



FILE NOTE			
Matter name:	A91258 & A91259 – Energy Assured Limited authorisation		
ACCC parties:	Darrell Channing, Neil Howes		
TRACKIT No:	43916	Date/Time:	24 th May 2011, 11:30am
Other parties:	Chris Connolly		
Phone to	<input type="checkbox"/>	Phone from	<input checked="" type="checkbox"/>
Meeting	<input type="checkbox"/>	Other	<input type="checkbox"/>

Chris Connolly made the following oral submission in relation to the Energy Assured Limited application for authorisation (A91258 & A91259) as amended on 13 May 2011:

Chris believes it would be very unlikely that the revised scheme would have any positive impact on consumers and meet the objectives that it sets out to achieve.

In summary his key concerns with the revised code are:

- There is no complaints mechanism for consumers.
- The list of sanctions is complex and the sanctions themselves are weak.
- The overriding requirement for the code manager and code panel to consider the compliance costs to retailers in determining sanctions undermines the entire sanctions process (see Section 28.4 (3)).
- Structural incentives for sales agents such as sales agent commission have not been addressed in the scheme.
- There is no incentive for sales agents to provide information which is in the best interests of consumers.

Chris set out the following comments on specific parts of the scheme:

Objectives of the scheme

The objectives of the code are important because they cannot be changed once the code is implemented.

Clause 1.1

The code should also aim to “*prevent* improper conduct by sales agents”.

Clause 1.2(2)

The scheme should ensure that sales agents are recruited, trained and assessed in a consistent *and best practice* manner across the industry.

Clause 1.2(4)

The scheme should ensure that when a customer complains about the conduct of a sales agent that these are handled in a consistent *and best practice* manner by energy retailers.

The EAL Standards

There should be an explicit requirement for sales agents to leave immediately if only children are present for safety reasons.

Clause 4.1(7)

The requirement for sales agents to leave on request and cease contact with a consumer who clearly indicates that contact is inconvenient, unwelcome or inappropriate should also go in clause 6 (Ethical and Lawful Conduct).

Clause 5.1(1)

This clause should be moved to section 4 (Consumer Contact) as the sales agent should establish this before the point at which the customer is about to enter into a contract.

Clause 5.1.3(d)

This clause should include a requirement for the sales agent to provide information about a consumer's right to complain under the code.

Clause 5.1(3)(e)

There should also be requirements for agents to explain their conflict of interest, including clear information that:

- they are not independent
- they are not required to act in the interest of the consumer
- they are not providing independent advice
- any price comparisons that are provided may not include all products available from competitors
- any price comparisons that are provided may change during the contract period and are only accurate / relevant at the time of sale.

Clause 5.1(4)(d)

Sufficient copies of the code need to be provided to sales agents when they are undertaking sales activities.

Clause 6.2(2)

The examples in this clause should be expanded to include, for instance, providing misleading information about competitors' products and any endorsement by government. Alternatively the examples should be removed.

Clause 6.2(6)

It needs to be clear that contact should be ceased if the person is under 18 or has no capacity to engage with the sales agent.

Clause 7.5(1)

It should be clear that members cannot engage sales agents who are suspended, to prevent suspended agents from simply moving to a new employer.

Clause 7.14(1)

Sales agents should be provided with more than one version of the code to provide to consumers if necessary.

Role of Energy Assured Limited

Clause 9.1(1)

EAL should be a dispute resolution body.

Clauses 9.1(2) and (3)

Following from the view that EAL should be a dispute resolution body, EAL should not refer consumers that come to it. Consumer referrals will result in added complexity and hassle for consumers and they will not pursue their complaint. Consumers should receive appropriate assistance and resolution of their complaint directly from EAL.

Stakeholder Working Group

This group appears to be a code oversight committee in which case it should have an independent Chair, consumer representatives and the costs of the group should be met by EAL. Otherwise it is not clear what this group will actually do.

EAL Register

Chris is concerned that members will not be able to access the history of a sales agent's conduct. The Register should contain a comprehensive history of breaches and suspensions.

Clause 14.2 (Table)

Sales agents with a provisional or development status should only be able to undertake sales activities under 'direct in-person' supervision.

Sales agents should not be able to display the EAL logo when training unless it is clear on the logo that they are not fully trained.

Training

Clause 16.1(2)

The end of this clause should read "...where the sales agent is subject to 'direct in-person' supervision until the Formal Competency Assessment has occurred".

Clause 16.2(7)

This clause should be split into two separate clauses:

- privacy, and
- ethnicity and diversity.

Clause 16.2

Identifying authority to enter into a contract, and recognising and managing complaints should also be included in the list of training matters in clause 16.2.

Remuneration

Chris considers that the scheme should include a section on remuneration and incentives here and that this should include:

- a prohibition on inducements that are likely to lead to pressure selling
- a limit on commission only remuneration, and
- that a salary should be the main part of remuneration.

Sales complaints made about the conduct of sales agents

Clause 17.2

Already many referrals under the scheme so do not agree with this clause.

Clause 17.6

Should include the location of the complaint and this should be more specific than just the state. This will be helpful in monitoring miss-selling in specific suburbs or regions.

Competence monitoring

Clause 18.1

All sales agents are to have an annual formal competence assessment but 18.1(2) seems to contradict this.

Competence record register

Clause 19.2

Should include any breaches that have been established through complaints made to ombudsman schemes.

Levels of breaches of EAL Standards

Clause 20.4

Retailers should be required to review *at least* the previous five consumer contracts before and after the breach. Alternatively retailers should be required to review *an appropriate number of* consumer contracts. In cases of a serious breach or a situation where the agent admits that they “always do it that way” it will be necessary to review more than 5 contracts.

Clause 21.1 and 21.2

Chris does not understand the difference between these two clauses. If retraining is required then the sales agent’s status should be changed.

Monthly reporting

Clause 25.3(3)(6)

The location of a complaint should be more specific than the state in which the complaint was made. This will help identify locational problems.

Sanctions Process

Clause 28

The sanctions process does not make sense and is of no practical use. There should be a wider range of sanctions available to apply to sales agents and members. These could include for example: apologies to the consumer, re-wording of documentation, changes to training, changes to processes, cancelling the contract, compensation, putting conditions on the activities of a member or sales agent, and naming and shaming. Until this range and level of sanctions is available there will be no increased consumer confidence.

Clause 28.4(3)

As noted above this clause overrides the rest of the sanctions process and undermines this process. There is no similar requirement on the code manager to consider the damage that the breach might have had on the reputation of the industry or the impact on consumers of the breach.

Signature:		Date/Time:	24 May 2011 / 11:30am
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