

## Form FC

Commonwealth of Australia

*Competition and Consumer Act 2010 — subsection 91C (1)*

### APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

#### 1. Applicant

- (a) Name of applicant:  
(Refer to direction 2)

A91390

Energy Assured Limited ACN 146 921 904 (EAL)

- (b) Description of business carried on by applicant:  
(Refer to direction 3)

EAL is a not-for-profit public company limited by guarantee. It was established to provide an energy marketing standards and compliance framework (**Scheme**) for its members (**Members**). The Members are:

- electricity and gas retailers (**Energy Retailers**);
- marketing companies (including Comparators) that conduct door to door sales on behalf of Energy Retailers (**Energy Marketers**); and
- the Energy Retailers Association of Australia Limited (**ERAA**)

- (c) Address in Australia for service of documents on the applicant:

Suite 3, Level 5 189 Kent Street, Sydney NSW 2000

#### 2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

EAL seeks revocation of Authorisation A91258 granted on 23 June 2011 (and varied on 8 November 2012) (**Authorisation**). The Authorisation (together with authorisation A91259) permits EAL Members to adopt and comply with the Scheme to self-regulate door to door energy sales that are undertaken on behalf of electricity and gas retailers.

- (b) Provide details of the basis upon which revocation is sought:

The Authorisation is due to expire on 14 July 2014. EAL and its members would like to extend the operation of the Scheme past 14 July 2014. EAL accordingly seeks a revocation of the Authorisation and a substitution for a new authorisation as outlined in this application.

**3. Substitution of authorisation**

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:

*(Refer to direction 4)*

EAL Members are parties to the EAL Constitution. The EAL Constitution requires EAL Members to adopt and comply with the EAL Code of Practice. See **attached** copies of the Code of Practice (which incorporates a Procedures Guideline).

- (b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

Face to face sales agency services, being sales activities conducted in person other than at the Energy Retailer's premises.

- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

The authorisation period sought is five years. The original authorisation was for a period of three years. However, due to the displayed benefits achieved since the Scheme became operational in January 2012 and as no known anti-competitive detriments have arisen, a longer period of authorisation is justified on this occasion. Grounds for supporting the authorisation period are included in the **attached** Submission.

**4. Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought**

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

Please see **attached** Schedule 1.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:

*(Refer to direction 5)*

Please see **attached** Schedule 1.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

**5. Public benefit claims**

- (a) Arguments in support of application for substitution of authorisation:

Please see **attached Submission**.  
(See *Direction 6 of this Form*)

- (b) Facts and evidence relied upon in support of these claims:

Please see **attached Submission**.

**6. Market definition**

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

- The market for the retail supply of electricity and/or gas to residential and small business customers; and
- The market for the supply of face to face sales agency services, other than those conducted at an Energy Retailer's premises to Energy Retailers and Energy Marketers by Energy Marketers and Sales Agents.

(See *Direction 7 of this Form*)

**7. Public detriments**

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

Please see **attached Submission**.  
(See *Direction 8 of this Form*)

- (b) Facts and evidence relevant to these detriments:

Please see **attached Submission**.

## **8. Contracts, arrangements or understandings in similar terms**

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

This application is expressed to be made in relation to the contract, arrangement or understanding that Members make in agreeing to be bound by the EAL Code of Practice.

- (b) If so, the following information is to be furnished:

- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable

*(See Direction 9 of this Form)*

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

Please see the **attached Schedule 1.**

*(See Direction 5 of this Form)*

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

Other Energy Marketers and other Energy Retailers.

## **9. Joint Ventures**

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable

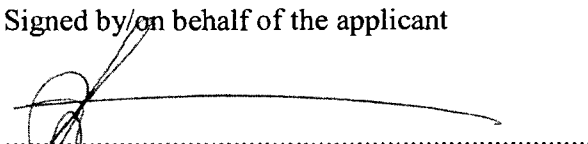
## **10. Further information**

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Anne Whitehouse  
Chief Executive Officer  
Energy Assured Limited  
Suite 3, Level 5  
189 Kent Street  
Sydney NSW 2000  
Ph: (02) 9241 2671  
Email: awhitehouse@energyassured.com.au

Dated 4 November 2013

Signed by/on behalf of the applicant



.....  
(Signature)

Anne Marie Whitehouse  
(Full Name)

Energy Assured Limited  
(Organisation)

Chief Executive Officer  
(Position in Organisation)



## **DIRECTIONS**

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
  - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
  - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
  - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.



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(Refer to direction 3)

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A91391

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Not applicable.

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*(See Direction 6 of this Form)*

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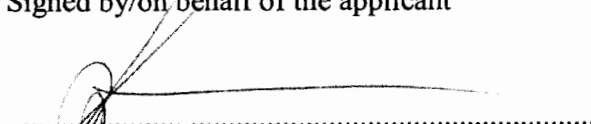
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Energy Assured Limited  
Suite 3, Level 5  
189 Kent Street  
Sydney NSW 2000  
Ph: (02) 9241 2671  
Email: awhitehouse@energyassured.com.au

Dated 4 November 2013

Signed by/on behalf of the applicant



.....  
(Signature)

Anne Marie Whitehouse  
(Full Name)

Energy Assured Limited  
(Organisation)

Chief Executive Officer  
(Position in Organisation)



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## Submission in support of Applications for Authorisation

### Energy Assured Limited: Face to Face Energy Sales Activities Self-Regulatory Scheme

#### Introduction

The following submission has been prepared to support the Applications for Revocation of Authorisations A91258 and A91259 and Substitution by Energy Assured Limited (**Energy Assured**) made under the *Competition and Consumer Act 2010* (Cth) (**CCA**).

Energy Assured was granted two Authorisations by the Australian Competition and Consumer Commission (**ACCC**) in June 2011 (**Original Authorisations**)<sup>1</sup>. The Original Authorisations authorised Energy Assured and its Energy Retailer and Energy Marketer members (**Members**) to adopt and comply with a scheme to self-regulate door to door energy sales undertaken on behalf Energy Retailers. The Original Authorisations are due to expire on 14 July 2014.

The Energy Assured Scheme has been in operation for 20 months and Energy Assured now seeks authorisation for another five years in relation to conduct which is substantially the same as that which was the subject of the Original Authorisations, and which may otherwise contravene the following sections of the CCA:

- Division 1 of Part IV of the CCA, if the scheme constitutes cartel conduct;
- section 45 of the CCA if the scheme contains an exclusionary provision; and
- section 45 of the CCA if the scheme has the purpose or would have or be likely to have the effect of substantially lessening competition.

The specific components of the Scheme that could be classified as those provisions of the contract, arrangement or understanding between Members that might contravene any or all of the above sections of the CCA are particularised in Annexure A to this Submission.

Having achieved positive changes in behaviour and material disciplinary outcomes since its commencement at the beginning of 2012, Energy Assured wishes to be able to continue to operate a self-regulated energy industry scheme to monitor and enhance face to face marketing standards (**Scheme**). It will continue to seek to improve compliance by Members to promote consumer confidence, to improve the customer experience and to reduce the incidence of sales issues during interaction with sales agents acting on behalf of Members (**Sales Agents**). Energy Assured seeks continuous improvement in its own operations and encourages its Members to seek continuous improvement in their compliance programs. As the Scheme further evolves, Energy Assured will respond appropriately to industry and market changes.

The Scheme is now expressed to apply to "face to face" marketing of energy. This confirms that the Scheme applies to any type of in person energy marketing, other than selling that occurs at the premises of the Energy Retailer. Door to door marketing will remain the primary conduct covered by the Scheme. However, other less common face to face sales channels will also be covered. This will add to the self-regulating benefits of the Scheme.

Some consequential changes, minor clarifications and procedural improvements have been made to the Code of Practice (**Code**) and underlying Procedures Guideline, when compared to the documentation that was the subject of the Original Authorisations (as varied by the Minor Variation). These are described in section 15 below. It is submitted that they do not detract from, and in some respects improve, the efficacy of the Scheme.

Save where otherwise indicated, capitalised words used in this Submission have the meaning given to them in the Code.

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<sup>1</sup> As varied by Minor Variation Authorisations granted on 8 November 2012.

## **Background**

### **1 Energy Assured Limited and its Members**

- 1.1 Energy Assured is a not-for-profit public company limited by guarantee, whose current Members are listed in Schedule 1.
- 1.2 Energy Assured's Membership comprises licensed electricity and gas retailers (**Energy Retailers**) and marketing companies that conduct face to face sales (**Energy Marketers**). Membership changes from time to time. Energy Retailers and Energy Marketers are collectively called Members.
- 1.3 All Australian Energy Retailers and Energy Marketers are eligible to become Members of Energy Assured. Each Member is required to comply with the Energy Assured Code and Procedures Guidelines (copies of which are contained in Schedule 2).
- 1.4 Membership of the Scheme is voluntary. Currently, the majority of Energy Retailers and Energy Marketers that conduct energy Sales Activities face to face are Members of the Energy Assured Scheme.

### **2 Objects**

- 2.1 Energy Assured has been established to:
  - (1) develop, implement and manage an agreed standard for the face to face marketing activities undertaken by its Members in respect of gas and electricity supply contracts with consumers;
  - (2) develop and facilitate training programs to provide Members with the knowledge and capabilities to maintain the competency standards required by the Scheme and, in turn, to deliver their own on-going training of Sales Agents;
  - (3) administer a register of Sales Agents showing their accreditation status, including if they have been deregistered;
  - (4) manage a complaints referral process;
  - (5) develop and implement procedures and processes to monitor and assess the conduct and activities of Sales Agents and the conduct of Members to ensure compliance with the Code;
  - (6) monitor Sales Agent performance to ensure agents with poor compliance are retrained or deregistered as required; and
  - (7) implement appropriate Sanctions where a Sales Agent or Member is found to have breached the Code.

### **3 Energy retailing in Australia**

- 3.1 There are approximately 20 Energy Retailers in Australia licensed to sell electricity and/or gas to around 11 Million households and small businesses, although not all of these Energy Retailers conduct face to face marketing.
- 3.2 The marketing of electricity and gas to small business and residential customers in Australia occurs through a number of sales channels including face to face, telephone, direct mail, alliances with third parties and online. Often new energy supply contracts are entered into as a result of unsolicited sales or where a customer moves premises.

### **4 Face to face marketing**

- 4.1 Energy Assured intends that the concept of face to face marketing under the Scheme would cover any form of energy sales and marketing activity to residential or small business

customers where there is in person contact between a Sales Agent and a customer and where the sales activity does not occur at the Energy Retailer's premises. This will include, but is not limited to, door to door sales, event marketing and kiosk marketing. Face to face marketing of small customer energy supply contracts is generally conducted by Sales Agents, engaged directly by an Energy Retailer or, more typically, indirectly through an Energy Marketer.

