishment to the EAL Member and inform the Board of EAL, other	The Code Manager and/or Panel Member(s) may determine how the public will be informed for example

	<p>stakeholders and the public that a letter of admonishment has been issued, the section of the Code that has been breached and an identification of the EAL Member.</p>	<p>by publishing the information on the website of EAL.</p>
Sanction 6	<p>Deregister (permanently or temporarily) the Member's membership of EAL and issue a public statement. The public statement will identify the EAL Member, state the section of the Code that has been breached and the period of Deregistration.</p>	<p>The Code Manager and/or Panel Member(s) shall determine the period of Deregistration in accordance with the Complaints Process.</p>

SCHEDULE B
SECURITY FOR APPEAL

Appellant	Matter Appealed	Number of Panel Members Hearing the Appeal	Cost
Agents	Deregistration (permanent or temporary)	1	\$100
Energy	Sanction 1	1	\$300
Retailers	Sanction 2	1	\$300
	Sanction 2	3	\$900
	Sanction 3	3	\$900
	Sanction 4	3	\$900
	Sanction 5	3	\$900
	Sanction 6	3	\$900
Energy	Sanction 1	1	\$300
Marketer	Sanction 2	1	\$300
	Sanction 2	3	\$900
	Sanction 3	3	\$900
	Sanction 4	3	\$900
	Sanction 5	3	\$900
	Sanction 6	3	\$900

FORM A

COMPLAINT AGAINST AN AGENT

Note: Fields marked with an asterisk () are mandatory. Failure to complete mandatory fields will result in the rejection of the Complaint.*

Failure to provide sufficient information or evidence about the Complaint may result in the dismissal of the Complaint.

***Name of Agent**

***Address of Agent**

Contact Details of Agent (fax, email, home phone, telephone, other contacts of agent)

Energy Assured ID Number

***Name EAL Member Complainant**

Address of EAL Member Complainant

***Section of Code Allegedly Breached**

***Description of Actions, Omissions and Circumstances Which Comprise the Breach**

Evidence in Support of the Above (Attach any documents you wish to be considered)

***Steps Taken to Notify Agent of the Complaint and Application to De-register the Agent**

Details of Previous Breaches of the Code

***Response and any documents received from the Agent**

***Note that a copy of this Complaint Form and any other particulars, information and documents provided with it or at any other time during the determination of the Complaint will be made available to the Agent named in the Complaint.**

FORM B

APPEAL

AGAINST DEREGISTRATION OF AN AGENT

Note: Fields marked with an asterisk () are mandatory. Failure to complete mandatory fields will result in the rejection of the Appeal.*

Failure to provide sufficient information or evidence about the Appeal may result in the dismissal of the Appeal.

***Name of Appellant**

***Contact Details of Appellant**

***Name of the Complainant**

Energy Assured ID Number

***Ground(s) of Appeal**

Particulars of Ground(s) of Appeal

Evidence in Support of Appeal (Attach any documents you wish to be considered).

Determination to which the Appellant will Consent

*You must enclose a cash or cheque in the sum of \$_____ made payable to "Energy Assured Limited" as security for the costs of the appeal. This sum will be repaid if your appeal is successful.

I warrant that I have read and understood the terms of the Complaints Process, including the warranty at clauses 6.2 and the exclusion clause at clause 6.7. # I agree to be bound by the terms of the Complaints Process. # I am authorised to agree on behalf of the Appellant that the Appellant will be bound by the Complaints Process.

FORM C

COMPLAINT AGAINST AN EAL MEMBER

Note: Fields marked with an asterisk () are mandatory. Failure to complete mandatory fields will result in the rejection of the Complaint.*

Failure to provide sufficient information or evidence about the Complaint may result in the dismissal of the Complaint.

***Name of EAL Member**

***Section of Code Allegedly Breached**

***Description of Actions, Omissions and Circumstances Comprising the Breach**

Evidence in Support of the Above (Attach any documents you wish to be considered)

Details of Previous Known Breaches of the Code

FORM D
NOTICE OF BREACH

ISSUED IN ACCORDANCE WITH THE COMPLAINTS PROCESS
OF ENERGY ASSURED LIMITED

IMPORTANT:

- You may only respond to this Notice by delivering a completed Notice of Appeal (copy **attached**) to the Code Manager within 10 Business Days of service of this Notice of Breach on you. Failure to respond will constitute an acceptance of the Complaint and Proposed Sanction shown below.
- A copy of the reasons for the Proposed Sanction has been **attached** to this Notice of Breach.
- Fields marked with an asterisk (*) are mandatory. Failure to complete mandatory fields will result in the rejection of your Notice of Appeal.
- Consideration of your appeal will be based on the information provided by you. If you fail to provide an adequate response to the Notice of Breach, such as failing to provide sufficient particulars or evidence in support of your appeal, then your appeal may be dismissed and the Proposed Sanction will be imposed on you without further notice.
- You may request an extension to provide further information in support of your Notice of Appeal on your Notice of Appeal where indicated.
- The Code Manager, [insert name], is contactable on [insert phone, fax, postal address, #email].

***Name of EAL Member**

***Section(s) of the Code Alleged to have been breached**

***Particulars of Breach**

Evidence in Support of the Alleged Breach(es)

***Proposed Sanction (and terms, including the period of Deregistration if appropriate)**

Particulars of the Proposed Sanction

Copies of the EAL Constitution, Code of Practice, Procedures Guidelines, Complaints Process and other relevant documents (including policies) are available from the Code Manager on request. You should review these documents carefully and contact the Code Manager if you have any queries.

FORM E

NOTICE OF APPEAL

Note: Fields marked with an asterisk () are mandatory. Failure to complete mandatory fields will result in the rejection of the Appeal.*

Failure to provide sufficient information or evidence about the Appeal may result in the dismissal of the Appeal.

