



27 May 2011

Attn: Mr Neil Howes
Assistance Director
Adjudication Branch
Australian Competition & Consumer Commission
360 Elizabeth Street
Melbourne Vic 3000

By email: Neil.Howes@aer.gov.au

Dear Mr Howes,

Re: Energy Assured Limited: amendments to proposed scheme to self regulate door-to-door energy sales

Thank you for the opportunity to provide comment on the Australian Competition and Consumer Commission (ACCC)'s receipt of Energy Assured Limited (EAL)'s further amended proposal for self-regulation of door-to-door energy sales.

The proposal by EAL includes a Code of Practice, Procedures Guideline and Constitution (the Code). The Energy and Water Ombudsman (Victoria) (EWOV) notes that this Code will set out a self-regulatory framework for the conduct of door-to-door energy sales by electricity and gas retailers.

As an industry-based external dispute resolution scheme, EWOV provides alternative dispute resolution services to Victorian energy and water consumers by receiving, investigating and facilitating the resolution of complaints. EWOV's comments are based on our experience in dealing with marketing complaints that come to us after they have not been resolved between the customer and the retailer.

Benefits of the Proposed Self-Regulatory Framework

EWOV maintains that the Code is an opportunity to raise consumer confidence in energy retailer marketing practices. While EWOV maintains its support, we propose that the ACCC approves EAL's authorisation, subject to the following conditions, which will ensure greater customer protection.

Energy and Water Ombudsman
(Victoria) Limited
ABN 57 070 516 175
GPO Box 469
Melbourne VIC 3001

Administration
Melbourne VIC 3000
Telephone 03 8672 4460
Facsimile 03 8672 4461

Enquiries and Complaints
Freecall 1800 500 509
Freefax 1800 500 549
TIS 131 450
NRS 133 677
Email ewovinfo@ewov.com.au
Web www.ewov.com.au

C1 - Amendments to part six. This amendment should outline a new section which advises that ongoing six monthly public reporting will commence from 31 December 2011. This will provide all stakeholders (consumers, consumer groups, retailers, ombudsman schemes and regulators) with timely information on breaches and sanctions imposed.

The Code outlines under part six and section 9.6 the reporting methods, stating that there will be:

- monthly reporting for each energy retailer
- annual Compliance Audits
- an Annual Report.

However, EWOV notes that:

- any potential breach recorded in monthly reporting will be investigated by the Code Manager (section 26)
- the EAL Board, Members (retailers), the Code Panel and Stakeholder Working Group will be provided with a consolidated version of the Yearly Compliance Audits (section 9.7)
- the Energy Regulator will be provided with the Annual Report (section 24.6).

EWOV acknowledges that some stakeholders will be provided with information on potential breaches, but considers that this information needs to be made available to all stakeholders. Providing this information will:

- encourage compliance
- create a culture of openness and transparency
- ensure that the customer benefits are realised
- ensure that the Code is effectively enforced.

C2 - Amendments to part two section 4(d), and part three section 7.15. This amendment should state that information about EAL will be provided to all customers, irrespective of whether a customer agrees to a contract or requests such information. This information should be made available to all customers as soon as EAL's authorisation is approved.

EAL has advised, under its amended Code part two and three, that customers will be provided with information on EAL only on request or when entering into an energy supply contract. The Code also outlines how this information will be provided, stating that marketing material will be sent to customers via email or post, and will be displayed on the EAL and retailers' websites.

EWOV strongly believes that customers should not have to sign a contract or make a request to receive this information. Consumers may be unaware of this new Code and can experience marketing issues without signing a contract. EWOV believes detailed information, as outlined under section 9.5, should be provided to all customers with or without being requested. Additionally, this information should be provided in an easy-to-read format free of legal jargon. EWOV suggests this could be achieved through:

- pamphlets being provided to all customers who receive door-to-door marketing

- annual bill insertions (a leaflet) by all retailers
- details of EAL on one energy bill per year

C3 - Amendments to section 28.2, sanction three. This amendment should change the wording of the following breach example from:

'Statements that are intentionally misleading or deceptive in nature being made consistently in relation to a particular matter by *numerous* Sales Agents as opposed to being an isolated incident and reported to the Code Manager under clause 26.1 (3).'

to

Statements that are intentionally misleading or deceptive in nature being made consistently in relation to a particular matter by *one or more* Sales Agents as opposed to being an isolated incident and reported to the Code Manager under clause 26.1 (3).

EWOV is concerned that the original wording of the above breach example does not adequately describe a systemic issue. In EWOV's case handling procedures we define a systemic issue as *'an issue, problem or change in company policy or practice that affects, or has the potential to affect, a number of customers.'* As such, a systemic issue, in the case of marketing, can result from the conduct of a single sales agent which then potentially affects large numbers of customers. EWOV therefore considers that clarification to the breach example is required so that all types of systemic issues are actively identified, and appropriate action can be taken to prevent further complaints from arising.

These three conditions will help ensure that EAL's proposal for self-regulation provides the consumer benefits the Code intends.

We trust the above comments are helpful. If you require further information or have any queries, please contact Belinda Crivelli, Senior Research and Communications Officer on (03) 8672 4460.

Yours sincerely,



Fiona McLeod
Energy and Water Ombudsman (Victoria)