- 4.2 There are over 1000 Sales Agents registered with Energy Assured selling face to face in Australia at present.

## **5 Regulatory Framework**

- 5.1 All types of face to face sales are regulated at the Commonwealth level by the general consumer protection provisions contained in the Australian Consumer Law.<sup>2</sup> In the case of door to door sales, there are also specific provisions of the Australian Consumer Law relating to unsolicited consumer agreements that prescribe standards of behaviour for that type of sales conduct.
- 5.2 Additionally, in each jurisdiction, it is a condition of an Energy Retailer's retail licence that the Energy Retailer complies with applicable industry-specific energy marketing codes of conduct. For the Australian Capital Territory, New South Wales, South Australia and Tasmania this appears under the National Energy Retail Rules, adopted recently as part of the National Energy Customer Framework and overseen by the Australian Energy Regulator. Meanwhile, the other Australian jurisdictions currently remain under State-based regulatory instruments overseen by the relevant jurisdictional regulators.
- 5.3 As elaborated upon later in this submission, the existence of regulatory regimes relating to face to face energy marketing does not mean that the Scheme does not have an important part to play in achieving higher standards of face to face marketing conduct. The Scheme delivers material additional benefits including recruitment, training and accreditation for Sales Agents, a complaints process and a disciplinary process for Sales Agents and Members. The Scheme is uniquely focussed on Sales Agent behaviour and in focusing on compliance at that granular level, seeks to achieve better outcomes for customers.

## **The Scheme**

### **6 Compliance with the Scheme**

- 6.1 Subject to authorisation being granted, Members will be required to continue to comply with the Energy Assured Code (and underlying Procedures Guideline). The Code deploys an enforcement regime to sanction Members for failure to comply with the Code.

### **7 Code Manager and Code Panel**

- 7.1 An independent manager carries out the administration and day-to-day supervision of the Code (**Code Manager**)<sup>3</sup>.
- 7.2 The Code Manager:
- (1) oversees the operation of the Energy Assured Register;
  - (2) monitors member compliance with the Code and Procedures Guideline and investigates complaints about Member conduct;
  - (3) ensures that corrective action is taken where Members fail to meet their obligations under the Code;
  - (4) in concert with the Code Panel, administers Sanctions;

<sup>2</sup> Which forms Schedule 2 to the CCA.

<sup>3</sup> See clause 10 of the Code.

- (5) issues training manuals and guidelines to assist Members with their compliance;
- (6) provides updates to the Board, ombudsman offices and jurisdictional regulators; and
- (7) oversees the promotion of the Scheme.

- 7.3 A committee of individuals with a variety of professional backgrounds is appointed by the Energy Assured Board (**Code Panel**)<sup>4</sup>. The Code Panel is independent to the Members and the Code Manager. The Code Panel hears appeals from Members and Sales Agents in relation to Sanctions imposed by the Code Manager. The Code Panel also regularly meets with the Code Manager to review the strategic operations of the Code and put forward recommendations or improvements.
- 7.4 The Code Manager and members of the Code Panel are not employees or officers of Energy Assured Members.
- 7.5 Members of the Code Panel are not permitted to have been engaged by a Member in the previous two years or to have any actual or potential conflict of interest.

## **8 Energy Assured Standards**

- 8.1 Standards for the proper and ethical conduct of Sales Agents when undertaking Sales Activities, including entering into a contract with a consumer, making contact with a consumer and otherwise dealing with consumers (**Energy Assured Standards**)<sup>5</sup> apply to all Sales Agents operating under the Scheme. Members must ensure that all Sales Agents engaged by them comply with the Energy Assured Standards.

## **9 Central Register**

- 9.1 A central database has been established to record the details and accreditation status of each Sales Agent, Experienced Sales Agent, Sub-agent Principal and Assessor (**Energy Assured Register**)<sup>6</sup>. If a person is not registered on the Energy Assured Register, and has not attained an appropriate accreditation status, they may not undertake Sales Activities on behalf of any Member.
- 9.2 If a Sales Agent does not comply with the Energy Assured Standards, and their non-compliance cannot be remedied by retraining and development, a Member may request the Code Manager to deregister the Sales Agent. If a Sales Agent is deregistered, the deregistration will last for a period of 5 years.

## **10 Recruitment**

- 10.1 Members are required to have processes in place to ensure that the Sales Agents they engage have met the vetting requirements prescribed under the Code, inclusive of appropriate reference checking, proof of identification and criminal history checks<sup>7</sup>.

## **11 Training and Competence Assessment**

- 11.1 Members must ensure that Sales Agents undertake On-job and Off-job Training to appropriate levels of competency and undertake a Formal Competency Assessment in accordance with the Code before permitting the Sales Agent to undertake Sales Activities<sup>8</sup>.
- 11.2 Members must also ensure that Sales Agents are re-assessed each year to confirm that they still meet satisfactory levels of competency.

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<sup>4</sup> See clause 12 of the Code.

<sup>5</sup> See Part 2 of the Code.

<sup>6</sup> See clause 14 of the Code.

<sup>7</sup> See clause 15 of the Code.

<sup>8</sup> See clause 16 of the Code.



## **12 Competence Monitoring**

- 12.1 Members must operate a competence monitoring process for the receipt, investigation and resolution of complaints received about the conduct of Sales Agents and must apply a consistent approach to the treatment of complaints and determining the appropriate disciplinary action to be taken by a Member<sup>9</sup>.
- 12.2 Complaints are sometimes received by Energy Assured directly from customers, consumer advocacy bodies or other stakeholders. Energy Assured is not a complaints resolution body and refers complaints to the appropriate Energy Retailer, Comparator or ombudsman office.

## **13 Compliance Monitoring**

- 13.1 Each Energy Retailer and Comparator must prepare a report to the Code Manager each quarter about its compliance with the Code<sup>10</sup>.
- 13.2 Each Member must also submit to Compliance Checks when required by the Code Manager<sup>11</sup>.
- 13.3 The scope of the Compliance Checks and procedures to be tested will be determined by Energy Assured and can include desktop audits, site visits, Sales Agent interviews and mystery shopping. The Compliance Checks regime will provide for a more extensive "spot check" regime than that currently in place under the Original Authorisation.
- 13.4 Energy Assured will prepare a detailed report of findings for each Member. This report will be provided to the relevant Member and any relevant energy regulator. Each report will:
- (1) outline the areas reviewed;
  - (2) set out the results of the review;
  - (3) identify areas of non-compliance; and
  - (4) prescribe action plans agreed with the Member to address areas of non-compliance by the Member.
- 13.5 Energy Assured will prepare a consolidated report of the results of all Energy Assured Compliance Checks and provide this to the Energy Assured Board, Members, the Code Panel, and at the next scheduled Stakeholder Working Group meeting summarising:
- (1) the extent and type of breaches of the Energy Assured Standards;
  - (2) the procedures and documentation that were reviewed;
  - (3) an outline of any major or important instances of non-compliance, inclusive of potential industry wide systemic issues identified;
  - (4) corrective measures that have been prescribed to address compliance issues; and
  - (5) any other relevant observations.
- 13.6 Under the Original Authorisation, the Code required each Energy Retailer to submit to an annual audit by an external auditor. Energy Assured proposes to replace the annual audit with an expanded schedule of Compliance Checks. This is for a number of reasons:
- (1) Energy Retailers are already required to submit to numerous regulatory audits as well as their own internal audits. By way of demonstration, a sample of Members were surveyed and their expected annual audit and compliance check program is outlined in Annexure B. Energy Assured believes these audits and compliance checks provide

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<sup>9</sup> See clause 18 of the Code.

<sup>10</sup> See clause 25 of the Code.

<sup>11</sup> See clause 24 of the Code.

efficient monitoring of Energy Retailers conducting Sales Activities without the need for Energy Assured to conduct its own annual audit, especially when quarterly reporting and Compliance Checks are a tool for constant monitoring.

- (2) Energy Marketers are also subject to internal and external audits and compliance assessments as outlined in Annexure B which shows the expected audits and compliance checks for those Members who were sampled.
- (3) The costs for Energy Assured to conduct the audits are high, making up nearly 20% of Energy Assured's entire operating budget. A fundamental component of the Scheme is that costs of membership be manageable to encourage membership of the Scheme and to reduce any significant barriers to joining the Scheme. As a result of the recent exit of some Energy Retailers from the Scheme (when they decided not to engage in door to door activities to residential customers any longer) the remaining Members are carrying the burden of funding the Scheme. By removing the need for an external audit Energy Assured, and ultimately the Members, avoid this duplicative cost burden. This cost reduction is expected to encourage continued membership and to more readily allow other Energy Retailers to consider membership.

#### **14 Member and Sales Agent Discipline**

- 14.1 Any concern about the conduct of a Member that is brought to its attention will be considered by the Code Manager in accordance with the Code<sup>12</sup>.
- 14.2 Any decision to Sanction a Member must be made by the Code Manager or by the Code Manager and a member of the Code Panel where the proposed Sanction is more than a category 1 Sanction.
- 14.3 Any complaint made about the conduct of a Sales Agent will be considered and determined by the Code Manager.
- 14.4 Where Sanctions have been imposed, a Member or Sales Agent may appeal the Sanction to the Code Panel.

#### **15 Summary of changes to the Code from Original Authorisations**

- 15.1 The following is a summary of the key changes proposed to the Code compared to the Code covered by the Original Authorisations (as amended by the Minor Variation). The changes are minimal and have been made having regard to the practical realities of operating the Scheme for 20 months. They seek to provide clarity, reduce unnecessary administrative burden or to increase the level of compliance of Members and Sales Agents.
  - (1) Change of term "door to door" to "face to face", as outlined in section 4.
  - (2) Change in frequency of Energy Retailer reporting to the Code Manager from monthly to quarterly. Quarterly reporting is sufficient for the purposes of monitoring, administration and reporting to the ombudsman and regulators. The requirement for monthly reporting only adds administrative burden for Members and the Code has been changed accordingly<sup>13</sup>.
  - (3) The requirement for Energy Retailers to submit to an external audit has been removed and replaced with a broader Compliance Check regime as outlined in section 13<sup>14</sup>.
  - (4) Permit the Code Panel to operate with four Members, rather than five. The workload for the Code Panel over the last 20 months has shown that it would be more than sufficient for the Code Panel to comprise four Members and operate effectively. While no change is planned at present to the composition of the Code Panel, Energy

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<sup>12</sup> See clauses 26 – 30 of the Code.

<sup>13</sup> See clause 25 of the Code.

<sup>14</sup> See clause 24 of the Code

Assured wishes to have the flexibility not to replace the fifth Code Panel position should one of the Code Panel Members cease their involvement<sup>15</sup>.