***Name of Appellant:**

***Contact Details of Appellant for correspondence**

***Name of other party to Complaint**

Preferred Panel Member to Hear the Appeal (If Sanctions 1 or 2 have been proposed).

***Ground(s) of Appeal**

Particulars of Ground(s) of Appeal

Evidence in Support of Appeal

Sanction to which the Appellant will Consent

Time requested to provide further information not contained in this Notice of Appeal and Reasons

You must enclose cash or a cheque in the sum of \$_____ made payable to “Energy Assured Limited” as security for the costs of the appeal. This sum will be repaid if your appeal is successful.

I warrant that I have read and understood the terms of the Complaints Process, including the warranty at clauses 6.2 – 6.3 and the exclusion clause at clause 6.7. # I agree to be bound by the terms of the Complaints Process. # I am authorised to agree on behalf of the Appellant that the Appellant will be bound by the Complaints Process.

**Signature*

**Print Name*

Energy Assured Limited Procedures Guideline

Introduction

1 Aims

- 1.1 The Code and these Guidelines, provide Members with a uniform and standardised industry approach for the training and recruitment of Sales Agents, the tracking and registering of Sales Agents, the assessment of Sales Agents through an accreditation process, and a framework in which Members can apply to the Code Manager to deregister an Agent from the registry for material breaches of the EAL Standards.

2 Interpretation

- 2.1 This document is called the Energy Assured Limited Procedures Guideline (**Guideline**).
- 2.2 This Guideline sets out the procedures, principles and processes that underpin the Code for the operation of the EAL Scheme for:
- (1) registering and maintenance of Sales Agents on the EAL Register; and
 - (2) recruiting, training and assessing Sales Agents.
- 2.3 If any part of this Guideline is inconsistent with the Code, the Code will prevail to the extent of the inconsistency.
- 2.4 Capitalised words appearing in this Guideline have the meaning given to them in the Dictionary at the end, or defined in **bold** in the body, of this Guideline.

3 Operational Personnel

- 3.1 Each Member must ensure that they have an appropriate governance framework and operational personnel to comply with the Code and this Guideline including appointing personnel to fulfil the roles set out in Annexure C.

EAL Register

4 Registration of New Sales Agents

- 4.1 Members must:
- (1) obtain the following information about each Sales Agent (**Details**) in writing:
 - (a) First Name;
 - (b) Middle Name;
 - (c) Surname;
 - (d) Date of birth;
 - (e) Passport Number or Australian Drivers License Number or Proof of ID number;
 - (f) Australian State or Territory;
 - (g) Sales Agent photograph; and

- (h) any additional information required by the Code Manager from time to time;
 - (2) ensure that the Sales Agent understands that the Details will be used on the EAL Register, how those Details will be used and who will have access to those Details;
 - (3) obtain the written agreement of the Sales Agent to use their Details on the EAL Register; and
 - (4) retain copies of the Details of, and the written agreements signed by, each Sales Agent.
- 4.2 Before the Sales Agent undertakes Sales Activities, the Member must create or update a record for each Sales Agent engaged by it by populating the EAL Register with the Details about each Sales Agent and the following information:
- (1) Sales Agent ID Number given by the Member;
 - (2) Active Member;
 - (3) Energy Marketer/Energy Retailer;
 - (4) Start Date;
 - (5) Accreditation Status;
 - (6) Award Date;
 - (7) Extension Award Date;
 - (8) Expiry Date;
 - (9) Extension Expiry Date; and
 - (10) any additional information required by the Code Manager from time to time
- (Sales Agent Profile).**
- 4.3 Upon the creation of each Sales Agent Profile, the Sales Agent will be allocated a unique SIDN.
- 4.4 The SIDN will be the primary means by which the Member will store records on the EAL Registry. The SIDN can be different to a Sales Agent's ID number issued by the Member.
- 4.5 Once an SIDN is issued, the Member can affix the EAL Logo to the Member's Identification Badge, highlighting to the consumer that the Sales Agent is being accredited under the EAL Scheme.
- 5 Register Maintenance**
- 5.1 Members must ensure that the data contained in the EAL Registry is accurate and up-to-date within the timeframes prescribed in this Procedures Guideline.
- 5.2 All Members must routinely check the EAL Register for all Sales Agent recruits during both the recruitment process and when creating or updating a Sales Agent Profile.
- 5.3 Members must keep a record of Sales Agent's details that reconcile with information contained in the EAL Register.
- 5.4 Each Member must carry out a monthly reconciliation between the Sales Agent's detailed on the EAL Register for that Member and the Member's own internal database of Sales Agents (**Reconciliation**). The Reconciliation should be prepared in accordance with the guidance notes issued by the Code Manager and should be submitted to the Code Manager at the

same time as an Energy Retailer would be required to submit a Monthly Report under the Code.

6 Access to EAL Register

6.1 A Member will only be permitted to access the Sales Agent Profiles of Sales Agents directly or indirectly engaged by it. A Member will not have access to the Sales Agent Profiles of Sales Agents engaged by other Members unless:

- (1) the Member is an Energy Retailer Member and those Sales Agents are engaged indirectly by the Energy Retailer Member through a Energy Marketer Member; or
- (2) the Sales Agent has been given an Accreditation Status of Leaver or Deregistered.

6.2 The Code Manager may inform any Member of the deregistration of any Sales Agent.

6.3 Any Member may view the following details of any Sales Agent registered on the EAL Register:

- (1) First Name;
- (2) Middle Name;
- (3) Surname;
- (4) Sales Agent photograph;
- (5) SIDN; and
- (6) history of Accreditation Status.

