



queensland council of social service inc  
WORKING FOR A FAIR QUEENSLAND

4 March 2011

The General Manager  
Adjudication Branch  
Australian Competition and Consumer Commission  
GPO Box 3131  
**CANBERRA ACT 2601**

Dear General Manager,

**RE: *Energy Assured Ltd applications for authorisation A91258 & A91259 – amendments to the proposed scheme***

Queensland Council of Social Service (QCOSS) is the peak body for over 600 welfare and community sector organisations in Queensland. For over 50 years QCOSS has worked to promote social justice and exists to provide a voice for Queenslanders affected by poverty and inequality. We act as a State-wide Council that leads on issues of significance to the social, community and health sectors. We work for a Fair Queensland and develop and advocate socially, economically and environmentally responsible public policy and action by community, government and business.

QCOSS has been funded by the Department of Employment, Economic Development and Innovation for an energy consumer advocacy project in Queensland. The purpose of this project is to advocate on behalf of Queensland consumers and particularly vulnerable and low income households in relation to energy.

QCOSS welcomes the opportunity to comment on the amended applications for authorisation of the Energy Assured Limited (EAL) self-regulatory scheme.

In our submission on the original application, QCOSS noted that the actions of door-to-door marketers have been a cause for concern in Queensland, with the Energy and Water Ombudsman Queensland (EWOQ) reporting a significant increase in marketing complaints, and having identified some common tactics used to mislead or coerce consumers into agreeing to retail contracts. We therefore welcome initiatives to improve the standards of door-to-door marketing, and remove rogue marketers from the sector. However, QCOSS raised concerns about a number of elements of the scheme as originally proposed that we believed would result in the Energy Assured scheme having little public benefit.

QCOSS recognises that some of our concerns have been addressed by the amendments EAL has made to the proposed scheme. In particular, we welcome changes to the minimum requirements for off-job training, the new requirement for post-sale verification to be done for all consumers that enter into a contract with an energy retailer, and the new requirement for competence monitoring to include random field assessments of sales agents. We note also that the provisions relating to breaches of the Energy Assured Code have been amended so that the

highest level sanctions can be imposed on a member earlier. QCOSS believes that these changes are improvements to the proposed scheme.

However, several of the concerns we raised in our previous submission have not been addressed in the amended application, including the restriction on consumers complaining about members, weak sanctions, the lack of redress for consumers, and accreditation procedures that provide for a sales agent's approved status to be automatically renewed. QCOSS believes that these are fundamental flaws that undermine the proposed scheme so deeply as to render it ineffective. Further comments on these issues are provided below.

### ***Complaints process***

The amended Energy Assured scheme still does not allow consumers to make complaints about EAL members. QCOSS disagrees with the view expressed by EAL that a customer is not able to identify any systemic issue. In 2010, for example, an incident occurred in Queensland in which a customer found a marketing script left on their property by a door-to-door energy marketer, containing instructions which would likely be a breach of the EAL code. It is likely that consumers would also be able to identify systemic issues by sharing information about their experiences within their communities and social networks.

QCOSS is also concerned about the apparent assumption that specific incidents customers complain about will be the responsibility of sales agents rather than EAL members. Since marketing activities are carried out on behalf of EAL members, the member should ultimately be responsible for the actions of their agents. Furthermore, customers will not always know or remember the name of the sales agent who visited them. In this case they would need to be able to lodge a complaint about the EAL member represented by the sales agent for the actions of the agent to be investigated. If the only recourse for customers who have a complaint about an EAL member is to take it to the jurisdictional ombudsman or regulator, it is hard to see how the complaints component of the EAL scheme can provide any public benefit.