- (5) Currently the Code provides for four Code Panel meetings per annum. However, this has been changed to "at least three meetings each year" to provide some flexibility in managing costs and scheduling<sup>16</sup>.
- (6) Added Sanctions to ensure that a deregistered Sales Agent cannot act as an Experienced Agent, Assessor or trainer, cannot manage teams of Sales Agents either directly or indirectly, cannot be engaged in any way where the person may influence other Sales Agents and cannot be engaged in any campaign activity linked to face to face sales<sup>17</sup>.
- (7) Added Sanctions to ensure that Sub-agent Principals act in accordance with the principles of the Code when dealing with Sales Agents and that Members adequately monitor sub-agency arrangements to ensure that Sales Agents are recruited, trained, assessed and disciplined appropriately<sup>18</sup>.
- (8) Updated Energy Assured Standards to bring them in line with the National Energy Retail Rules, now applicable in four jurisdictions<sup>19</sup>;
- (9) Updated Energy Assured Standard for the conduct of verification calls to ensure that a customer is not coached during the Post Sale Verification Procedure. This initiative has already been introduced in training modules. However, adding it to the Code provides clarity for customers and Sales Agents<sup>20</sup>.

- 15.2 To assist the ACCC, the amendments that have been made to the Code and Procedures Guideline appear in a "compare" document in Schedule 3.

## Key outcomes of the Scheme to date

### 16 Results of 2012 audit

- 16.1 The Code currently requires an annual audit to be undertaken to ascertain the extent of each Energy Retailer's compliance with the Code. A report is prepared by an independent external auditor for each Energy Retailer, which is provided to the Energy Retailer, the Code Manager and the jurisdictional regulator. A consolidated report is also prepared that is shared with key stakeholders and provided to the Stakeholder Working Group.
- 16.2 The 2012 audit covered the period from 16 January to 30 June 2012. It comprised:
- A review of documents and processes ;
  - On-site Energy Retailer visits;
  - 4,451 sample tests across all Code parts resulting in the following findings:
    - Non-compliance (major): 8;
    - Non-compliance (important): 57; and
    - Non-compliance (minor): 85;
  - Energy Retailers assessed: 10; and
  - Energy Marketers assessed: 11.
- 16.3 As stated above, Energy Assured submits this application for authorisation without the requirement for an annual compliance audit being conducted on each Energy Retailer.

<sup>15</sup> See clause 12 of the Code.

<sup>16</sup> See subclause 12.4 of the Code.

<sup>17</sup> See subclause 7.6 of the Code.

<sup>18</sup> See clause 8 of the Code.

<sup>19</sup> See clauses 3 – 6 of the Code.

<sup>20</sup> See subclause 5.2(3) of the Code.

## 17 Awareness of the Code

17.1 Consumer and stakeholder awareness of the Scheme has advanced substantially since its introduction. Energy Assured and its Members have promoted the Scheme in the following ways:

- (1) Sales Agents have averaged contact with over 1 million customers each month through face to face marketing<sup>21</sup>. Each customer is told about Energy Assured and each approved Sales Agent has the Energy Assured Logo on their identity badge.
- (2) Marketing material is provided to every customer who enters into a contract or to any other prospective customer on request. The marketing material helps consumers understand the standards of behaviour governed by the scheme and the recourse available to them if they consider these standards have not been met. The material contains, among other things, information about the Code, a summary of the Energy Assured Standards and details about how a customer can make a complaint. In its research report the ACCC<sup>22</sup> estimated that 1,000,000 energy contract sales occurred via this channel in 2011. This means around 1 million copies of the marketing material are distributed each year.
- (3) It is a mandatory question in every Post Sale Verification Procedure that the customer is asked if the Sales Agent has provided information about the Code. Every contract sale that occurs must have a post-sale verification call performed. This means that around 1 million customers receive this message each year.
- (4) The Energy Assured website contains information about the Scheme and received over 5,200 unique visits in 2012-13.
- (5) Each Energy Retailer has a link from their website to the Energy Assured website.
- (6) Energy Assured discusses and promotes the Code with energy ombudsman offices, regulators, Consumer Advocacy Groups, Members of Parliament and government agencies. In 2012-13 the Code Manager met with stakeholders 65 different times.
- (7) Energy Assured sent correspondence in 2012 to all Legal Aid offices and all Local Councils in NSW, QLD, VIC and SA promoting the Scheme.
- (8) Energy Assured liaises with the media and has been promoted or referenced through various media articles, talk-back radio and current affairs programs over the last two years.

## 18 Categorisation of complaints

18.1 The following table provides a breakdown by Energy Retailer Member of the regularity of complaints received and the extent to which each complaint by was categorised as each breach type per Member during 2012-13.

Retailer	Complaint Free Contact (%)	Complaints no breach (%)	Complaint L1 (%)	Complaint L2 (%)	Complaint L3 (%)
AGL	99.98	0.018	0.000	0.001	0.001
Alinta	99.82	0.072	0.084	0.018	0.005
APG	99.98	0.013	0.004	0.002	0.001
EnergyAustralia	99.99	0.006	0.002	0.001	0.001
Lumo	99.90	0.100	0.000	0.000	0.001
Momentum	100	0.000	0.000	0.000	0.000
Origin	99.96	0.037	0.001	0.001	0.001

<sup>21</sup> Based on Energy Retailer reporting to Energy Assured.

<sup>22</sup> Research into the Door-to-Door Sales Industry in Australia, Frost & Sullivan, August 2012.

Red	99.98	0.000	0.000	0.003	0.014
Simply	99.93	0.069	0.002	0.001	0.002

- 18.2 The above percentages are based upon the number of face to face contacts made during the relevant reporting period, of which there have been approximately 12.5 million per annum across the industry. It demonstrates an extremely low level of complaints being raised with Energy Retailers.
- 18.3 As there is no available pre-Scheme data similar to the above and as the Scheme has been operational for less than two years, there is no comparative data available to demonstrate trends of improvement. However, some ombudsman data is available and is discussed later in this submission.

## 19 Discipline of Members – Warning Notices and Sanctions

- 19.1 The Code provides for Warning Notices and Sanctions to be applied to Members for failing to comply with the Code. Since the Scheme commenced, Energy Assured has issued the following Warning Notices and Sanctions to Members:

Sanction	Number issued
Warning Notices	8
Level 1 Sanction	1
Level 2 Sanction	2

- 19.2 When determining Sanctions, the Code Manager considers cost and resource constraints on Members. However, improved behaviour is the prime consideration when devising Sanctions. Some examples of compliance actions that Members have been asked to perform are:

Issue	Corrective action required
Possible lack of independence where assessments and investigations were completed by the Sales Agent's direct Manager	<ul style="list-style-type: none"> <li>Provide Energy Assured with a list of those Sales Agents who have been assessed by their manager, and from which Energy Assured will choose 3 from each team, to be randomly re-assessed by different assessors. Should any of these Sales Agents not be found to be competent, Energy Assured may require all agents assessed by that particular team manager, to be re-assessed.</li> <li>Marketer to provide a list of all investigations of complaints that were undertaken by team managers on their own staff. Energy Assured to randomly select 5% or up to 15 cases and ask the Energy Retailer to review these against their Sales Complaints Handling Process requirements.</li> <li>Confirm that no further assessments or investigations are undertaken for Sales Agents by their direct team managers.</li> </ul>
Agent using a non-compliant script	<ul style="list-style-type: none"> <li>A review of all training materials and scripts used in formal training and informal daily refresher training sessions.</li> <li>All Sales Agents to undergo revised training urgently.</li> </ul>

- 19.3 Energy Assured has observed a high level of compliance when corrective actions are required of Members. Where a Warning Notice has been issued, Members have, in most cases, complied with prescribed corrective actions in the required timeframes. This has meant only a limited number of Sanctions have needed to be issued.
- 19.4 The number and nature of Sanctions and Warning Notices are discussed by the Code Manager with the ombudsman offices and relevant regulators. Where a Level 3 or above Sanction occurs, the name of the Member is also disclosed to the regulator.
- 19.5 Systemic Issues are defined in the Code and are reported to the Code Manager by the Energy Retailers<sup>23</sup>. Energy Assured maintains records of Systemic Issues identified by and/or to it by Members and ensures that appropriate remedial action is taken by responsible Members accordingly.

<sup>23</sup> See subclauses 19.5 – 19.8 of the Code.

## **20 Changes in membership of Energy Assured**

- 20.1 Since its commencement, Energy Assured membership has varied from time to time. The change in the Code via a Minor Variation at the end of 2012 to confirm that Energy Marketers that provide a comparator service (**Comparators**) were also covered by the Code has opened up the potential membership of the Scheme.
- 20.2 Comparators must follow all of the compliance requirements of other Members. The Minor Variation was sought to accommodate incremental differences in operations between Comparators and other Energy Marketers given Comparators represent more than one Energy Retailer at a time. This means that their reporting and complaint handling obligations are slightly different and when conducting Sales Activities, they need to nominate the Energy Retailers they represent. These slight differences are retained in the Code under this application. In the few months since the Minor Variation was approved, there have been no operational issues associated with the membership of Comparators and they have been dealt with in the same way as other Members.
- 20.3 In recent months, some Energy Retailers have ceased door to door marketing to residential customers and so have withdrawn from membership of Energy Assured. This has been a commercial decision for each Energy Retailer to make according to its own business plans. Energy Assured's membership of Energy Retailers and Energy Marketers remains robust and there has been no impact on the efficient running or the effectiveness of the Scheme for participating Members.
- 20.4 Moreover, a new category of Energy Retailer membership has been developed to admit Energy Retailers who engage in face to face Sales Activities primarily to small business customers. This will encourage those Energy Retailers who have limited face to face Sales Activities, carrying a different risk profile and compliance issues, to still participate in the Scheme.

## **21 Discipline of Sales Agents**

- 21.1 As at 31 August 2013, since the Scheme commenced:
- (1) 270 applications for Deregistration of Sales Agents have been received by the Code Manager.
  - (2) 36 applications have been denied by the Code Manager during the investigation.
  - (3) 45 Sales Agents have appealed their Deregistration.
  - (4) 10 appeals have been successful and the Code Panel has overturned the Code Manager's determination.
  - (5) 35 appeals have been unsuccessful and the Code Panel has upheld the Code Manager's determination.

## **22 Engagement with stakeholders and consumer groups**

- 22.1 Energy Assured ensures a consistently high level of stakeholder engagement.
- 22.2 In addition to meetings with individual stakeholders that are held on a regular basis as set out above, Energy Assured hosts a Stakeholder Working Group twice a year<sup>24</sup>. Consumer Advocates, ombudsman offices, regulators, Department of Fair Trading and government departments are invited to participate. This is an opportunity for Energy Assured to update stakeholders, answer questions and gain insight from stakeholders.
- 22.3 Energy Assured sought feedback on its training program from the Stakeholder Working Group. Energy Assured includes case studies as part of the training program, particularly to help Sales Agents understand some of the issues facing vulnerable customers and to help them to

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<sup>24</sup> See clause 11 of the Code.

consider how they would apply the training using practical examples. By working with Consumer Advocates, Energy Assured is able to better understand some of the issues facing consumers. For example, two case studies were added after discussions with the Consumer Utilities Advocacy Centre and the Footscray Community Legal Centre to assist Sales Agents with cultural awareness.