6.4 In order to view the information about a Sales Agent listed in clause 6.2, a Member must have the Sales Agent's:

- (1) SIDN; or
- (2) Passport number; or
- (3) Driver's Licence Number (Class C or Class R); or
- (4) Proof of ID number.

6.5 Each Member may nominate persons who are authorised to access the EAL Register on its behalf (**Authorised Users**). The role of an Authorised User is set out in Annexure C. Members must provide up to date details of Authorised Users and their level of permitted access to the Code Manager on a monthly basis.

6.6 The Code Manager may access any Sales Agent Profile recorded on the EAL Register.

6.7 EAL and Members must ensure that they have procedures in place to protect the confidentiality of the information contained on the EAL Register and protect the privacy of Sales Agents.

7 Accreditation Procedures

7.1 In this clause 7, a reference to a Member is a reference to the Member that has engaged the Sales Agent.

7.2 The Sales Agent's Accreditation Status and corresponding privileges may be one of the following:

Accreditation Status	Description	Duration of Status	Privileges
Provisional	Applies to new Sales Agents pending completion of training and passing Competency Assessment	Between four and six weeks	Can undertake Sales Activities under supervision by an Experienced Sales Agent after Off-job Training and Off-job Assessment have been successfully completed Can display EAL Logo
Approved	Sales Agent has passed a Formal and Annual Competency Assessment by an Approved Assessor	1 year	Can undertake Sales Activities Can display EAL Logo
Development	Sales Agent has not passed Competency Assessment or has committed a Level 2 Breach under the Code of Practice and is undergoing further training.	Up to 15 Business Days	Can undertake Sales Activities under supervision by an Experienced Sales Agent Can display EAL Logo
Suspended	Sales Agent suspended from undertaking Sales Activities pending outcome of investigation and determination of Deregistration Application as a result of an alleged Level 3 Breach under the Code of Practice.	Up to 15 Business Days or until the Deregistration Application is finally determined	Cannot undertake Sales Activities or display EAL Logo
Deregistered	Agent has been deregistered in accordance with the Complaints Process	5 Years	Cannot undertake Sales Activities or display EAL Logo
Inactive	Sales Agent on authorised leave	Up to 3 Months	Cannot undertake Sales Activities or display EAL Logo
Active	Sales Agent returned from leave but not yet re-taken and passed Competency Assessment	Generally up to 10 Business Days	Can undertake Sales Activities under supervision by an Experienced Sales Agent Can display EAL Logo
Leaver	Sales Agent is no longer engaged by Member or is "Inactive" for more than 3 months	Unspecified	Cannot undertake Sales Activities or display EAL Logo

7.3 Provisional Accreditation Status

A Member may enter a Provisional Accreditation Status for a Sales Agent in the EAL Register:

- (1) if a Sales Agent has never been registered on the EAL Register or was deregistered from the EAL Register more than five years ago, after the process specified in clauses 4.1 and 4.2 has been followed; and
- (2) if a Sales Agent is already registered on the EAL Register but had a Leaver Accreditation Status, the Member must enter the EAL Registry, search for the Sales Agent and update all information contained in the Energy Assured Registry with the Sales Agent's Details in accordance with clauses 4.1 and 4.2. If there are any discrepancies between the information existing on the EAL Registry about a Sales

Agent and the Details provided, an explanatory note must be placed on record in the Sales Agent's file.

The first day that the Sales Agent engages in Sales Activities in the field will be listed as the start date in the EAL Register for that Sales Agent (**Start Date**).

7.4 Approved Accreditation Status

A Sales Agent's Provisional Accreditation Status will automatically change to Approved four weeks after the Start Date (**Award Date**). The Member must ensure that the Sales Agent has passed the Formal Competence Assessment prior to the Award Date.

If a Sales Agent does not pass the Formal Competence Assessment by the Award Date, but is considered to have the potential to do so, the Provisional Accreditation Status period can be extended for a further two weeks and a new Award Date must be noted in the EAL Registry (**Extension Award Date**). The Compliance Manager (whose role is set out in Annexure C) or their authorised delegate must agree to the Provisional Accreditation Status being extended to the Extension Award Date. The Extension Award Date must be noted on the EAL Registry, and be kept on record for audit purposes.

An Approved Accreditation Status will expire twelve months from the Award Date, or the Extension Award Date (**Expiry Date**).

One month before the Expiry Date, a notice in writing will be sent to the Member stating the date on which the Sales Agent's Accreditation Status will expire (**Renewal Notice**).

Before the Expiry Date, the Sales Agent must pass a Formal Competence Assessment.

Should an Agent not pass the Formal Competence Assessment before the Expiry Date, the Member must seek an extension of up to a period not exceeding 4 weeks past the Expiry Date (**Extension Expiry Date**) and reflect a change in status in the EAL Register as depicted in clauses 7.5 or 7.6. The Compliance Manager or their authorised delegate must agree to the extension of the Expiry Date to the Extension Expiry Date. The Extension Expiry Date must be noted on the EAL Registry, and be kept on record for audit purposes.

On the Expiry Date, or the Extension Expiry Date, the EAL Register will automatically renew the Sales Agent's Approved Accreditation Status for a further 12 months (resetting the Expiry Date for a further 12 months), unless the Member advises that the Sales Agent has not passed the Formal Competence Assessment.

7.5 Development Accreditation Status

A Member must enter a Development Accreditation Status for a Sales Agent in the EAL Register:

- (1) if a Sales Agent with an Approved Accreditation Status is found not to have been meeting the EAL Standards in accordance with the Code of Practice and a period of re-training or development is assessed as being necessary;
- (2) within five Business Days of determining that the Sales Agent does not meet the EAL Standards.

