

10 January 2011

Dr Richard Chadwick  
General Manager Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
Canberra ACT 2601

By email: [adjudication@accc.gov.au](mailto:adjudication@accc.gov.au)

Dear Dr Chadwick,

**Energy Assured Limited Applications for Authorisation A91258 & 91259 – interested party submissions**

The Consumer Utilities Advocacy Centre Ltd (CUAC) is an independent consumer advocacy organisation. It was established to ensure the representation of Victorian consumers in policy and regulatory debates on electricity, gas and water. In informing these debates, CUAC monitors grass roots consumer utilities issues with particular regard to low income, disadvantaged and rural consumers.

CUAC responded to the ACCC's call for submissions on Energy Assured Limited ("EAL") Applications A91258 and A91259 ("Applications") on 23 November 2010. We note that EAL has since provided further information in their letter to the ACCC dated 21 December 2010 ("EAL's Response to ACCC Questions"), and the ACCC will be providing a draft determination in January/February 2011.

While we reserve our rights to respond to the draft determination, there is one matter which we would like to raise with the ACCC before issuance of the draft determination. It is regarding the lack of consultation on the EAL Code of Practice. We raised this in our submission on 23 November 2010. However, this requires further comment in view of EAL's Response to ACCC Questions (page 11).

There is a clear distinction between engaging consumers in a consultation process towards the development of a code of practice and being presented with a completed code of practice. This is evident from the ACCC's Guidelines for developing effective

voluntary industry codes of conduct (February 2005) (“ACCC Guideline”). According to the ACCC Guideline, one of the “important steps” an industry should take *before* drafting or reviewing an industry code of conduct is:

identifying and consulting with the relevant stakeholder groups within the industry, consumer affairs agencies and relevant user, consumer and public interest groups—this will assist in identifying and gaining an understanding of the problems that the code should address.<sup>1</sup>

The ACCC Guideline refers to the contributions which consumers make towards “the *development* of business to consumer codes, code administration and consumer dispute resolution schemes.”<sup>2</sup>

As mentioned in our submission dated 23 November 2010, CUAC was not consulted in the development of EAL’s Code of Practice. We are also unaware of any other consumer advocacy groups having been consulted. The EAL’s Response to ACCC Questions acknowledges that only energy retailers and energy marketers were consulted and it was these two groups that “provided insights into regulatory issues and *likely consumer responses* and concerns arising out of the EAL Scheme.” CUAC believes that consumer advocacy groups would have been better placed to identify key issues to be addressed in EAL’s Code of Practice.

CUAC was provided with a copy of the Energy Retailers Association of Australia’s (ERAA)’s press release and EAL’s Code of Practice on 6 October 2010. While we appreciated the prior notification, this notification was given a day before the ERAA’s press statement was released on 7 October 2010. The ERAA Executive Director, Mr Cameron O’Reilly presented copies of these documents to CUAC Executive Officer Ms Jo Benvenuti on 6 October 2010. Following this meeting, CUAC as co-convenor of the National Energy Consumer Roundtable (“Roundtable”) invited Mr O’Reilly to present the EAL Code of Practice at the Roundtable meeting on 14 October 2010. For most Roundtable members, this was the first time that they had heard about EAL’s Code of Practice. No process for input or modification was suggested. The EAL lodged its Application on 29 October 2010.

We mention the following as an example of an important issue we would have addressed if consulted regarding the development of EAL’s Code of practice. The EAL’s Response to ACCC Questions refers to standard information packs being provided to customers as a means of advising customers about the EAL Code of Practice and the complaints process. The information pack will not be provided to all customers who are door-knocked, but only to customers who sign up at the door or on request.<sup>3</sup> This

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<sup>1</sup> ACCC, Guidelines for developing effective voluntary industry codes of conduct (February 2005), at 5.

<sup>2</sup> ACCC, Guidelines for developing effective voluntary industry codes of conduct (February 2005), at 8.


<sup>3</sup> EAL’s letter to ACCC dated 21 December 2010.

means that customers who have potentially been subjected to marketing misconduct but who have not entered into a contract at the door, or who have not asked for an information pack, may be unaware about EAL's Code of Practice and the complaints process. Consumers may also be unaware that they can ask for the information pack. CUAC believes that one of the key consumer issues regarding door-to-door marketing is the lack of information and awareness of consumer rights and responsibilities in this interface. These issues need to be meaningfully addressed in EAL's Code of Practice in order to demonstrate additional consumer benefit.

We ask the ACCC to consider this letter in developing its draft determination. We welcome further participation in this consultation. If you have any queries on this letter, please contact the undersigned.



Jo Benvenuti  
Executive Officer



Deanna Foong  
Senior Policy Officer