- 22.4 The Code Manager also participates in the Energy Marketing Working Group hosted by Consumer Affairs Victoria twice each year.
- 22.5 These close relationships have permitted a mutually beneficial development of the Code and generated a good level of support from consumer groups and stakeholders alike.

### **23 Liaison with and assistance to Ombudsmen and regulators**

- 23.1 Through Memoranda of Understanding, Energy Assured works with each energy ombudsman's office to share information about complaints, monitor emerging trends and to provide information about the effectiveness of the Scheme.
- 23.2 While Energy Assured does not manage customer complaints, in the small number of circumstances where a complaint is received directly by Energy Assured it refers customers to the appropriate Energy Retailer, Comparator, energy Ombudsman or Department of Fair Trading.

### **24 Observed commitment to compliance by Members**

- 24.1 As noted above, the Code Manager has observed a high degree of compliance, and a commitment to making improvements by participating Members. The figures reported in this submission support this finding.
- 24.2 With scope for the Code Manager to report specific information about the performance of Members to Stakeholders and publish an Annual Report detailing Member-specific complaint rates compared to contacts, Members are held accountable for their performance and actions<sup>25</sup>.
- 24.3 The Code Manager has observed that Members have improved their compliance through introducing or enhancing their quality assurance programs. For example, most Members conduct quality checks on a percentage of sales made each week, more so than they did before the Scheme became effective.
- 24.4 There is now a significant incidence of sales issues which are discovered by Members through the quality assurance checks or by the independent operators conducting the post-sale verification calls. This means that many matters are resolved swiftly before they become complaints. This enables speedy retraining or disciplining of Sales Agents and that Code and regulatory contraventions are prevented.

## **Public Benefits**

Energy Assured has a proven track record that has delivered meaningful results, including those outlined in the preceding sections.

It is submitted that the Scheme has significant public benefits that far outweigh any anti-competitive detriment. In particular, many anticipated benefits highlighted in the application for the Original Authorisation have been realised over the past 20 months and demonstrate that the Scheme can be expected to continue to yield benefits if authorised for a further five years.

### **25 Improved standards of marketing, consumer protection and confidence**

- 25.1 **Quality:** Through rigorous recruitment, training, assessment and accreditation regimes to instil and enforce the Energy Assured Standards, the quality of Sales Activities has improved since

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<sup>25</sup> See subclause 9.6 of the Code.

the Scheme commenced. Some of the key components of the Scheme believed to be supporting these improvements are:

- All Sales Agents must provide 100 points of identification<sup>26</sup> and undergo a criminal history check<sup>27</sup>.
- Following training, Sales Agents are accompanied by an Experienced Sales Agent until they have passed an assessment by an Assessor to permit the Sales Agent to work unsupervised<sup>28</sup>.
- Every month, 5% of all approved Sales Agents must be assessed with the results reported to Energy Assured<sup>29</sup>.
- In addition to the training and assessment that must be undertaken for a new Sales Agent, Members must also conduct annual assessments of their Sales Agents and provide ongoing training as required<sup>30</sup>. This process allows the member to take a more proactive approach in the prevention of marketing complaints by ensuring that Sales Agents do not develop poor habits over time. Absent the Code and the Energy Assured Register, there is no obligation on Members to follow any re-training process.
- The Scheme streamlines processes and creates uniformity in the selection, recruitment, training and competence of Sales Agents industry and nation-wide. This in turn promotes certainty and consistency for customers.
- Sales Agents are monitored through a central database and through a complaints and competence monitoring process that ensures that Sales Agents are retrained or disciplined in a standardised way across the industry if complaints are received about them<sup>31</sup>.

- 25.2 **Rogue Sales Agents reduced:** The real threat of deregistration sanctions for Sales Agents has proved to be an essential tool to promote good behaviour and weed out rogue Sales Agents, thereby improving the standard of Sales Activities. The statistics relating to the discipline of Sales Agents is reported in paragraph 21.1 above. At 31 August 2013, 234 Sales Agents had been deregistered since the commencement of the Scheme. Moreover, Members are also prevented from engaging deregistered Sales Agents in any capacity for 5 years.
- 25.3 **Members held to account:** The warning notice and sanctions process is operating effectively. Members respond appropriately to warning notices and sanctions.
- 25.4 **Fewer unwelcome contacts:** By improving the standards of Sales Activities, customers experience lower rates of inappropriate or unwelcome contacts.
- Energy Assured has a zero tolerance policy on Sales Agents ignoring a do not knock notice and several Sales Agents have been deregistered for this particular breach.
  - As a result of the Scheme, customers experience a more professional approach by Sales Agents in most cases. This is because Sales Agents are trained to a consistent standard, are aware of the behaviours that are expected and understand the consequences of failing to meet the Energy Assured Standards.
  - Sales Agents are recruited with regard to preserving consumer security, ensuring that they are of appropriate demeanour, are not deregistered and have completed a criminal history check.
- 25.5 **Improved consumer confidence:** Improved quality of Sales Activities and a reduction in negative experiences, as discussed above, has led to better levels of consumer protection and consumer confidence. Energy Assured will continue to monitor industry reports such as the *AEMC NSW Retail Review* and the *Victorians' experience of the Electricity Market 2013*, both recently published. Energy Assured is currently incorporating some of the findings into its training materials.
- 25.6 **Low level of customer complaints:** The energy industry works hard to reduce the number and severity of customer complaints. As reported in section 18 above, one of the ways Energy Assured monitors complaint numbers and trends is to look at complaints as a ratio of customer

<sup>26</sup> See subclause 15.2(1) of the Code.

<sup>27</sup> See subclause 15.2(3) of the Code.

<sup>28</sup> See subclause 16.1 of the Code.

<sup>29</sup> See subclause 18.1(2) of the Code.

<sup>30</sup> See subclauses 18.1(3) and 18.3 of the Code.

<sup>31</sup> See clause 19 of the Code.



contacts. Throughout the operation of the Scheme, this ratio has averaged between 3 and 4 complaints per 10,000 customer contacts. This ratio is ascertained by the number of complaints reported by Energy Retailers in their reporting to Energy Assured compared to the number of customers that have been contacted for the same period. Of course, as there are around 12.5 million customer contacts made each year through face to face energy marketing in Australia, some complaints are inevitable. However, this is a very low proportion of complaints.

- 25.7 This low complaint ratio leads to a greater level of confidence for customers when choosing an energy contract in a face to face environment.

## **26 Improvements not confined to Energy Retailers that are Members**

- 26.1 Energy Marketers can be Members of the Scheme even if the Energy Retailer for whom they are providing services is not a Member<sup>32</sup>. This facilitates improvements in the standard of Sales Activities of non-Member Energy Retailers to the extent that they may use Energy Marketers that are Members. In particular, Energy Marketers are able to check that a Sales Agent is not deregistered before engaging the Sales Agent and are able to apply to deregister Sales Agents themselves. This will continue to provide protection for customers by limiting the risk that those Sales Agents who have been deregistered, are being engaged.
- 26.2 Also, an Energy Marketer may conduct Sales Activities on behalf of more than one Energy Retailer. This means that even if an Energy Retailer is not a Member, they benefit from improved standards of Sales Activities by reason of the Energy Marketer being a Member of Energy Assured due to its other client(s) being an Energy Retailer Member.

## **27 Improved competition at retail level**

- 27.1 Competition is very important at the retail level. Energy is traditionally a "low involvement" decision and consumers do not always seek out energy contract choices themselves. Frost & Sullivan (2012) find that most consumers have relatively little interest in the product and few make a pro-active effort to purchase it<sup>33</sup>. An effective face to face marketing channel, principally through door to door sales, allows customers an easy way to exercise choice.
- 27.2 Incumbent Energy Retailers can benefit from limited direct consumer engagement. However, smaller and new entrant Energy Retailers find the face to face marketing channel very effective to grow their business without the need to spend heavily on building their brand in above the line media.
- 27.3 In a recent report by Citi<sup>34</sup>, it was said:

**Price war continues in NSW** — Price discounting remains highest in NSW, the largest market in the NEM. Interestingly, it appears that competition is most intense in ORG's incumbency areas where discounts average around 25% off benchmark Tier 1 standing offers, than it is in Energy Australia's where the magnitude is close to 10%.

**Discounting high in VIC & SA** — Competitive activity in the deregulated markets of VIC and SA remains high. In fact, in VIC, discounting is highest in AGK's incumbency area, perhaps the residual impact of AGK's attack on NSW customers in ORG's incumbency area in particular. We note however, ORG has brought back down their discounts across the board which is expected given they are the largest retailer in the NEM (and is most impacted from excessive discounting).

**QLD is least active** — As expected, discounting in QLD is much more subdued than in the other regions, reflecting the level at which tariffs have been set by the regulator. That said, there is a sufficient number of retailers offering product outside of the two incumbents AGK and ORG for consumers. Not surprisingly, Energy Australia, the only Tier 1 retailer without an incumbency in QLD is priced the lowest.

<sup>32</sup> See Dictionary section, subclause (28) of the Code.

<sup>33</sup> Research into the Door-to-Door Sales Industry in Australia, Frost & Sullivan, August 2012.

<sup>34</sup> Marie Miyashiro, CFA, Citi Research, *Utilities: Energy Retail, Part 1: State of the Retail Market*, 12 September 2013.

- 27.4 Face to face sales play an important role in the energy industry as they are seen to drive customer switching, enabling Tier 2 Energy Retailers to build market share. According to Frost & Sullivan (2012):

*many traders believe that usage of door-to-door sales is important to stimulate market competition, particularly in the energy sector. Without this channel, smaller tier-2 retailers (non-incumbents), in particular, state that it would be difficult for them to establish a critical mass of customers and thereby offer an effective level of competition in the market. Door-to-door sales is regarded as a highly cost-effective channel that requires much lower levels of upfront investment than alternatives such as outbound telesales (which require contact centre infrastructure), or television advertising.*

- 27.5 Having a highly competitive energy market ultimately benefits customers through better prices, more attractive discounts and more innovative offers as Energy Retailers compete for the customer's account.