The relevant training and development must be undertaken and a Formal Competence Assessment must be performed within ten Business Days of the Development Accreditation Status being entered for the Sales Agent. After that time, the Sales Agent must be given an Approved or Suspended Accreditation Status as the case may be.

7.6 Suspended Accreditation Status

Where a Member is of the reasonable belief that a Sales Agent has breached the EAL Standards in a way that may warrant Deregistration, the Member must enter a Suspended Accreditation Status for the Sales Agent in the EAL Register and that status will remain on the

EAL Register for the Sales Agent until the investigation of the Sales Agent's conduct is completed (**Suspension Period**).

The Member must inform the Sales Agent in writing that the Sales Agent's EAL Accreditation Status will be suspended pending the outcome of a thorough investigation (**Suspension Notice**). The Suspension Notice must contain:

- (1) details of the Sales Agent's right to appeal under the Complaints Process should suspension lead to a Deregistration Application; and
- (2) a direction that within 1 Business Day, the Sales Agent must cease to undertake Sales Activities on behalf of the Member, cease to use the EAL Logo when conducting Sales Activities and return any identification that displays the EAL Logo.

Wherever possible, and subject to a Member's documented disciplinary procedures, the Suspension Period should not be greater than 15 Business Days or until the Deregistration Application is finally determined.

If, at the end of the Suspension Period, there is found to be no issue regarding a Sales Agent's competence, the Sales Agent's Accreditation Status will be returned to the Accreditation Status which was registered immediately prior to their suspension and the details of the suspension will be removed from the EAL Register.

If, at the end of the Suspension Period, the Sales Agent is found to have failed to meet the EAL Standards in a way that warrants Deregistration, the Member must make an application to the Code Manager to Deregister the Sales Agent from the Registry in accordance with the Complaints Process.

7.7 Deregistration Accreditation Status

A Member who finds that a Sales Agent no longer meets the EAL Standards in a manner that cannot be remedied by re-training and development must, in accordance with the Member's internal procedures, make a Deregistration Application.

Deregistration from the Energy Assured Registry will usually occur after a Suspension Period. However if a serious breach of the EAL Standards has occurred there is no requirement that there first be a Suspension Period.

Where a Member lodges a Deregistration Application, the Member must send the Sales Agent a notice in writing (by recorded delivery) that the Member has made a Deregistration Application (**Deregistration Notice**). The Deregistration Notice must contain:

- (1) details of the Sales Agent's right to appeal under the Complaints Process; and
- (2) a direction that within 1 Business Day, the Sales Agent must cease to undertake Sales Activities on behalf of the Member, cease to use the EAL Logo when conducting Sales Activities and return any identification that displays the EAL Logo.

The Code Manager will review the Deregistration Application and administer any resulting Deregistration in accordance with the Complaints Process.

7.8 Inactive/Active Accreditation Status

A Member must enter an Inactive Accreditation Status for a Sales Agent in the EAL Register where the Sales Agent has an Approved Accreditation Status but has temporarily ceased Sales Activities on behalf of a Member (but has not left the Member). The Member must update the EAL Register to reflect the change in the Sales Agent's Accreditation Status within 5 Business Days of the Sales Agent being deemed "Inactive".

If a Sales Agent's Accreditation is Inactive for more than 3 months, the Sales Agent's Accreditation Status will be automatically changed to Leaver.

During any period that the Sales Agent has an Inactive Accreditation Status, the Member must not allow the Sales Agent's SIDN to be used and must maintain any of the Sales Agent's collateral displaying the Energy Assured Logo at its premises.

A Member may enter an Active Accreditation Status for a Sales Agent where the Sales Agent has an Inactive Accreditation Status and wishes to re-commence Sales Activities on behalf of the Member. The Member must update the EAL Register to reflect the change in the Sales Agent's Accreditation Status within 15 Business Days of the Sales Agent returning from leave. During the Active Accreditation Status period the Sales Agent must undertake Sales Activities under supervision of an Experienced Sales Agent until deemed competent to resume Sales Activities under an "Approved Status" after completing an On-job Assessment.

An Active or Inactive Accreditation Status will expire 12 months from the Award Date, or the Extension Award Date applying to the Sales Agent's Approved Accreditation Status. If a Sales Agent has an Approved Accreditation Status for part of a 12 month period, an Active or Inactive Accreditation Status will form the remainder of the 12 month Accreditation Period.

On the Expiry Date, the EAL Register will automatically renew the Sales Agent's Active or Inactive Accreditation Status for a further 12 months (resetting the Expiry Date for a further 12 months), unless the Member advises that some other status is appropriate.

7.9 Leaver Accreditation Status

A Member must enter a Leaver Accreditation Status for a Sales Agent in the EAL Register where the Sales Agent leaves the employment or engagement of the Member or has had an "Inactive" Accreditation Status for more than 3 months. The Member must update the EAL Register to reflect the change in the Sales Agent's Accreditation Status within 5 Business Days of the Sales Agent no longer being engaged by the Member.

8 Registration Fees

- 8.1 A Member must pay a fee (**Registration Fee**) to EAL when the Sales Agent is first registered on the EAL Register (**Provisional Fee**) and when the Sales Agent attains an Approved Accreditation Status (**Approved Fee**).
- 8.2 A Provisional Fee is payable in relation to a Sales Agent 6 days from the Start Date. Should the Sales Agent no longer be employed by the Member on that date, the Member should remove the Sales Agent from the EAL Register, and no Provisional Fee will be incurred.
- 8.3 An Approved Fee is payable in relation to a Sales Agent on the Award Date, or the Extension Award Date (as applicable).
- 8.4 An Approved Fee is also payable every 12 months on the Expiry Date or Extension Expiry Date (as applicable), to maintain a Sales Agent's Approved, Active or Inactive Accreditation Status.
- 8.5 Registration Fees will be collated and forwarded to the Member in electronic format for payment (**Batch Bill**) on the same date each month (**Batch Date**). A Member must pay a Batch Bill within 14 days of the Batch Date. The Batch Bill will be based on all Provisional and Approved Fees due for the month preceding the Batch Date. The Batch Date will be agreed to between the Member and the Code Manager.
- 8.6 Registration Fees will be determined by the Board of EAL and will be set for a period of six months.

