



Department of Justice

Consumer Affairs Victoria

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Our ref: CD/11/226345

Mr Neil Howes
Assistant Director, Adjudication Branch
Australian Competition & Consumer Commission
360 Elizabeth Street
MELBOURNE VIC 3000

Dear Mr Howes

Request by Energy Assured Limited for approval to self-regulate door to door energy sales

Thank you for the opportunity to make a submission in response to Energy Assured Limited's (EAL) application to the ACCC for approval of its proposed scheme for the self-regulation of door to door energy sales. Please note that Consumer Affairs Victoria (CAV) does not require this submission to remain confidential.

CAV is generally concerned that the code does not achieve the objectives of a voluntary code of practice, which is to reflect best practice and go beyond the minimum requirements of the law. Furthermore, CAV is also concerned that the code will cause confusion amongst consumers if it fails to provide the same level of protection to consumers available under existing legislation.

In response to specific sections of the code, CAV notes the following:

Section 4.1 (7)

If the code is to go beyond legislative requirements, it could include a requirement for a sales agent to inform a consumer that, if asked to leave the consumer's premises, the sales agent cannot return for 30 days. This would notify consumers whether a sales agent has breached this requirement.

Section 5

As noted by the ACCC, information requirements within the code should at a minimum, meet requirements under the law. Section 5 of the code outlines requirements that the sales agent

must meet when entering into a contract. This section creates confusion around what, when and how information should be provided to consumers.

The information described in 5.1 (3) (a) - (e) is information that a consumer should be made aware of before entering into an agreement. The phrase used in 5.1 (3) of the code "or as soon as practicable" is therefore problematic.

This phrase also creates confusion when read alongside section 5.1 (4) of the code. Section 5.1 (4) deals with documentation that must be provided to a consumer and notes that sales agents must provide any material in accordance with legislation and that documentation may include details outlined in section 5.1 (3) of the code.

To be compliant with section 5.1(4) of the code and meet ACL requirements regarding the provision of documentation to consumers, agents would have to provide documentation that sets out information such as price immediately after an agreement is entered into. This causes confusion when read in conjunction with the phrase "or as soon as practicable" used in section 5.1 (3).

Section 18

Ongoing monitoring and compliance activities may be annoying and disruptive for consumers, particularly consumers who do not enter into contracts or vulnerable and disadvantaged consumers.

Consumers should be made aware at the outset that they might be contacted in future for compliance exercises. Consumers should also be given the choice of opting out of future compliance activities.

Section 20

This section discusses EAL standards and potential breaches. Some of the examples given would be a clear breach of the legislation. However, this section potentially causes confusion for consumers as it might imply that certain behaviour by agents is a breach of the code, but does not alert them to the fact it is also a breach of the law. This should be clarified.

This section also notes that energy retailers must conduct a review (which includes examining the five sales made before and after the incident in question by the sales agent) and, where applicable, provide a report to regulators.

The term "where applicable" is too broad and implies retailers can use discretion when it comes to reporting breaches of the legislation. This seems to be in conflict with the broad aim of the code of improving sales agents' compliance with existing legislation. Furthermore, waiting for a review to be completed before reporting serious breaches of the law, such as fraud, is inappropriate.

For the purposes of sanctions, section 20 of the code distinguishes between a sales agent providing false or misleading information by mistake as opposed to intentionally. The ACL makes no such distinction when it comes to a trader providing false or misleading information. The distinction the code creates may cause confusion for consumers, particularly when it comes to understanding the sort of behaviour they should expect from sales agents and,

furthermore, what their rights and options for recourse are when an agent engages in false or misleading behaviour.

CAV supports efforts by industry to improve compliance with existing legislation within the door-to-door sales industry. In this respect, aspects of EAL's proposed scheme, including a register of sales agents, could offer real benefits to consumers if they helped to prevent unscrupulous sales agents from operating within the industry.

Yours sincerely



Dr Claire Noone

Director

Consumer Affairs Victoria