## **28 Improved consumer choice and information**

- 28.1 Through the encouragement of retail competition, consumer choice is increased.
- 28.2 Standardised training and competency assessments ensure consumers receive quality information on energy contracts offered by Sales Agents. Under the Scheme, consumers are better informed about their available energy supply choices because all Sales Agents undergo classroom training instigated by the Energy Retailer which includes product knowledge, privacy rules, consumer rights, Australian Consumer Law requirements for unsolicited sales, requirements under state based legislation and the Energy Assured training program.
- 28.3 Also, with the inclusion of Comparators within the Scheme, customers are able to learn about more than one Energy Retailer's offers during a face to face marketing interaction, thus improving information symmetry, thereby aiding those customers to be better informed about more of their available energy supply choices. Not every market offer available from every Energy Retailer is necessarily compared in the face to face interactions because not all Energy Retailers have relationships with Comparators. Nevertheless, the customer is presented with a selection of offers from which to choose. Ensuring Comparators are Members of the Scheme also aids in assisting the Comparators to ensure that this service is performed appropriately.

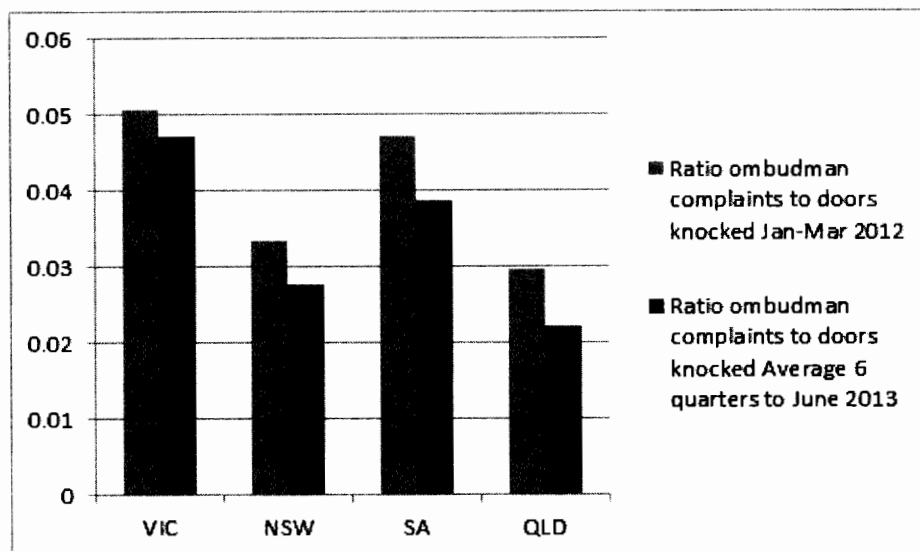
## **29 Assistance for Members to comply with their regulatory obligations**

- 29.1 The Scheme provides clear parameters for compliance and assists Members to comply with their legal, regulatory and ethical obligations in conducting face to face Sales Activities.
- 29.2 By setting benchmarks in the industry, Members strive to achieve the Energy Assured Standards and view membership of the Scheme as a reputational safeguard.
- 29.3 The Code Manager's role in overseeing the Scheme, monitoring compliance and imposing Sanctions where appropriate has led to ongoing improvements in marketing activities. Energy Assured has a helicopter view of the industry, enabling it to monitor trends, address issues quickly and provide a central point of liaison for the industry and key stakeholders with regard to face to face marketing compliance.

## **30 Reduction in ombudsman complaints**

- 30.1 The Scheme has a key role in reducing consumer complaints relating to door-to-door sales activity. Over the time that the Scheme has been in operation, the ratio of such complaints compared to customer visits has reduced. This is illustrated by the following graph, which shows the ratio of Ombudsman complaints to doors knocked for the first quarter of the Scheme's operation (January to March 2012) (blue columns), against the ratio of ombudsman complaints to doors knocked over the six quarters of the Scheme's operation (January 2012 to June 2013) (red columns).

- 30.2 The clear reduction in complaints is demonstrative of the Scheme's efficacy as a tool for improving consumers' experiences with door-to-door energy marketing.



### 31 Guidance and support to Members

- 31.1 Since the inception of the Scheme, the Code Manager has issued guidelines to provide clarity for Members and assist them with their compliance with the Code as follows:

- (1) Energy Assured member Guideline 1 – Returning Sales Contractors;
- (2) Energy Assured member Guideline 2 – Assessor independence;
- (3) Energy Assured member Guideline 3 – Treatment of Sales Agents when undertaking an investigation;
- (4) Energy Assured member Guideline 4 – Verification calls best practice;
- (5) Energy Assured member Guideline 5 – Engagement with deregistered Sales Agents;
- (6) Energy Assured member Guideline 6 – Evidence to be submitted with Deregistration Application;
- (7) Energy Assured member Guideline 7 – New Member readiness checklist;
- (8) Energy Assured member Guideline 8 – Sales Agents to only be engaged by one Member and must be entered on register prior to commencing Sales Activities; and
- (9) Energy Assured member Guideline 9 – Do Not Knock notices on apartments, villas and other multi-dwelling properties.

- 31.2 Energy Assured would be happy to provide copies these guidelines to the ACCC if it would assist.

### 32 Code Review

- 32.1 Consistent with the requirements of the Code, an independent Code Review was undertaken in May 2013. The Code Review concluded that the Code was operating effectively to achieve its aims. Minor recommendations for improvements in stakeholder education and monitoring were made and are being implemented by Energy Assured.

- 32.2 Consumer groups, ombudsmen, jurisdictional regulators and the AER were provided with a copy of the Code Review. Results of the Code review were discussed at the Stakeholder Working Group in May 2013.

## **Public Detriments**

### **33 No anti-competitive detriment**

- 33.1 It is submitted that the Scheme has little, if any, negative impact on competition. The Scheme is open to all Energy Retailers and Energy Marketers. Similarly the participation of all Sales Agents is encouraged. Provided they comply with the Membership conditions and Energy Assured Standards, all participants are on a level playing field. In the event that a participant fails to comply, any decision to Sanction the Member or Sales Agent are made by independent decision-makers.
- 33.2 In respect of the "Accreditation Provision" outlined in Annexure A, there may be a perception that requiring Members to deal only with Sales Agents that are registered and accredited under the Scheme would unreasonably restrict the ability of Sales Agents to engage in face to face Sales Activities in the energy industry by preventing Energy Retailers and Energy Marketers who are Members from dealing with Sales Agents that are not registered and accredited. However, there would be no such appreciable restriction as the Scheme is open to any person seeking to engage in face to face Sales Activities as a Sales Agent (provided they pass criminal history and reference checks and do not have a history of frequent or substantial infringements of the Energy Assured Code).
- 33.3 Additionally, the deregistration of a Sales Agent is not indefinite. A Sales Agent is eligible for re-registration in 5 years. As such, it is difficult to demonstrate any real limitation on the acquisition of face to face sales services from Sales Agents. In any event, any limitation would positively improve the delivery of the public benefits to the extent that it improves the standard of face to face energy marketing and promotes consumer confidence and choice as discussed above.
- 33.4 In respect of the "Exclusive Representative Provision", there may be a perception that to require a Sales Agent to only represent one member at any one time inhibits the free and competitive movement of Sales Agents in the market. However, it is the mechanics of the Scheme that require this state of affairs. The Energy Assured Register cannot operate appropriately and the necessary competence monitoring and training cannot occur if more than one member is responsible for a Sales Agent at any one time. To not impose this requirement would be to significantly hamper the administration of the Scheme and its ability to deliver the public benefits outlined above. In any case, given any Sales Agent is eligible to become a Scheme participant and be engaged by any Member and given that a Sales Agent is free to leave the engagement of a Member at any time, there can be little impact on the allocation of Sales Agents.
- 33.5 As for the "Member Provision", there may be a perception that requiring an Energy Retailer Member to only engage Energy Marketers that are Members to undertake Sales Activities on its behalf<sup>35</sup> would unreasonably exclude Energy Marketers that are not Members of the Scheme. Arguably if a large proportion of Energy Retailers are Members and they cannot engage non-member Energy Marketers, this may diminish the Energy Marketer's customer base. On the other hand, given any Energy Marketer is eligible to become a member of Energy Assured, this requirement would be unlikely to have any meaningful impact on the manner in which the services of Energy Marketers are acquired by Members. Additionally, without this provision, an Energy Retailer Member cannot ensure that it is complying with the Code. If it does not engage an Energy Marketer that is also a Member there is no mechanism for ensuring that the Member is engaging Sales Agents that are accredited on the Energy Assured Register and recruited, trained and assessed accordingly. Absent a fully compliant Membership, the ability of the Scheme to achieve the consumer benefits and other public benefits outlined above would be significantly reduced.

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<sup>35</sup> See subclause 7.1(1) of the Code.

- 33.6 A Member or Sales Agent that fails to comply with the Code may face sanctions<sup>36</sup>. The sanctions may affect a Member's ability to claim association with Energy Assured, result in poor publicity or expulsion and, for a Sales Agent, could result in deregistration. The imposition of a Sanction could hamper the ability of an Energy Retailer, Energy Marketer or Sales Agent to engage in face to face marketing in the future as the lack of association may discourage customers from engaging with them. This could accordingly affect their ability to compete in that channel of distribution. However:
- all Members and Sales Agents are on a level playing field with respect to eligibility for the Scheme and the requirement to comply with the Scheme;
  - to not Sanction a Member and/or Sales Agent for failure to comply would significantly diminish the ability of the Scheme to promote compliance and accordingly achieve the public benefits outlined above; and
  - the imposition of Sanctions that meaningfully affect a person's ability to operate in the face to face energy sales sector are rare. The removal of Member and Sales Agent privileges only occur in extreme cases of misconduct where the justification for the punishment outweighs any effect on competition.
- 33.7 Additionally, the decision to impose a Sanction rests with the Code Manager and the Code Panel. As indicated above, the Code Manager and Code Panel are independent of the Members. As such, decisions made under the Complaints Process are insulated from potential boycotting or blacklisting of Members or Sales Agents. Additional protection is provided by the appeal mechanism under the Complaints process that permits an aggrieved Member or Sales Agent to request that a first instance decision be reviewed.
- 33.8 A possible detriment of the Scheme is that the requirement that Members implement new compliance measures to adhere to the Scheme could, in turn, result in Members incurring additional costs. However, it is likely that Energy Retailers and Energy Marketers would have been required to incur compliance costs in any event given a possibility of additional regulatory requirements being imposed by legislation absent the Scheme. The Code has also been slightly amended to reduce the cost burden to Members in light of the operational practicalities that have revealed themselves over the past two years.

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<sup>36</sup> See subclause 28.1 of the Code.