Recruitment, Training and Competence

9 Recruitment

- 9.1 Members may only engage Sales Agents that have:

- (1) sufficient knowledge and skills;
- (2) sufficient previous relevant experience and training with supporting references; and
- (3) an appropriate demeanour and present themselves in a respectable manner,

to enable them to suitably perform the role of a Sales Agent, noting the important role that Sales Agents play as the 'public face' of the industry.

9.2 Members may only engage Sales Agents that have:

- (1) passed a 100-point identification check in accordance with Annexure A;
- (2) provided relevant Details and consented to the use of those Details for the EAL Registry;
- (3) provided proof of address; and
- (4) passed a criminal history check.

9.3 A record must be kept in the Sales Agent's HR file that provides consent for the criminal history check, the date the check was requested, the report, and any subsequent action taken as a result of the report, subject to the Member's Recruitment Policy.

9.4 When a Sales Agent has previously been listed on the EAL Register and has provided an SIDN, the Member must obtain the consent of the Sales Agent to review the Agent's Accreditation Status history in the EAL Register and may contact the EAL Member that previously engaged the Sales Agents for reference purposes. Where a Sales Agents has not previously been registered on the EAL Register, the Member must obtain appropriate references in accordance with the Member's internal recruitment policies.

9.5 Members must keep a record of the satisfaction of all background checks and eligibility checks on the Sales Agent's file.

9.6 If a Sales Agent ceases to represent the Member, a copy of his or her record must be retained by the Member for a minimum of 12 months.

10 Training

10.1 All new Sales Agents must undergo:

- (1) Off-job Training; and
- (2) On-job Training under the supervision of an Experienced Individual, whilst on an Accreditation Status of Provisional.

10.2 For the purposes of clause 10.1(2) an Experienced Individual must be registered within the EAL Registry as an Experienced Individual and at the time of conducting the supervision have:

- (1) an Approved Accreditation Status under the EAL Register;
- (2) not had a breach of the EAL Standards registered against their performance in last 12 months in the Competence Register Record; and
- (3) been provided with training to effectively supervise new Sales Agents under the EAL Standards.

10.3 Members must ensure that the outcomes of the Off-job Training and On-job Training are clearly documented to ensure consistency in the training methodologies used.

- 10.4 Off-job Training can be run in conjunction with On-job Training as long as the new Sales Agents do not meet with consumers unsupervised until they have passed an Off-job Assessment.
- 10.5 Whilst it is the responsibility of the Member to ensure that Sales Agents are trained appropriately to standards that meet the requirements of Applicable Laws, there are a number of minimum requirements that must be covered in Off-job Training as set out in the Code of Practice.
- 10.6 Each new Sales Agent must complete a written assessment that demonstrates that the Sales Agent has successfully attended and understood the Member's Off-job Training (**Off-job Assessment**). The Member must keep the Off-job Assessment in the Sales Agent's file, signed and dated by the Sales Agent and the trainer that conducted the Off-job Training.
- 10.7 During On-job Training, the new Sales Agent must demonstrate the ability to perform to the EAL Standards as determined by the Member, including demonstrating the ability to promote and sell the product. The Sales Agent must be assessed on their performance (**On-job Assessment**) based on the sample provided in Annexure B and in accordance with Annexure D. The Member must keep the On-job Assessment in the Sales Agent's file, signed and dated by the Sales Agent and the Sales Agent that conducted the On-job Training.
- 10.8 Prior to obtaining an Accreditation Status of Approved, the new Sales Agent must demonstrate that they are competent in and can consistently meet all of the EAL Standards by completing a formal competency assessment. The Formal Competency Assessment:
- (1) must be based on the sample provided in Annexure B;
 - (2) must be in accordance with Annexure D;
 - (3) must be administered by an Assessor who must observe the Sales Agent directly and consider other key performance evidence as determined by the Member; and
 - (4) cannot be completed until the Sales Agent has successfully completed the On-job Assessment and Off-job Assessment.
- 10.9 For the purposes of clause 10.8 (3), an Assessor must be registered as an Approved Assessor within the EAL Register at the time of conducting the supervision and have:
- (1) worked for the member for not less than three months;
 - (2) an Approved Accreditation Status under the EAL Register;
 - (3) not had a breach of the EAL Standards registered against their performance under the Competence Records Register in last 12 months; and
 - (4) been provided with training to effectively assess new Sales Agents under the EAL Standards,
- or have been engaged externally by the Member to perform the role of Assessor and have received appropriate training to perform assessments on Sales Agents under the Energy Assured Standards.
- 10.10 Members must ensure that they have policies and procedures in place that detail what is involved in conducting a Formal Competency Assessment on a Sales Agent.
- 10.11 Stages of Accreditation in the first 4 weeks

Training/Assessment Outcome	Accreditation Status	Sales Agent Privileges
Completion of Off-job Training	Provisional	If passed "Off-job Assessment" can commence On-job Training

Commencement of On-job Training	Provisional	Must be accompanied by an Experienced Individual when visiting consumers.
Commencement On-job Training	Provisional	When deemed competent and passed "On-job Assessment" can visit consumers unsupervised, however with ongoing support
Formal Competency Assessment (within 4 weeks)	Approved	When deemed competent and reviewed by qualified Assessor under a "Formal Competency Assessment", may visit consumers alone with normal supervision
Assessments demonstrate Sales Agent has not been operating to the EAL Standards	Withdrawn for serious or persistent Sales Complaints or misconduct, or Changed back to Development if was at Approved	See clause 7.

