



ENERGY AND WATER OMBUDSMAN Victoria

Listen Assist Resolve

4 March 2011

Attn: Mr Neil Howes
Assistant Director
Adjudication Branch
Australian Competition & Consumer Commission
360 Elizabeth Street
Melbourne Vic 3000

By email: Neil.Howes@aer.gov.au

Dear Mr Howes

Re: Energy Assured Limited - amendments to proposed scheme for self-regulation of door-to-door energy sales

Thank you for the opportunity to provide comment on the Australian Competition and Consumer Commission (ACCC)'s receipt of Energy Assured Limited (EAL)'s amended proposal for self-regulation of door-to-door energy sales.

The proposal by EAL includes a Code of Practice, Procedures Guideline and Complaints Process (the Code). The Energy and Water Ombudsman (Victoria) (EWOV) notes that this Code will set out a self-regulatory framework for the conduct of door-to-door energy sales undertaken on behalf of electricity and gas retailers.

As an industry-based external dispute resolution scheme, EWOV provides alternative dispute resolution services to Victorian energy and water consumers by receiving, investigating and facilitating the resolution of complaints. In making this further submission, EWOV's comments are based on our experience in dealing with marketing complaints that come to us after they have not been resolved between the customer and the retailer.

Marketing and Transfer Issues

Victoria currently operates within a regulatory framework that provides protections for customers who experience issues when receiving marketing from energy retailers. However, even with these protections EWOV continues to experience a growth in complaint numbers involving marketing and transfer issues. As stated in EWOV's previous submission, in 2009/10

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EWOV experienced an increase of 33% in marketing-related issues compared to the previous financial year. The most frequent complaints about marketing that EWOV receives include:

- the marketer providing misleading information
- the marketer using excessive sales pressure in the course of a marketing representation
- the retailer gaining the billing rights for a property without having obtained the account holder's consent
- the retailer failing to draw attention to some contract terms, and therefore not obtaining explicit informed consent
- the retailer not actioning the request to cancel the contract during the cooling-off period

Benefits of the Proposed Self-Regulatory Framework

The growth in cases received by EWOV indicates that marketing issues continue to be a mounting concern for Victorian consumers. On the whole, EWOV welcomes EAL's approach to self-regulation of energy retailers' door-to-door marketing activities. EAL has advised that by introducing self-regulation under its proposed scheme there will be customer benefits such as:

- promoting consumer confidence
- less issues arising from rogue marketers
- uniform approach to recruitment, training and monitoring of marketers
- a process of enforcement when non-compliance occurs for both members (retailers and marketing companies) and individual marketers

EWOV maintains that the Code is an opportunity to raise consumer confidence in retailers' marketing practices, and while EWOV maintains its support, we offer the following recommendations, to ensure that these customer benefits are realised.

Framework Structure

As noted, the Code is made up of a Code of Practice, Procedures Guideline and Complaints Process. EWOV suggests that the EAL combine these three separate documents into a one simple well structured document written in the simplest form using plain English.

It is crucial that all stakeholders are easily able to find important information within the Code and understand the Code's intentions correctly. For example, EWOV believes that the objectives of the Code are not well highlighted. The objectives should be clearly outlined at the beginning of the Code and marked 'objectives' rather than being incorporated into the introduction.

Systemic Issues

EWOV understands that Section 19 of the Code of Practice outlines the monthly reporting requirements for each Energy Retailer to the Code Manager that includes alerting the EAL to any potential systemic issues.

However, EWOV believes that further detail is required to highlight how these issues will then be addressed.

Based on EWOV's own investigation of systemic issues, it is imperative to ensure that these issues are proactively identified so that the appropriate course of action can be taken to prevent further complaints from arising.

Working with Stakeholders

EWOV acknowledges that an EAL annual report will be made available to all stakeholders and will be uploaded on to the EAL website. However, EWOV suggests that the EAL provide more frequent information. EWOV endorses the distribution of regular updates regarding breaches and systemic issues, so as to ensure a culture of openness and transparency with all interested stakeholders.

Consumer Awareness

Under Part 3, sections 9.1 and 10.1 of the Code of Practice, it states that members must promote the Code by making copies of it available to consumers on request, and by displaying information on the EAL and members' websites. It also advises that detailed information should be provided to consumers when entering into an energy supply contract.

EWOV strongly believes that customers should not have to sign a contract or make a request in order to be provided with this information. This is especially given the high possibility that many consumers will be unaware of the existence of the new Code. Additionally, it is possible that consumers could experience marketing issues without signing a contract, and would thereby under the terms of the Code of Practice not be eligible to be provided with details of the Code unless requested.

As such, EWOV believes that retailers should be required to provide detailed information of the Code as outlined under section 10.2, not just the Code of Practice, to all customers with or without their request. This information should be provided in an easy-to-read format that does not require the consumer to understand legal jargon. EWOV suggests this could be achieved through:

- pamphlets being provided to all customers who receive door-to-door marketing
- bill insertions by all retailer members
- a letter drop to all consumers
- details of EAL on bills

EWOV therefore suggests amendments to these sections of the Code of Practice.

Regulator, Ombudsman Schemes and the EAL Responsibilities

EWOV suggests that the Code provide further clarification about EAL's role in relation to regulators and Ombudsman schemes. This could be achieved by including further information in Section 2 of the Code, and through providing a flowchart outlining all bodies, their responsibilities, and when and how customers can contact each.

Clear statements should also be included under these sections that advise:

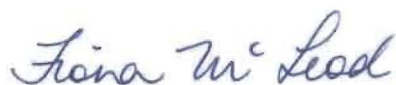
- EAL is not a dispute resolution body
- EAL will refer customers back to their retailer to resolve their dispute directly if they have not contacted the retailer previously
- EAL will also refer customers to EWOV if they are dissatisfied with the retailer's response to their complaint
- EAL will investigate breaches and maintain a register with their members

EWOV believes that this will better illustrate how regulators, Ombudsman schemes and the EAL will operate in conjunction with each other.

In order to ensure that EAL's proposal for self-regulation provides the benefits to consumers that it claims the Code will provide, EWOV urges EAL to consider the above suggestions for further amendments.

We trust the above comments are helpful. If you require further information or have any queries, please contact Belinda Crivelli, Senior Research and Communications Officer on 03 8672 4460.

Yours sincerely



Fiona McLeod
Energy and Water Ombudsman (Victoria)