## Annexure A

Provisions of the Code that may constitute cartel provisions, exclusionary provisions or otherwise have or be likely to have the purpose or effect of substantially lessening competition, in relation to which authorisation is sought:

1. The Code contains a provision that requires all Sales Agents to have fulfilled particular recruitment and training and be registered and accredited under the Energy Assured accreditation scheme in order to be permitted to conduct Sales Activities or any role connected to Sales Activities (**Accreditation Provision**)<sup>37</sup>. The Accreditation Provision has the potential to constitute an exclusionary provision or cartel provision to the extent it restricts or limits the acquisition of goods or services (i.e. the face to face sales and related services provided by Sales Agents) from a particular class of persons (i.e. non-accredited Sales Agents).
2. The Code contains a provision that prevents more than one Member from engaging any one Sales Agent at the same time (**Exclusive Representative Provision**)<sup>38</sup>. The Exclusive Representative Provision has the potential to constitute a cartel provision to the extent it can be construed as having the purpose of directly or indirectly allocating between the Members, the Sales Agents who are likely to supply Sales Agent services to those Members.
3. The Code contains a provision that provides that where an Energy Retailer contracts with a third party for the provision of face to face marketing services, the third party provider must be a Member (**Member Provision**)<sup>39</sup>. The Member Provision has the potential to constitute an exclusionary provision or cartel provision to the extent it can be construed as having the purpose of preventing, restricting or limiting the acquisition of goods or services (i.e. the intermediary marketing services provided by Energy Marketers) from a particular class of persons (i.e. other energy marketers that are not Members).

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<sup>37</sup> See clauses 14 – 16 of the Code.

<sup>38</sup> See subclauses 6.1 and 8.1(2) of the Code.

<sup>39</sup> See subclause 7.1(1) of the Code.

## Annexure B

### Existing internal and external audit activities of a sample of Members

	Title of Audit <i>Brief description of audit or purpose</i>	Internal	External	Commissioned by <i>Name of regulator, internal or third party</i>	Frequency			
					6 monthly	annually	bi annually	other
Retailer 1	IPART new entrant audit		x	IPART				ad hoc
	Breach reporting audit		x	Retailer		x		
	ACL Compliance Audit	X		Retailer		x		
	Compliance program	x		Retailer		x		
	Sales process and compliance audit	x		Retailer		x		
Retailer 2	Internal Channel Audit	x		Retailer				ad hoc
	Breach Reporting/ Self Reporting	x		Retailer	x			
	Compliance Committee	x		Retailer				2 monthly
	QA Reporting	x		Retailer				Weekly
	Contract Performance/ KPI's	x		Retailer				Ongoing
	Channel Compliance Meeting	x		Retailer				2 monthly
	ESCV Regulatory Audits		x	ESCV		x		
Retailer 3	Field Audit	x		BAU				quarterly
	Back Office Audit	x		BAU				quarterly
	Training Audit	x		BAU				quarterly
	Sales Audit	x		BAU / As required				ad hoc
Retailer 4	Field Sales			Retailer	x			
	Complaints Management review			Retailer				ad hoc
	NSW Compliance			IPART	x			
Retailer 5	Sales Assurance Review	X		Internal			x	
	Sales Assurance audit	X		Internal		x		
	Sales Assurance on field audit	X		Internal				ad hoc
	Internal D2D audit	X		Internal				ad hoc
	Internal marketing code audit	X		Internal				ad hoc
Marketer 1	No NMI no MIRN call audit	x		Retailer				Weekly
	Sales Audit - check contract data entry	x		Retailer				Daily
	Fit2work Audit - ensure police checks are carried out, recorded and filed	x		Fit2work		x		
Marketer 2	Full compliance audit	x		Marketer			*	
	Full compliance audit		x	Marketer				ad hoc
Marketer 3	Compliance Surveys	x		Marketer	8			
	Compliance Process Review		x	Marketer				ad hoc
Marketer 4	Check agent documentation to ensure meet FW/WHs/other legal requirements	x		Marketer				weekly
	Ethical Check: checking terminology, practices, documents, file keeping, appearance, etc.	x		Marketer			x	
	Ongoing Post 6pm check to confirm sales occurring in permitted times	x		Marketer				ad hoc

## Schedule 1 Members

Parties to the contract, arrangement or understanding and on whose behalf the application is made

Name	Address	Description of Business
Aims Marketing	Suite 601 Level 6 Office Building 159 – 175 Church Street Westfield Parramatta NSW 2022	Energy Marketer
Alinta	Level 11, 20 Bridge Street Sydney NSW 2000	Energy Retailer
Appco Group Energy Pty Ltd	Level 6, 80 Cooper Street Surry Hills, NSW 2010	Energy Marketer
ASAP	Suite 3, Level 2, 21 Cremorne St, Richmond VIC 3121	Energy Marketer
The Comunicom Group Pty Ltd	Suite 502, Level 5 46-56 Kippax Street Surry Hills NSW 2010	Energy Marketer
Energy Deal	Level 4, 973 Nepean Highway Morabbin VIC 3189	Energy Marketer
Energy Retailers Association of Australia	Suite 3, Level 5 189 Kent Street Sydney NSW 2000	
FieldStar Services Ltd	Building 10, Level 3 658 Church Street Richmond VIC 3121	Energy Marketer
Genius Direct	Level 3, 534 Church Street Richmond VIC 3121	Energy Marketer
Lumo Energy Australia Pty Ltd	Level 3 565 Bourke Street Melbourne VIC 3000	Energy Retailer
Momentum Energy Pty Ltd	Level 12 628 Bourke Street Melbourne VIC 3000	Energy Retailer
Origin Energy Retail Ltd	Ground Floor 360 Elizabeth Street Melbourne VIC 3001	Energy Retailer
Qenergy	11 Cordelia Street South Brisbane QLD 4101	Energy Retailer
Red Energy Pty Ltd	2 William Street East Richmond VIC 3121	Energy Retailer
Redwood BC	Suite 2, 150 Chestnut Street, Cremorne, Vic, 3121	Energy Marketer
Sales Etiquette	16 Studley Street Abbotsford VIC 3067	Energy Marketer
Sales Force Australia Pty Ltd (Salmat)	Lvl 1 23 - 31 Lincoln Sq South Carlton VIC 3053 Australia	Energy Marketer
Sales Solutions	Suite C8, Encompass Business Park 101, Rookwood Road, Yagoona, NSW 2199	Energy Marketer
Sales Marketing and Real	Level 3	Energy Marketer



Name	Address	Description of Business
Technologies (SMART) Pty Ltd	554 Church Street Richmond VIC 3121	
Simply Energy	Level 33, Rialto South Tower 525 Collins Street, Melbourne VIC 3000	Energy Retailer
SIQ	65 Fraser St, Richmond 3121	Energy Marketer

It is proposed that additional Energy Retailers and Energy Marketers will become parties to the contract or proposed contract, arrangement or understanding in the future.

## **Schedule 2**

# **ENERGY ASSURED LIMITED**

## **CODE OF PRACTICE**

**As amended November 2013**

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**Annexure A - Sales Complaint Handling Process (Flow Chart)**

**Annexure B - Determining an Appropriate Member Sanction (Flow Chart)**

**Annexure C - Security for Appeal - effective 16 January 2014. Fees increase 5% each year.**

**Annexure D - Form A - Deregistration Application**

**Annexure E - Form B - Deregistration Notice**

**Annexure F - Form C - Member Complaint**

**Annexure G - Form D - Notice of Breach**

**Annexure H - Form E - Notice of Appeal (Sales Agent)**

**Annexure I - Form F - Notice of Appeal (Member)**

## **PART 1: PRELIMINARY**

### **1 Objectives and Scope of the Code**

- 1.1 This Code creates a self-regulated industry scheme to enhance compliance with the existing Federal and State-based regulatory framework applying to the face to face marketing of energy to both residential and small business consumers. Not only does the Code seek to improve the compliance of Energy Retailers that subscribe to the Code, but also the Energy Marketers that often perform face to face sales on their behalf. These Energy Marketers may represent just one retailer or offer a comparator service as a Comparator. Energy Assured's membership comprises both Energy Retailers and Energy Marketers. The Code aims to:
- (1) promote consumer confidence in face to face sales activities in the energy industry;
  - (2) provide consumers with a better overall experience in energy marketing during face to face sales;
  - (3) improve the standards and effectiveness of face to face sales in the energy industry;
  - (4) reduce the rate of Sales Complaints; and
  - (5) discipline and/or remove "rogue" Sales Agents.
- 1.2 To achieve its Objectives, the Code details a scheme that standardises processes and procedures within the face to face retail energy industry to meet a set of Energy Assured Standards by:
- (1) establishing a central register of Sales Agents that have been accredited under the scheme;
  - (2) providing for a national scheme that ensures Sales Agents are recruited, trained and assessed in a consistent manner across the industry;
  - (3) providing for a national scheme for the monitoring of Sales Agents, where any proven breach of the Energy Assured Standards may result in disciplinary measures and deregistration from the Energy Assured Register for 5 years;
  - (4) providing for a scheme which ensures that when a consumer complains about the conduct of a Sales Agent with the Energy Assured Standards, these are handled in a consistent manner by Energy Retailers and Comparators;
  - (5) strengthening the regime of compliance to the Code, ensuring that Members are consistently monitored independently through quarterly reports and Compliance Checks under the Code (which are in addition to the regulatory reporting obligations); and
  - (6) imposing sanctions on Members that fail to comply with the requirements set out in the Code, noting that sanctions may also be imposed by the relevant energy regulator or authority.

### **2 Interpretation**

#### **2.1 Definitions**

Capitalised words appearing in this Code have the meaning given to them in the Dictionary at the end, or defined in **bold** in the body of this Code.

## **2.2 Inconsistency with laws**

This Code applies to the extent that it is consistent with Applicable Laws. If this Code is inconsistent with any Applicable Law, that law will apply to the extent of the inconsistency.

## **2.3 Energy Assured Procedures Guideline**

This Code operates together with the Energy Assured Procedures Guideline. The Procedures Guideline sets out the procedures, principles and processes that underpin the Code for registering and maintaining Sales Agents, Experienced Sales Agents, Assessors and Sub-agent Principals on the Energy Assured Register and recruiting, training and assessing Sales Agents.

## **2.4 Code Supplements Existing Regulatory Regime**

This Code sits alongside the Applicable Laws that govern face to face sales across numerous Australian jurisdictions, including the Australian Consumer Law and does not override a Member's obligations under these laws.

- (1) The roles of Energy Assured, the Code Manager and the Code Panel relate to the administration and enforcement of the Code. These roles are separate from the role of applicable jurisdictional energy regulators in administering and enforcing Applicable Laws. The Sanctions that may be imposed under this Code are in addition to the sanctions that can be imposed by the relevant energy regulator or authority.
- (2) This Code operates separately to the applicable energy ombudsman schemes. Each energy ombudsman is an independent dispute resolution body. Consumers can complain about the behaviour of a Sales Agent to either the relevant Energy Retailer or Comparator in the first instance, or to the applicable energy ombudsman, should they choose to do so.

