



24th May 2011

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

By email: richard.chadwick@acc.gov.au; neil.howes@acc.gov.au;
adjudication@acc.gov.au

Dear Mr Chadwick,

Energy Assured Limited (EAL) Applications for Authorisation A91258 & A91259 – interested party consultation to the amended application

Australian Power & Gas (APG) welcomes the opportunity to provide comments on the Energy Assured Limited (EAL) amended application for authorisation. At the outset we wish to raise our disappointment and concern regarding the ACCC Draft Determination denying authorisation for a voluntary Code of Practice applying to door to door sales.

Of particular concern is the view formed by the ACCC in denying authorisation that the proposed self-regulatory scheme (Scheme) will not provide a public benefit, and will likely add to public detriment.

APG strongly disagrees with this view formed by the ACCC.

In addition APG is deeply concerned by the comments and assertions made by the ACCC in its Draft Determination regarding its perceived view that there is an; *"inherent conflict of interest for energy retailers who employ and train sales agents and also directly benefit from sales agents sales"*.

Whilst retailers benefit from a successful sale, if a sale is non-compliant or results in a customer complaint retailers incur significant costs in managing and resolving the customer issue. Further if the non-compliance results in an Ombudsman complaint the cost to retailers can exceed several hundreds of dollars. These are direct costs incurred by the retailer.



Given the average margins from a residential customer (circa \$50) there is no incentive for retailers to tolerate non-compliant behaviour from its sales agents.

Retailers are totally aligned with acquiring customers through compliant activities. A compliant sale is the underlying principal of EAL. This is common across all retailers and marketers which is why industry support for the scheme is strong.

The assertion by the ACCC (regarding a perceived conflict of interest) is concerning given that it demonstrates a potential bias has pre-existed and influenced the ACCC decision making in assessing the application for authorisation.

Given this we are concerned with the ACCC ability to objectively base its assessment of the Scheme on the net public benefit "test" of the Scheme itself.

The establishment of the proposed Scheme and its objectives, in our view will provide significant public benefit. The Scheme is being established to work in conjunction with the existing regulatory framework and is not intended to replace the obligations that currently govern the activities of door to door selling.

The proposed Scheme will enhance the already comprehensive regulatory obligations that govern door to door selling. We would go further to say that the proposed Scheme will provide a greater level of consumer protection than currently exists.

The objectives of the Scheme are to enhance consumer confidence and benefit through;

- Establishing a central register of Sales Agents that have been accredited under the Scheme;
- Providing for a national Scheme that ensures Sales Agents are recruited, trained and assessed in a consistent manner across the industry;
- Providing for a national Scheme for the monitoring of door to door Sales Agents, where any proven breach of the Standards will result in disciplinary measures and can lead to deregistration from the register for 5 years;
- Providing for a Scheme which ensures that when a consumer complains about the conduct of a Sales Agent to the Standards that these are addressed and handled in a consistent manner by members;



- Introducing a regime of compliance to the Scheme ensuring that members are constantly and independently monitored through monthly reports and annual compliance audits; and
- Imposing sanctions on members that fail to comply with the requirements set out in the Scheme.

Given this we are at odds to understand how the ACCC can come to the conclusion that the Scheme will provide no public benefit.

As noted in our previous submission the establishment of a central register for Sales Agents that have been accredited under the Scheme and have been recruited trained and assessed in a consistent manner across the industry will provide significant benefit to consumers. Further the registration provides a platform for the monitoring and assessment of agents, this will ensure that agents employed by retailers conduct their activities in accordance with the enhanced obligations set out under the Scheme.

The registration system will ensure that agents who do not come up to standard or who wilfully conduct themselves in contravention of the required standard are deregistered. Therefor under the Scheme any such agent will no longer be able to operate in the market. This is a vast improvement on the current position where an agent (who is not up to standard) is free to move between retailers as under current arrangements there is no central register where retailers can obtain information regarding an agent's conduct or qualifications.

APG would respectfully point out that the inclusion of the Sales Agent Registry and its operation provides a mechanism that will result in a greater level of protection than is currently afforded customers under existing regulations.

This alone will provide significant public benefit and in no way could be viewed as likely to add to consumer detriment.

However not withstanding EAL having regard to the Draft Determination has reviewed the structure and operation of the Scheme and has made further changes / enhancements consistent with the ACCC recommendations contained in its Draft Determination.



These enhancements include;

- Greater rigor around the processes for disciplining and sanctioning of Sales Agents and EAL Members where non-compliances occur,
- Increased level of accountability on Members for the conduct of their Sales Agents,
- The adoption of best practice and applicable laws in the EAL Standards,
- Increased interaction, consultation with and reporting to stakeholders including key consumer groups, energy ombudsman and energy regulators,
- Greater improvement in the transparency of the Scheme along with the limiting of any discretionary aspect of the Scheme,
- Consideration of consumer awareness issues,
- Improvements to compliance and enforcement.

These enhancements further support our view that the Scheme provides significant public benefit.

APG fully supports the Scheme and we believe that the enhancements made to the Scheme following the ACCC Draft Decision further demonstrate the Scheme provides a significant public benefit and should receive authorisation from the ACCC.

APG would welcome the opportunity to further discuss our submission with the ACCC. Should you have any questions or would like additional information regarding our submission I may be contacted on (02) 8908 2714 or via email: sruddy@auspg.com.au

Yours Sincerely

Shaun Ruddy
Manager Regulatory & Compliance
Australian Power & Gas