### ***Penalties for breaches of the EAL Code***

While EAL has amended provisions relating to when sanctions 5 and 6 can be imposed, the sanctions themselves have not been changed. QCOSS remains concerned that the proposed sanctions are too weak to provide an effective deterrent against breaches of the EAL Code. We believe that the financial benefit to energy retailers of acquiring customers through inappropriate marketing tactics is likely to outweigh the financial or reputational costs imposed by the proposed sanctions. There is no guarantee that identification of EAL members who have breached the Code will occur through a medium that ensures the breach is widely known enough to have a significant reputational cost. Nor is there any indication in the complaints procedure as to how it should be decided what level of sanction is appropriate.

QCOSS also has concerns about the amended provisions relating to breaches by sales agents. The examples given to illustrate what would constitute a level 2 breach, for example, include instances where a sales agent has misled or coerced a customer. Our view is that such behaviour should be regarded as misconduct, which would be more consistent with the definition of a level 3 breach. Where a sales agent's actions are classed as a level 2 breach, the EAL member is required to implement a period of re-training and development. QCOSS does not believe

this reflects the seriousness of the behaviours listed as examples of level 2 breaches.

### ***Lack of redress for consumers***

There continues to be no provision for compensating consumers or cancelling contracts without penalty when a breach of the Code has occurred. Although the post-sale verification procedure is likely to identify some instances where customers were coerced or misled into agreeing to contracts, the minimum verification questions do not establish whether information given to the customer about the terms and conditions of the contract was correct. Therefore it cannot be assumed that instances where customers have been misled or coerced into entering contracts will be identified before the transfer to the EAL member occurs. Without any requirement to compensate the customer, it is possible for an EAL member to benefit from the acquisition of customers through marketing tactics that breach the Code, even if a complaint is made.

### ***Accreditation process***

The EAL Procedures Guideline still provides for a sales agent's accreditation status in the EAL register to be automatically changed to Approved four weeks after their start date, and for their Approved status to be automatically renewed on the expiry date. QCOSS notes that in its response to the ACCC's request for further information, EAL argued that automation of parts of the system are designed to reduce costs, and that in addition to the sanctions that would apply for failing to comply with the Code, the requirement to pay registration fees for sales agents would act as a deterrent to failing to advise EAL when an agent had not passed a formal competence assessment.

While compliance monitoring may eventually identify EAL members who had not complied with their obligation to keep the register up to date, this would still allow sales agents who had not passed their competence assessment or who had breached the Code to continue operating for sometime after the breach or failure had occurred. As discussed above, QCOSS does not believe that the proposed sanctions would offer a sufficient incentive to comply with the scheme if the sales agent in question was successful in signing customers.


QCOSS also doubts that the proposed process would reduce the costs of administering the EAL register. Since a registration fee is payable, automatically changing or renewing the sales agent's status would require EAL to invoice members for payment of the registration fee. If a member did not advise that a sales agent had not passed the competence assessment or had left, but also did not pay the registration fee, EAL would need to incur costs associated with collection action and/or verifying the sales agent's status. Ultimately these costs would be passed on to consumers. It would therefore be much more effective, and administratively less costly, if the onus was on members to advise when a sales agent had passed their competence assessment and pay the registration fee prior to the accreditation status being changed or renewed.

As stated in our previous submission, QCOSS recognises that there benefits to developing standardised training programs and tracking sales agents through the EAL register. We consider that the requirements for post-sale verification and proactive monitoring of sales agents' performance in the amended application would also have benefits. However, these benefits are undermined by proposed procedures that would allow sales agents to be automatically approved, sanctions that provide little incentive for members to comply with the scheme, disciplinary

provisions for sales agents that do not recognise the seriousness of some types of breach, a lack of redress for customers who are the victims of unethical marketers, and a complaints process that does not allow customers to complain about EAL members. QCOSS therefore maintains our previous position that the potential detriments of the scheme outweigh any potential public benefit.

If you would like any further information or to clarify any aspect of this submission, please contact Linda Parmenter or Nadine Lester on 07 3004 6900.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Sarah Coles', is written over a light blue horizontal line.

Sarah Coles  
**Senior Manager, Policy Advocacy**