In its Marketing Material, Energy Assured will ensure that consumers fully understand the various avenues of complaint available to them, and that complaints are handled in a manner that does not prejudice a consumer's recourse to other avenues of complaint, including by operating in the manner set out in clause 9.1.

## **PART 2: THE ENERGY ASSURED STANDARDS**

### **3 Compliance with the Energy Assured Standards**

- 3.1 Members, their agents/contractors, and all Sales Agents must comply with the Energy Assured Standards set out below.
- 3.2 The Energy Assured Standards include those embodied standards in the Applicable Laws that govern face to face sales across numerous Australian jurisdictions, including the Australian Consumer Law.
- 3.3 The Energy Assured Standards apply to the extent that they are consistent with the Applicable Laws. If the Energy Assured Standards are inconsistent with any Applicable Law then that Applicable Law will apply to the extent of the inconsistency.

### **4 Consumer Contact**

- 4.1 Sales Agents must:
  - (1) only make door to door sales calls during “permitted hours” under the Applicable Laws which, at the time of the publication of this Code do not include:
    - (a) any time on a Sunday or public holiday;
    - (b) any time before 9am on any other day; or
    - (c) any time after 6pm on any other day (or 5pm if the other day is a Saturday),unless it is with the consumer's consent in accordance with Applicable Laws, of which a record must be kept;
  - (2) comply with any signs at a consumer's premises indicating:
    - (a) canvassing is not permitted at the premises; or
    - (b) no advertising or similar material is to be left at the premises or in a receptacle associated with the premises;
  - (3) as soon as possible on making contact, identify themselves, the Energy Retailer(s) (and in the case of a Sales Agent representing a Comparator, the Comparator) they represent, and their purpose;
  - (4) produce an identity card, which clearly displays the Energy Retailer's name, the Sales Agent's name and photograph, the business address and contact details of the Energy Retailer they represent, (or in the case of a Sales Agent representing a Comparator, the name of the Comparator, and the business address and contact details of the Comparator), an expiry date for validity of the card, and the Energy Assured Logo;
  - (5) for door to door sales, not misrepresent themselves or the purpose of their visit and state that the purpose of his or her visit is to assist the consumer to enter into an energy retail contract;
  - (6) for door to door sales, advise that he or she is not permitted to remain on the premises for more than an hour unless consent is provided in writing;
  - (7) for door to door sales, advise that he or she must leave the premises immediately on request and immediately cease contact with a consumer who clearly indicates that contact is inconvenient, unwelcome or inappropriate before or during the negotiation of a contract;



- (8) ensure that during a Post Sale Verification Procedure, the telephone is not used with the loud speaker setting engaged and that a customer is not coached during the call;
- (9) for door to door sales, if contact is ceased, record that the consumer is not to be contacted by the Energy Retailer (or in the case of a Sales Agent representing a Comparator, the Comparator) for at least 30 days after the request was made;
- (10) explain that if the consumer is not happy with the way they have been dealt with, they can contact the Energy Retailer, Comparator or energy ombudsman to make a complaint; and
- (11) provide the consumer with a copy of the Marketing Material in accordance with clause 9.5, if requested by the consumer or where a consumer expresses an interest in obtaining more information.

**4.2 A Sales Agent who represents a Comparator must:**

- (1) explain to the consumer that they represent the Comparator and that the Comparator offers a comparison service;
- (2) show the consumer a list of all Energy Retailers the Comparator represents; and
- (3) if the Comparator does not represent all retailers, it must tell the consumer this.

**4.3 Members must maintain records, including the date and the approximate time of contact with the consumer to allow the subsequent identification of the Sales Agent involved in a particular Sales Activity. This will assist in dealing with any Sales Complaint or query. Records are to be retained:**

- (1) for a period of two years; or
- (2) where a consumer has within that period made a complaint or referred a dispute to the energy ombudsman in relation to energy marketing activities – for the period the complaint remains unresolved,

whichever is the longer period.

**4.4 Members must ensure that it and its appropriate officers and employees have immediate access, or a right of immediate access, to each such record.**

**4.5 Members must comply with any requirement that applies in their State or Territory to create and maintain a "no contact list" for use by its Sales Agents.**

**5 Entering into a Contract**

**5.1 Sales Agents must:**

- (1) take appropriate steps to ensure that the consumer has the authority to enter into a contract for the energy supplied at the premises;
- (2) provide in writing before the formation of a contract information about:
  - (a) the consumer's right to terminate the contract during applicable cooling off and other termination periods; and
  - (b) the way in which a consumer may exercise that right.
- (3) provide the following information to a consumer in accordance with all Applicable Laws, including the Australian Consumer Law, regarding the essential provisions of the terms of supply, so as to ensure that the consumer understands what they are committing themselves to, including:

- (a) that they are entering into a contract to transfer their energy supply to the Energy Retailer;
  - (b) all applicable prices, charges, early termination payments and any penalties that may apply, information on security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters are calculated and may be changed, including a declaration that the price offered is inclusive of all costs, including GST;
  - (c) the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the consumer moves out during the term of the contract;
  - (d) if any requirement is to be or may be complied with by an electronic transaction – how the transaction is to operate and, as appropriate, an indication that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction;
  - (e) the consumer's right to complain to the Energy Retailer or Comparator in respect of any energy marketing activity of the Sales Agent and, if the complaint is not satisfactorily resolved by the Energy Retailer, the consumer's right to complain to the energy ombudsman; and
  - (f) that the Sales Agent may receive a fee or commission if the consumer enters into a contract;
- (4) provide the consumer with:
- (a) a copy of the contract and any information and documentation required to be provided to the consumer in accordance with Applicable Laws, which must include but is not limited to:
    - (i) details contained in clause 5.1(3);
    - (ii) a prominent notice on the front page of the contract about the rights of the consumer to terminate the contract in accordance with Applicable Laws;
    - (iii) the notice that may be used by the consumer to terminate the contract;
    - (iv) the full name, ABN or ACN, address, e-mail address, phone number and fax number of the Energy Retailer or Comparator that the Sales Agent represents; and
  - (b) the Sales Agent's name, and Company ID Number, and the full name and details of the company they work for, if different to the Energy Retailer or Comparator;
  - (c) information about the Energy Retailer or Comparator's Sales Complaints Handling Process, including details of the relevant energy ombudsman; and
  - (d) a copy of the Marketing Material in accordance with clause 9.5.

5.2 Energy Retailers must:

- (1) ensure that they provide Sales Agents with documents and information that are required to be provided to consumers under the Applicable Laws;
- (2) design contract forms and supporting documentation so that the consumer clearly understands the terms of the contract that they are entering into; and

- (3) ensure that the Post Sale Verification Procedure is conducted with each consumer that has entered into a contract in accordance with clause 18.2. Mandatory questions for the Post Sale Verification Procedure are included in the Dictionary.

## **6 Ethical and Lawful Conduct**

6.1 Sales Agents can only conduct Sales Activities on behalf of the Member(s) with whom they are currently registered on the Energy Assured Register.

6.2 Sales Agents must:

- (1) be courteous and professional;
- (2) not provide the consumer with information that is misleading or deceptive, in particular in relation to potential savings or false assumptions about the product (and in the case of a Sales Agent representing a Comparator, about the service the Comparator provides), or misrepresent the consumer's rights and obligations;
- (3) not engage in unconscionable conduct;
- (4) not engage in the use of high-pressure tactics (such as coercion and harassment);
- (5) ensure a consumer's privacy is maintained;
- (6) comply with any sign at a consumer's premises indicating that canvassing is not permitted at the premises;
- (7) not exploit a person's inexperience, vulnerability, credulity or loyalties;
- (8) ensure that safety is maintained for themselves and the consumer;
- (9) not commit forgery or fraud; and
- (10) for door to door sales, leave immediately on a customer's request and obtain the customer's written consent to remain on premises for over an hour.

## **PART 3: ROLES AND RESPONSIBILITIES**

### **7 Rights and Obligations of Members**

- 7.1 Where an Energy Retailer engages an Energy Marketer to conduct Sales Activities on its behalf:
- (1) the Energy Marketer must be a Member;
  - (2) both the Energy Retailer and the Energy Marketer must comply with this Code, and all Applicable Laws (and accordingly, all clauses that refer to a "Member" or "Energy Marketer" must be complied with by the Energy Marketer as appropriate); and
  - (3) the Energy Retailer must provide to the Code Manager a documented governance framework that details how the roles and responsibilities for compliance with this Code and the Procedures Guidelines have been allocated between the parties. This compliance framework will be used by the Code Manager in identifying and considering issues in accordance with clauses 26, 27 and 28.
- 7.2 Members must comply with the Energy Assured Standards.
- 7.3 Members must ensure that Sales Agents engaged by them comply with clause 8.
- 7.4 Members must comply with the processes for the operation, maintenance and registration of Sales Agents on the Energy Assured Register as determined in the Procedures Guideline and this Code.
- 7.5 Members must only engage Sales Agents to conduct Sales Activities that:
- (1) are registered under the Energy Assured Register and have attained an appropriate Accreditation Status in accordance with clause 14.2 and the Procedures Guideline;
  - (2) have been recruited in accordance with clause 14.3; and
  - (3) have been trained and assessed in accordance with clause 16 and the Procedures Guideline.
- 7.6 Members may not engage Sales Agents that have been Deregistered:
- (1) as an Experienced Sales Agent, Assessor or trainer;
  - (2) to manage teams of Sales Agents either directly or indirectly;
  - (3) in any position where they may influence or have contact with Sales Agents including the recruitment of Sales Agents; or
  - (4) in any campaign activity linked to face to face marketing.
- 7.7 Energy Retailers and Comparators must handle Sales Complaints in accordance with clause 17.
- 7.8 Members must monitor the compliance of Sales Agents with the Energy Assured Standards in accordance with clause 18.
- 7.9 Members must categorise and record breaches of the Energy Assured Standards by Sales Agents in accordance with clauses 19 and 20.
- 7.10 Members must discipline Sales Agents in accordance with clause 21.

