

From: Gerard Brody [mailto:GBrody@bsl.org.au]
Sent: Thursday, 3 March 2011 10:17 AM
To: Howes, Neil
Subject: RE: Door to door energy sales scheme - ACCC meeting with consumer groups to discuss amended EAL proposal [SEC=UNCLASSIFIED]

Hi Neil

Our comments about the revised EAL application for authorisation are listed below. While it does appear that EAL has responded to many of the concerns raised by the ACCC in its letter of 4 February, we still have some outstanding concerns with the EAL Code and related documents.

- There is no indication that EAL responded to the fundamental concern raised in the earlier consultations, that is, lack of consultation with relevant groups in the development of the code and associated procedures. We again maintain that consultation early with relevant parties, before the lodgement for authorisation with the ACCC, would give EAL the opportunity to develop a Code that would improve consumer protection in door-to-door energy marketing.
- While the formal competency assessment includes consideration of the recognition and treatment of vulnerable consumers (clause 12.2), we believe that a lack of detail about what this entails is a significant failing of the Code. The various concerns with energy retail marketing, including those raised in the recent ESC respecting customers investigation, particularly impact vulnerable consumers. The ESC report noted the problems raised with African consumers, but our experience is that those from a non-English speaking background, elderly consumers, disabled consumers and others are particularly vulnerable to disadvantage from door-to-door energy marketing. If the EAL Code is to set a benchmark in consumer protection above that required by the law, then it should clearly state how these particular vulnerable consumers will be protected. Such standards should be placed both in the training section of the Code (clause 12) as well as the EAL standards set out in Part 4.
- We maintain that the mechanisms of the Code are confusing, particularly the 3 levels of breaches (clause 15 of Code) and 6 levels of sanctions in the Complaints Process – it is not clear how these interact. We are also confused about the difference between level 2 and level 3 breaches – they both appear to cover examples of intentional misleading and deceptive conduct. Any misleading and deceptive conduct should be considered the highest level of breach, as it is also a breach of the law.
- The Complaints Process details different sanctions for complaints about agents and complaints about members. For agents, the only sanction appears to be deregistration. Given that many of the sales agents are vulnerable employees often in intermittent work situations, it seems unreasonable to have such a harsh sanction as the only available. This can be contrasted with sanctions for members, which are tiered and the first 4 levels of sanctions not even requiring any action from the member. It would be good practice for all sanctions of members to be made public and for the sanctions to clearly require remedial action from the member, including compensating affected consumers. Consideration should be given to alternative sanctions for agents, such as additional training requirements.
- The composition of the Code Panel in clause 4.1 does not necessarily ensure balanced representation, and it is not clear how feasible it is to appoint someone with senior level experience in energy retailing who has not been engaged by a member in the last two years to the Panel.

- “Stakeholders” are defined in the Code to mean “energy ombudsmen (sic) and relevant regulators and government agencies”. Is there a reason why consumers and consumer organisations aren’t considered stakeholders?

In conclusion, we reiterate concerns about the ability of an industry Code of Practice for door-to-door marketing to have an overall net public benefit. Given that most sales agents are engaged on a commission basis, there is an inherent incentive for them to act in their own best interests to obtain a sale rather than consider the interests of the consumer. In such a market, an industry Code of Practice should attempt to re-align the interest of the sales agents and energy retailers so that they are incentivised to provide good customer service and not mislead or take advantage of a vulnerable consumer in any way. We do not believe that the EAL Code as it is currently drafted achieves this goal.

Should you like to discuss further, please contact me.

Best regards

Gerard

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