11 Annual Competence Assessment

In addition to the training and assessment that must be undertaken by a new Sales Agent in accordance with clause 10, Members must ensure that they conduct

a Formal Competency Assessment on Sales Agents with an Approved Status each year before the Expiry Date (**Annual Competence Assessment Process**).

- 11.1 The Annual Competence Assessment Process will be reviewed by the Compliance Manager whose role is set out in Annexure C to ensure that it is carried out against the EAL Standards.
- 11.2 The Code Auditor will review the Annual Competence Assessment Process to ensure consistency across all Members.
- 11.3 The Code Manager retains the right to visit Members in order to verify that appropriate measures are being taken in respect of the Annual Competence Assessment Process.
- 11.4 Roles & responsibilities of individuals involved in the Annual Competence Assessment Process are set out in Annexure C.
- 11.5 Members must ensure that they keep a record of Sales Agent assessments, including results of the Formal Competency Assessment and the date by which the next Formal Competency Assessment must be administered.
- 11.6 Members must:
- (1) appoint and train their Assessors/Experienced Individuals and keep records of those appointments and training;
 - (2) ensure that for all assessments conducted on Sales Agents that a record of which Assessor/Experienced Individual conducted the assessment is maintained;
 - (3) demonstrate to the Compliance Manager that the Member has adequate internal control processes to monitor the quality and consistency of the work of Assessors/Experienced Individuals including:
 - (a) sampling the assessments of Assessors/Experienced Individuals to ensure consistency and quality in assessments conducted;

- (b) ensuring up to date records of internal verification and sampling activity are maintained and these are available for audit purposes;
 - (c) ensuring that Assessors/Experienced Individuals remain competent to assess and are provided with information and guidance to ensure that they understand their responsibilities under the Energy Assured Standards and are provided guidance on the Sales Complaint Handling Process;
 - (d) ensuring that all assessment forms are signed by both the Sales Agent and the Assessor/Experienced Individual performing the assessment; and
 - (e) where a failure in an assessment is identified, have in place procedures to review previous assessments done by the Assessor/Experienced Individual where the failure has been identified, and if required conduct reassessments of any suspect historical assessments.
- (4) where an Assessor/Experienced Individual has breached their responsibilities in ensuring Sales Agents are competently assessed under the EAL Standards, have procedures in place to ensure that corrective action is taken, which may include Deregistration.

Dictionary

12 Definitions

12.1 In this Guideline:

- (1) **Accreditation Status** means one of the levels of accreditation that may be attained by a Sales Agent as set out in clause 7;
- (2) **Applicable Law** means all rules, regulations, codes, statutes, guidelines, licences, legislation, orders in council, tariffs, proclamations, directions or standards that relate to the marketing, sale and supply of energy;
- (3) **Business Day** means a day that is not a Saturday, Sunday or public holiday in jurisdiction in which the Sales Agent conducts Sales Activities;
- (4) **Code Auditor** means an independent body (which will be a reputable firm of auditors) engaged by EAL to review Member compliance with the Code;
- (5) **Code Manager** means the individual appointed by EAL to carry out the day to day administration and management of the Code whose role is set out in the Code;
- (6) **Code** means this Code of Practice and any documents incorporated in it, including the Complaints Process and this Procedures Guideline;
- (7) **Code Panel** means the panel of four people who are independent of the EAL, the Code Manager and the Members whose role is set out in the Code;
- (8) **Competence Assessment Process** means controls, processes and systems that enable the assessment of the competency of Sales Agents to comply with the EAL Standards;
- (9) **Competence Records Register** means the record that is used to measure Levels of breaches that are recorded against a Sales Agent under clause 16 of the Code of Practice;
- (10) **Complaints Process** means the EAL Complaints Process that sets out the process for accepting, investigating and assessing complaints made against Sales Agents and Members in relation to their compliance with the Code and the sanctions that can be imposed for non-compliance with the Code. The Complaints Process is separate to

the Sales Complaint Handling Process operated by an Energy Retailer to handle Sales Complaints about Sales Agents;

- (11) **Compliance Audit** means a formalised audit conducted by the Code Auditor on individual Member compliance with the Code;
- (12) **Deregistration Application** means an application made to the Code Manager requesting that a Sales Agent be deregistered from the EAL Register;
- (13) **EAL** means Energy Assured Limited;
- (14) **EAL Logo** means the EAL logo that demonstrates that the Sales Agent complies with this Code;
- (15) **EAL Register** means the database register of Sales Agents accredited under the EAL Scheme which is administered and monitored by EAL;
- (16) **EAL Scheme** means the training and accreditation scheme for Sales Agents;
- (17) **EAL Standards** means the standards for the conduct of Sales Activities as set out in the Code;
- (18) **Energy Marketer** means a company that engages in Sales Activities on behalf of Energy Retailers;
- (19) **Energy Retailer** means an entity that holds a valid licence or similar authorisation, issued by the relevant government regulator, to retail electricity and/or gas in the State or Territory to which the retail licence relates.
- (20) **Formal Competency Assessment** means an assessment of the competency of the Sales Agent to comply with the EAL Standards that must be undertaken by a Sales Agent before they can achieve or maintained an Accreditation Status that enables them to conduct Sales Activities unsupervised;
- (21) **Member** means an Energy Retailer or Energy Marketer that has signed the EAL Constitution and in doing so, agreed to adhere to this Code;
- (22) **Off-job Training** means a classroom-based Sales Agent induction program which should be conducted in a formal environment by an individual that is qualified to provide such training;
- (23) **On-job Training** means field training undertaken by a Sales Agent under the supervision of an experienced Sales Agent;
- (24) **Sales Activities** means the face-to-face marketing of energy supply to consumers;
- (25) **Sales Agent** means any individual authorised by a Member who solely represents a Member (and/or a Member's associated companies) for the purposes of engaging in Sales Activities where the principal function of such individual is to market energy supply alone or energy supply and other domestic utility services to domestic consumers;
- (26) **Sales Complaint** means a complaint made by a consumer, energy Ombudsman, relevant regulator, government agency or other interested party about a Sales Agent's Sales Activities;
- (27) **Sales Complaint Handling Process** means the process for handling Sales Complaints established by an Energy Retailer under the Code;
- (28) **Sanction** means disciplinary action or any other sanction imposed on a Member under the Complaints Process; and

