

# Submission

**To :** ACCC

**From:** UnitingCare Australia

**Re:** Energy Assured Limited application for authorisation  
A91258 & A91259

## Introductory Comments

UnitingCare Australia appreciates the preparedness of energy retailers to systematically and comprehensively review their approach to door-to-door marketing, and to recognise the difficulties that this approach poses for many consumers.

This short submission is in response to the revised code of practice for Energy Assured Limited, reference 11.02.01.v2.DOC.

UnitingCare Australia made verbal responses to the initial code of practice, and Mark Henley represented the organisation in a recent discussion with Mr Ramy Soussou, acting Chief Executive Officer of Energy Assured Limited.

We understand that in considering this application, the ACCC needs to determine whether there is a high likelihood of net consumer benefit from the introduction of the proposed EAL scheme. It is our expectation that the focus of ACCC consideration would be on assessing whether consumers, in general, are likely to be better off and whether that benefit is significant. There would be little point in authorising EAL if the consumer benefit was minor.

## Overview response to EAL 'draft 2'

1. UnitingCare Australia is somewhat bemused by the haste with which this authorisation is being pursued. We observe that this haste has contributed to inadequate consideration of the customer in developing the proposed code, and there has been little engagement with consumer organisations, which we believe, could have significantly improved the focus and details of this proposed code of practice.
2. The focus of the code is deficient, in particular because it is silent on the principle that we believe is of paramount importance, namely that the proposed new arrangements will not leave customers worse off. For example, the code does not propose any assistance for consumers who are adversely affected by poor practice from door-to-door marketing. The code also fails to deal with processes for checking suitability of engagement with customers who have been door-knocked by a person subsequently found to be in breach of the code.
3. Despite clear feedback on the first draft, the revised code of practice fails to recognise the diversity of customer experience, knowledge and decision making capacity. For example, the code makes no provision for information being available to customers in languages other than English, nor does it address the issues of door-to-door sales with a customer who is likely to have limited decision making capacity, e.g. some aged persons, potentially with some degree of onset of Alzheimer's disease, or people with mental illness or limited literacy abilities. The failure to address these issues is a clear indication of the failure of EAL to

meaningfully address many of the critical issues associated with poor practice that is currently all too common from door-to-door energy marketing.

4. We also believe that the code puts too much 'distance', between companies engaged to undertake door-to-door marketing and the retailers who engage them. We are very clear that the responsibility for interaction with consumers on behalf of the energy company is the responsibility of the energy company and cannot be diminished through contracting a third-party, in this instance an Energy Assured Limited member.
5. The code is inadequate in areas of consumer information and in transparency of public reporting, particularly regarding EAL member breaches.
6. The code makes no mention of target benchmarks of standards; for example, percentage of complaints dealt with within a certain time limit by a provider.

### **Specific Responses**

The following deals with a selection of specific clauses and suggests improvements.

#### **Clause 2.4**

This clause fails to deal with communication in languages other than English. We suggest that information be available in at least the five most widely used languages other than English.

Sub section 2 talks about communicating the progress of the code to the stakeholders; we suggest that the code needs to be more specific in identifying a minimum set of stakeholders and consumer interest groups.

This clause does not provide for the creation of a summary of the code in plain English that could be distributed widely, for example, to financial counsellors for their clients, and also to be given to each person who is door-knocked.

#### **Clause 4**

This clause states that members of the Code Panel will be appointed by EAL. We do not regard this as good practice and would suggest, for example, that the consumer representative be endorsed by the relevant consumers association or network. The person, from a senior level in a regulatory or government body, could be endorsed by the association of Australian and New Zealand Energy and Water Ombudsman

We also believe that the structure needs stronger consumer engagement, and suggest that EAL be required to establish a consumer reference group as a sub-committee or reference group for the Code Panel.

#### **Clause 5**

5.1 should specify that the review be carried out in all jurisdictions in which EAL is operating.

5.2 should specifically state that consumer groups are included in the definition of stakeholders.

5.7 we see no reason why the independent review of the code should not be able to make recommendations about objectives as set out in the EAL constitution. We accept that there will be specified mechanisms for dealing with constitutional change, but such change can occur if deemed appropriate by the members acting in accordance with their constitution.

#### **Clause 8**

8.1 we suggest that a third subclause shall be "advise Code Manager" and a fourth subclause should be "advise the Chief Executive of the member that has engaged the sales agent that is to be disciplined."

8.2, 8.3 should both specify the requirement to advise the Code Manager, the CEO of the member and the Code Panel.

8.6 should specify advising the management board of the member concerned

8.7 should also specify that the "... code manager consider": (3) adequacy of member procedures

#### Clause 10

We suggest that every two years all EAL members should be required to review all aspects of their agent engagement processes and to check for congruence what their own organisational values and objectives.

10.1 (3) should include the specification that code information is available in at least five languages other than English

This clause should also include the requirement that an approved code summary will be provided to all consumers who are door knocked, and should include contact details for the Energy Ombudsman in the respective jurisdiction.

#### Clause 12

12.2 should include "the values and objectives of the engaging retailer".

Training should also include cultural awareness and an understanding of capacity of customers to make informed decisions.

Clause 13 should also include that the "Code Manager maintains a record of all complaints and outcomes and that this is to be published on a web site.

#### Summary

UnitingCare Australia is concerned that the Energy Assured Limited code application is inadequate in a number of aspects of consumer engagement and in understanding the diversity of consumer circumstances. We would be happy to talk further with representatives of Energy Assured Limited about more appropriate ways of engaging consumers, and other issues raised in this brief submission. We support the direction of the EAL code proposal and the need to significantly improve door-to-door marketing practice for energy, and suggest that EAL applying the proposals made here and by other consumer organisations would give a much higher likelihood of consumers, particularly more marginal consumers, being better off.

#### Further information

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