

Ramy,

We are writing in response to your letter dated 13 May 2011 containing the revised Energy Assured Limited (EAL) scheme to self regulate door to door energy sales.

As discussed this afternoon, the ACCC would appreciate any further information or views from EAL on the following issues.

#### **Information to consumers**

In the draft determination the ACCC considered that sales agents should be required to provide all consumers door knocked with the member's contact number. The ACCC considered that this would facilitate the making of a complaint in the event that a consumers' experience with a sales agent representing an energy retailer is not compliant with the code.

- Clause 7.14(3) of the revised code requires sales agents to provide EAL marketing material about the code when the consumer enters into a contract or on request from the consumer.
- Clause 4.1(4) of the revised code requires sales agents to produce an identity card which must include the name, address and contact details of the energy retailer as well as other information.
- Clause 4.1(9) of the revised code requires sales agents to explain that if the consumer is not happy with the way they have been dealt with, they can contact the retailer or energy ombudsman to make a complaint.
- The requirement to provide a consumer with the members contact number to a consumer on request has been removed from the revised version of the code.

The ACCC considers that all consumers that express an interest in entering into a contract with a sales agent, but who decide not to, should be provided with a copy of the retailer's contact details as to facilitate the making of a complaint in the event that a consumers' experience with a sales agent representing an energy retailer is not compliant with the code.

***Q. How will EAL ensure that sales agents provide a copy of the contact details of the energy retailer to all consumers that express an interest in entering into a contract?***

#### **Sanctions on sales agents**

In the draft determination the ACCC suggested that providing false information about termination fees or promising discounts that do not apply was misleading and deceptive conduct that would contravene a series of consumer protection laws. The ACCC therefore considered that this conduct should warrant a level 3 breach and not a level 2 breach as set out in the scheme.

The revised scheme clarifies that a level 2 breach will be imposed on a sales agent that provides false information about termination fees or promising discounts that do not apply by mistake. Intentional misleading and deceptive conduct will result in a level 3 breach .

***Q. Given that the Australian Consumer Law makes no distinction between providing false or misleading information by mistake, as opposed to intentionally, please explain why this type of conduct should be regarded as a level 2 breach and not a level 3 breach?***

### **Limitations on who can make a complaint about members under the scheme**

In the draft determination the ACCC raised a concern that consumers and, in particular, consumer groups were prevented from complaining to EAL about a member under the scheme. The ACCC noted that consumer groups are well placed to identify systemic problems with a member's compliance.

Consumer groups are now allowed to make a complaint to EAL about a member under the scheme. However, consumers themselves cannot.

In its response EAL argues that providing consumers with an additional avenue of complaint will create confusion for consumers. In addition, it argues that consumer complaints made to the energy retailer under the sales complaint handling process will become known to EAL through monthly report and audit processes. Further, it argues that consumers may also complain to the energy ombudsman or relevant energy regulator who can make a complaint to EAL about a member.

***Q. Can the code be more explicit that individual consumers can complain to the ombudsman or relevant regulator who can then raise a complaint about a member under the scheme?***

### **Rigour of sanctions on members**

In the draft determination the ACCC raised concerns about the rigour of the sanctions to be imposed on members noting that the public will only be informed about a sanction if a level 5 or level 6 sanction has been imposed.

EAL has revised the sanctions that may be imposed on members for breaches of the code. In addition to changes to the type of sanction to be imposed on members at each level the revised scheme allows for greater reporting of member sanctions to the EAL board, energy ombudsmen and the relevant energy regulator. The public will continue to only be informed about a sanction if a level 5 or level 6 sanction has been imposed.

The ACCC welcomes the improvements in transparency around the reporting of sanctions.

***Q. Is there any scope for the scheme to include public reporting on sanctions below Level 5?***

### **Public reporting on compliance**

In the draft determination the ACCC raised concerns about the transparency of information that will be reported on compliance with the scheme.

The revised scheme provides for:

- An annual public report
- Monthly retailer reports to the code manager - these will not be accessible more broadly
- A detailed audit report - this will be provided to the energy retailer concerned, the relevant energy regulator and the code manager
- A consolidated report on the results of all compliance audits on retailers - this will be provided to the EAL Board, Members, the Code Panel, and at the next scheduled

Stakeholder Working Group (it is not clear whether this report will identify individual members)

The ACCC welcomes the increased transparency of reporting on compliance particularly in relation to the results of the audits. However, the ACCC has concerns that key stakeholders such as the relevant energy regulator and energy ombudsman will be only provided with information on compliance annually.

***Q. Please advise whether EAL could report more frequently on compliance with the code to the relevant energy regulator and the energy ombudsman?***

Also, please find attached a table with some additional issues for your consideration.

If you have any queries then please do not hesitate to contact me.

Regards,

**Neil Howes**

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Section/Clause	Comments
1.2(6)	Suggest that the word 'further' be removed.
EAL Procedures Guideline	Should 'maintainance' be 'maintaining'?
Code Supplements Existing Regulatory Regime	This section refers to 'jurisdictional regulators' only.
4.1(5)	Would this go better with 4.1(3)?
4.1(7)	Suggest dividing this clause into two. The first half of the clause should start by stipulating when this information is to be provided i.e. '...as soon as practicable and in any event before starting to negotiate' as per the ACL. The second part of this clause should refer to applicable laws (see s.75 of the ACL).
5.1(3)(b)-(d)	Should there be a requiremet to provide information on the customers obligations with respect to electronic transfers as per the National Energy Retail Rules.
5.1(4)(b)	Sales agents no longer required to provide SIDN. Is this because the full name and company ID is sufficient?
7.16	Should marketing material be consistent with laws i.e. should this sentence be constructed the other way around?
9.4 (2)	Marketing material used by "sales agents" (not members)?
9.4(4)	This clause implies that members may develop their own marketing material on the code which contradicts clause 9.4(2). Please confirm that EAL will provide marketing material that will be used by members to promote the code as per clause 9.4(2). Also, are the clause references correct in this clause?
9.5(8)	The members of EAL were not included in the 'draft flyer' of the EAL marketing material provided to the ACCC on 17 March 2011. Please confirm whether EAL intend for this information to be included in the EAL marketing material.
11.2	As identified by EAL by way of a telephone call to the ACCC the second sentence in this clause should start 'EAL and the Code Panel...'
11.3	"The notice of invitation"
12.1(3)	"consumer advocacy ...". And this should be defined such that it does not unintentionally exclude certain groups.
12.6	<i>A member or members of the code panel</i> will hear appeals against sanctions on members and sales agents in accordance with clauses 29 and 30.
14.(2) table	Can 'experienced sales agent' be defined in the dictionary in the code?
18.2	Query whether it is appropriate to call this process independent given that the retailer can still conduct this process.
18.3	Is 'mystery shopping' the correct term here?
27.3	Not clear who this obligation is imposed on.
Dictionary	
EAL scheme	This term does not appear to be used in the scheme and could potentially be confusing given that the word scheme is used elsewhere in the code
Annex A	Suggest removing ' <i>public detriment of the EAL scheme</i> '
Annex B	Doesn't mention that the code manager or code panel (as the case may be) has to take into account costs of compliance for members etc as per clause 28.4(3).