- (29) **SIDN** means Sales Agent Identification Number allocated to a Sales Agent when they are first registered on the EAL Register.

Annexure A

100-point identification check

IDENTIFICATION	SCORE	TICK
Primary		
Passport – a current passport or expired passport (can be expired maximum of two years, but not cancelled)	70	
Citizenship certificate – or certified copy	70	
Birth Extract/Birth certificate – or certified copy	70	
Secondary		
Licence issued under an Australian State law (e.g. Drivers licence)	40	
Identification Card issued under an Australian State Law (e.g. Proof of Age)	40	
Employment ID		
<ul style="list-style-type: none"> ID card issued by employer (name & address) 	35	
<ul style="list-style-type: none"> ID card issued by employer (name only) 	25	
Letter from employer (within last two years)		
<ul style="list-style-type: none"> Confirming name and address 	35	
Student ID Card (Tertiary)		
<ul style="list-style-type: none"> Must contain a photo and/or signature 	40	
Rates Notice	25	
Credit/debit cards/passbooks (only one per institution)	25	
Medicare Card (signature not required)	25	
Membership card (club, union or trade, professional bodies)	25	
Foreign Driver License (name & signature)	25	
Records of a public utility – phone, water, gas or electricity bill (must have name & address)	25	
Rent receipt from a licensed real estate agent	25	
Recent arrival in Australia– Valid Passport	100	
TOTAL		

Annexure B

On-job Assessment Form (Sample)

Sales Agent	Name	Energy Assured ID Number	
	Date of Assessment	Date of previous Assessment	

Assessor	Name	Energy Assured ID Number	
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Personal Preparation	Appearance	YES	NO
	ID card visible and in good condition	YES	NO
	Sales presenter up to date and complete	YES	NO
	Walk sheet understood and current	YES	NO
Out in the field	Uses walk sheet (or equivalent) accurately	YES	NO
	Respects "no sales callers" signs	YES	NO
	Respects property and OH&S obligations	YES	NO
Approach to Consumer	States name	YES	NO
	Presents ID	YES	NO
	States purpose of visit	YES	NO
	States name of Company (Member) they represent	YES	NO
	Established is decision maker	YES	NO
Presentation	Uses presenter during sales pitch	YES	NO
	Carries out accurate price comparisons	YES	NO
	Correct feature of the product is given (inclusive of eligibility for concessions, rebates or grants)	YES	NO
	Does not use cooling off as a sales pitch	YES	NO

	Does not provide false, derogatory or misleading statements	YES	NO
	Recognises when to end visit	YES	NO
Sales Agent behaviours	Courteous & Professional	YES	NO
	Does not exaggerate or use high pressure techniques	YES	NO
	Takes into account ethnicity/diversity	YES	NO
	Recognises and respects a vulnerable situation	YES	NO
	Ensure understands that they are switching retailers	YES	NO
Contract	Leaves a copy of the contract & right to cancel notice	YES	NO
	Leaves welcome pack inclusive of complaints procedure	YES	NO
	Leaves pricing form	YES	NO
	Leaves written acknowledgement & price fact sheet where required	YES	NO
	Leaves contact details	YES	NO
Contract administration	All boxes filled in correctly	YES	NO
	Signed and dated by	YES	NO
	Signed by agent with ID number easily displayed	YES	NO
Other	Understands complaints & levels raised against them	YES	NO
	Displays behaviours that addresses the complaint	YES	NO
	Sales Agent Cancellation Rate within average benchmark	YES	NO
	Other Key Performance Indicator's	YES	NO

Annexure C

Roles and Responsibilities

Role	Appointed by	Responsibilities within the Assessment & Monitoring Process
Code Auditor	EAL	<ul style="list-style-type: none"> Independent annual Compliance Audit done on Energy Retailers, to ascertain whether the Licensed Retailer, and the Energy Marketer they use, meet the EAL Standards
Energy Assured Compliance Manager	Energy Retailer	<ul style="list-style-type: none"> Oversees the operation of the EAL Scheme and fully understands the Members' obligations under the Code and Guideline Ensures that the Energy Market used by, that they may use, adheres to the Energy Assured Code and Guideline Ensures that all systems and procedures are open to the scrutiny of the Code Auditor and Code Manager as requested and within the prescribed time frames Ensures compliance under the Code and Guidelines by ensuring that: <ol style="list-style-type: none"> Sales Agents are recruited as determined in accordance with the Code and Guideline; appropriate measures are adopted to ensure that Sales Agents are competent under the EAL Standards; the registration process is being followed; Sales Agents are properly assessed under the Formal and Annual Competence Assessment issues are monitored as determined in the Sales Complaints Handling Process and the Competence Register that there is appropriate documentation, systems and processes to meet these requirements. Responsible for applications to Code Manager for deregistration of Sales Agent. Provides Compliance Reports to Code Manager. Liaises with Code Manager.
Member Operations Manager	Member	<ul style="list-style-type: none"> Providing assistance and support to Assessors Providing information that supports application for change in Accreditation Status of the Sales Agent Ensuring Assessors are accurately interpreting the EAL Standards and have the systems in place that identify discrepancy with interpretations Monitoring that all assessments are fair, valid, qualitative and reliable Liaising with the Compliance Manager Monitoring the EAL Registry, the Sales Complaint Handling Process and the Competence Register Ensuring that all relevant information is provided to the Assessors to facilitate an appropriate assessment of a Sales Agent. Ensuring that it has appropriate systems, procedures & documentations in place that meet requirements under the Code and Guideline.

		<ul style="list-style-type: none"> • Maintaining accurate and verifiable Sales Agent assessment and achievement central records as required by the Code and Guideline for all Off-Job, On-Job and Formal Competency Assessments. • Approving changes in Accreditation Status's of Sales Agents and responsibility for ensuring Authorised Users update the EAL Register as required
Assessor	Member	<ul style="list-style-type: none"> • Administers Formal Competency Assessment on Sales Agents. • Depending on outcome of assessment, make recommendations of training needs of Sales Agent and/or a change in Accreditation Status in the EAL Register as required by the Member's Operation Manager • Assessing evidence of Sales Agent competence against the EAL Standards • Is independent to the Sales Agent and their team leader
Experienced Individual	Member	<ul style="list-style-type: none"> • Delivery of On-job Assessment on new Sales Agents, prior to new Sales Agent being allowed to visit s unaccompanied • Providing accurate and verifiable On-job Assessment and achievement records to the Operations Manager
Authorised User	Member	<ul style="list-style-type: none"> • Dependent on level of access can <ul style="list-style-type: none"> ○ Search Agents ○ Amend Agents ○ Create Agents ○ Run Reports • Sole individual allowed to search and change the Accreditation Status of a Sales Agent in the Energy Assured Registry being <ul style="list-style-type: none"> ○ Provisional ○ Approved ○ Inactive ○ Active ○ Leaver ○ Suspended ○ Development

Annexure D

On-job and Formal Competency Assessment

On-job Assessment	
<p>Visit by Sales Agent to s accompanied by Experienced Individual The Sales Agent must clearly understand the standards he/she is to be assessed against and the way in which he/she is going to be informally assessed</p>	<p>Sample of what may be used:</p> <ul style="list-style-type: none"> • Experienced Individual to ensure new Sales Agent understands the requirements under the On-job Competence Assessment • Experienced Individual ensures that the new Sales Agent understands how the EAL Accreditation Status works and under what circumstances it may be changed • Experienced Individual to ensure that the new Sales Agent is aware of the EAL Standards and how they are going to be assessed in the future • Experienced Individual to conduct an On-job Assessment on the new Sales Agent
Formal Competency Assessment	
<p>Stage 1 Prepare for the Assessment (Sales Agent and Assessor) The Sales Agent must clearly understand the standards he/she is to be assessed against and the way in which he/she is going to be Formally assessed</p>	<p>Sample Questions that may be asked</p> <ul style="list-style-type: none"> • Are you aware of the purpose of this Assessment? • Can you explain the various levels of Accreditation Status and under what circumstances can the Accreditation Status be Deregistration? • Have you read the Energy Assured Code and do you understand it? • Can you describe some of the EAL Standards and how you can be in breach of them? • When you were last accompanied by on a visit to a , by whom and what feedback did you receive? • Have you received any other feedback about your performance, e.g. from Sales complaints, audits etc... • What have you learnt from previous feedback and what have you changed? • Have you been informed about the disciplinary procedures and Complaints Process that applies to you if you breach the EAL Standards and do you understand your right's of appeal, if a change in Accreditation Status to Development or deregistration is being investigated
<p>Stage 2 Collecting the Evidence (Sales Agent & Assessor)</p>	<p>Responsibilities:</p> <ul style="list-style-type: none"> • Assessor to ensure he/she understands the Competence Monitoring & Assessment Process. • Assessor to gather any supplementary documentary evidence before the assessment (this will vary dependent on tenure of the Sales Agent) • Assessor to gather information as a result of the Competence Monitoring & Assessment Process • Assessor to gather results of Off-job Assessment and On-job Assessment of Sales Agent • Sales Agent to introduce the Assessor to s, but assure the that the Assessor is simply there as an observer. • Assessor to record activities on the Member's Formal Competency Assessment form
<p>Stage 3</p>	<ul style="list-style-type: none"> • Assessor to take into account achievements noted during observation

	<ul style="list-style-type: none">• Assessor to identify evidence that does not meet the requirements of the EAL Standards and to discuss the identified evidence with the Sales Agent and give feed back• Assessor to agree an action plan if necessary to undertake further training and record the agreed actions in writing.• Assessor to provide a written recommendation as to the Sales Agent's competence. Members are to ensure that they provide Sales Agents with a guide as to how this is to be determined. The Code Auditor and Code Manager will review these to ensure consistency across all Members• Assessor to inform the Sales Agent of the recommendation, inclusive a change in status if warranted, that all assessments are subject verification by the Operations Manager, and that if he/she disagrees with the assessment decision, he/she has a right to appeal under the Members Dispute Resolution Process.• Sales Agent to enter his/her comments in the appropriate section inclusive of how they felt with the process or the decision
Stage 4 Agent Verification Process (Energy Assured Responsible Person)	<ul style="list-style-type: none">• The Member's Operations Manager to ensure assessments have been appropriately and consistently carried out by the Assessors• Subject to the disciplinary procedures that apply to you under the Code, the Members Operations Manager to authorise any change in Accreditation Status in the EAL Register as an outcome of the assessment.