- 7.11 Where applicable, Members must make an application to deregister a Sales Agent in accordance with clause 22.
- 7.12 Members must continually monitor, report on, and submit to Energy Assured Compliance Checks on the extent of their compliance with the Code in accordance with clauses 23, 24 and 25, including reporting on their compliance in accordance with obligations under the relevant Applicable Law.
- 7.13 Members that fail to comply with this Code will be subject to disciplinary procedures for non-compliance in accordance with clauses 27 and 28.
- 7.14 Members must comply with any standards/guidelines set by the Code Manager.
- 7.15 Each Member must promote this Code by:
- (1) ensuring that their representatives are aware of the Code and its contents and that Sales Agents have a copy of the Code with them when performing Sales Activities;
  - (2) displaying the Energy Assured Logo prominently on Sales Agent ID badges;
  - (3) ensuring that Sales Agents provide the Marketing Material about the Code when:
    - (a) the consumer enters into an energy supply contract; or
    - (b) on the consumer's request; and
  - (4) ensuring that as part of its Post Sale Verification Procedures they verify with the consumer that the customer was made aware of the Code and its purpose.
- 7.16 Each Energy Retailer and Comparator must also promote this Code by:
- (1) making copies of the Code available to consumers on request via email or post; and
  - (2) displaying information about the Code on its website, including at least the information set out in clause 9.5.
- 7.17 In order to comply fully with the Applicable Laws and the Energy Assured Standards, the Member is likely to have to provide additional information to the consumer. This additional information must not be inconsistent with the information contained in the Marketing Material.
- 7.18 Nothing in this section excuses a Member from its obligations to comply with Applicable Laws, including reporting incidents of Sales Agent forgery or fraud to the police.

## **8 Rights and Obligations of Sales Agents and Sub-agent Principals**

- 8.1 Members must ensure that Sales Agents:
- (1) comply with the Energy Assured Standards and Applicable Laws;
  - (2) only conduct Sales Activities on behalf of the Member with which they are currently registered on the Energy Assured Register; and
  - (3) only undertake Sales Activities in accordance with their Accreditation Status, in accordance with clause 14.2 and the Procedures Guideline.
- 8.2 Members must ensure that Sub-agent Principals (and their respective Sales Agents) comply with the Code and the Procedures Guideline.

## **9 Role of Energy Assured Limited**

- 9.1 Energy Assured has been established to administer the Code. It was established to achieve the same objects as the Code seeks to achieve. For the purposes of this Code, Energy Assured:
- (1) is not a dispute resolution body;
  - (2) does not resolve customer complaints;
  - (3) will refer consumers back to their Energy Retailer or Comparator (if applicable) to resolve their dispute directly if they have not contacted the Energy Retailer or Comparator previously.
  - (4) will refer consumers to the relevant energy ombudsman if they have attempted to have their complaint resolved by the Energy Retailer or Comparator, and are dissatisfied with that response; and
  - (5) will investigate allegations of non-compliance with the Code to supplement existing regulatory regimes and promote uniformity and consistency in face to face marketing in the energy industry in accordance with clause 26.
- 9.2 The membership, governance structure and procedures of Energy Assured are set out in its Constitution.
- 9.3 Energy Assured will consult on, and participate in, decision making on matters set out in this Code.
- 9.4 Energy Assured will promote the Code by:
- (1) displaying information about the Code and its Members on its website and copies of this Code and the Procedures Guideline;
  - (2) developing Marketing Material that is to be used by Sales Agents when undertaking Sales Activities and displayed on the Energy Assured website in the six most common languages spoken in Australia;
  - (3) promoting and communicating about the progress of the Code with energy ombudsmen, relevant energy regulators, government agencies, Consumer Advocacy Groups and associations through correspondence;
  - (4) requiring Members to undertake marketing activities, including those set out in clauses 7.15 and 7.16 and providing Members with Marketing Material that promotes the Code to consumers; and
  - (5) undertaking any other promotional, marketing or advertising campaign necessary or worthwhile to ensure that the Code becomes visible and understood amongst energy ombudsmen, relevant energy regulators, government agencies, Consumer Advocacy Groups and associations and consumers.
- 9.5 For the purposes of clause 9.4(2), the Marketing Material that promotes the Code to consumers must clearly state the following information:
- (1) that the Energy Retailer(s) (and any Energy Marketer that represents them, if applicable) is a Member of Energy Assured and has adopted, and will comply with, the Code;
  - (2) why the Code was established and how it interacts with Applicable Laws, inclusive of the Australian Consumer Law, the national energy customer framework, where applicable, and any other relevant energy regulations governing face to face sales;

- (3) a summary of the Energy Assured Standards- i.e. what the consumer can expect from Sales Agents;
- (4) how the consumer can make a complaint or provide feedback about a Sales Agent under the Energy Assured Code;
- (5) how a Sales Complaint will be treated by the Energy Retailer or Comparator;
- (6) the implications if a Sales Agent is found to have breached the Energy Assured Standards;
- (7) that the Sales Agent has been recruited and trained in accordance with the Energy Assured Code;
- (8) that the Member is a member of Energy Assured;
- (9) the contact details of the Energy Retailer or Comparator;
- (10) the Energy Assured website address;
- (11) that the Code operates separately to the energy ombudsman scheme applying in the consumer's State or Territory and that they may separately utilise that scheme if they wish to;
- (12) the role of the Code Manager and Code Panel; and
- (13) how the material located in the Marketing Material can be obtained in six different languages.

9.6 Energy Assured will publish an Annual Report on its website. The Annual Report will, at a minimum, address the following matters:

- (1) a report from both the Chairman of Energy Assured and the Chairman of the Code Panel;
- (2) an overview of the Code;
- (3) an overview of the Compliance Checks undertaken;
- (4) statistics (without naming the Sales Agents involved) of proven breaches and deregistration applications against Sales Agents dealt with under clauses 19 and 22, such as the number of breaches recorded per Level made during the year, the outcomes of any Deregistration Applications and the number of appeals heard under clause 29 (to the extent that they are not confidential);
- (5) statistics (naming the parties involved) of Sales Complaints made to an Energy Retailer or Comparator as a proportion of consumers contacted and divided into categories showing the types of complaints received from data obtained from quarterly reports under clause 25;
- (6) examples of the type of Sales Complaints received and how these were addressed;
- (7) statistics (without naming the Members involved) of the number of issues identified against Members dealt with under clause 27, the outcome of those issues that resulted in the imposition of Sanctions under clause 28 and the number of appeals heard under clause 30 (to the extent that they are not confidential);
- (8) examples of Member issues identified and how these were addressed;
- (9) the nature of industry wide systemic issues and how these have been resolved;
- (10) details of Sanction 5s and Sanction 6s issued and the naming of the Member;

- (11) statistics of the number of Sanctions and appeals considered and heard by each Panel Member; and
- (12) outcomes or recommendations of any Code review.

9.7 Energy Assured will provide the relevant energy regulator with a copy of the Annual Report before publication under clause 9.6.

## **10 Role of Code Manager**

10.1 The Code Manager is responsible for the administration and day-to-day supervision of the Code. The Code Manager is independent of the Members.

10.2 The Code Manager:

- (1) oversees the operation of the Energy Assured Register;
- (2) oversees the promotion of the Code;
- (3) develops appropriate training material on the Code so Members are fully aware of their obligations, including in accordance with clause 11.1(8);
- (4) monitors Members' compliance with the Code and Procedures Guideline including conducting Compliance Checks;
- (5) ensures that corrective action is taken where Members fail to meet their obligations under the Code;
- (6) investigates complaints about the conduct of Members in accordance with clause 26;
- (7) may issue guidelines from time to time to assist Members and Sales Agents to comply with the Code;
- (8) in combination with the Code Panel, administers Sanctions and appeals in accordance with this Code;
- (9) provides quarterly updates to the Energy Assured board, Members, energy ombudsmen and jurisdictional energy regulators on the number and nature of:
  - (a) Warning Notices and proposed Sanctions on Members and the reasons for those Sanctions being proposed; and
  - (b) the result of Warning Notices being imposed; and
- (10) will engage with the relevant energy ombudsman to share information on Member issues identified and the Levels of Sales Complaints received.

## **11 Stakeholder Working Group**

11.1 The Code Manager will establish and engage a working group comprising representatives from the industry, Consumer Advocacy Groups, energy ombudsmen and any other interested party (**Stakeholder Working Group**). The Stakeholder Working Group will meet bi-annually to consider the effectiveness of the Code. The meetings will, at a minimum, deal with the following matters:

- (1) overview and general feedback on the development of the Code;
- (2) discussions on areas in which the Code can be improved;
- (3) review the Marketing Material;



- (4) discussion as to types of breaches made by Sales Agents under the Energy Assured Standards and the appropriateness of the categorisation of Levels under clause 20;
  - (5) overview of Warning Notices issued and the nature of Sanctions imposed similar to that required under clause 10.2(9);
  - (6) overview of results of Compliance Checks;
  - (7) details of any industry wide Systemic Issues and how they have been addressed; and
  - (8) appropriate training packages to address community concerns about face to face sales in the energy industry.
- 11.2 Feedback from the Stakeholder Working Group will be referred to Energy Assured and the Code Panel by the Code Manager. Energy Assured and the Code Panel will consider that feedback and, where appropriate, adopt recommendations made. Where recommendations are made for changes to the Code or the provision of additional training packages, the Code Manager will provide feedback at the next scheduled Stakeholder Working Group as to how these are being addressed.
- 12 Role and composition of the Code Panel**
- 12.1 The Code Panel is independent to the Members and the Code Manager and must be composed of individuals with a variety of professional backgrounds, none of whom have been engaged by a Member in the previous two years or have any actual or potential conflict of interest. Panel Members will be appointed by Energy Assured and consist of at least:
- (1) one person with relevant experience, at a senior level, in the energy retailing industry;
  - (2) at least one person with relevant experience, at a senior level, in a regulatory or government body that administers consumer laws or Marketing Codes that govern face to face sales activities;
  - (3) one person with relevant experience, at a senior level, in a Consumer Advocacy Group; and
  - (4) one person with current legal qualifications, preferably in the energy industry.
- 12.2 Each Panel Member will hold office for a term of three years and will be eligible for re-appointment for one further term of two years.
- 12.3 The Code Panel must elect a Chairman.
- 12.4 The Code Panel will meet at least three times each year with the Code Manager to:
- (1) review the strategic operations of the Code and put forward recommendations or improvements;
  - (2) determine an appropriate roster to ensure that to the extent reasonably practicable, the hearing of complaints and appeals against decisions made against Sales Agents and Members are shared evenly between Panel Members (**Roster**);
  - (3) establish procedures for the determination of Sanctions under clause 28.10 and the hearing of appeals under clauses 29 and 30;
  - (4) review recent determinations of Sanctions proposed and imposed on Members and Sales Agent appeals to ensure consistency is maintained;
  - (5) determine the appropriate requirements for the scope of the Code review; and
  - (6) review quarterly progress reports prepared by the Code Manager under clause 13.6.

- 12.5 A single member of the Code Panel will consider a complaint made against a Member at first instance where a Sanction is proposed to be imposed in accordance with clause 28.9 and 28.10.
  - 12.6 A member or members of the Code Panel will hear appeals against Sanctions imposed on Sales Agents and Members in accordance with clauses 29 and 30.
  - 12.7 If a Panel Member is of the view that they are conflicted or lack the expertise to make a decision under clauses 28.10, 29 or 30, the Panel Member must excuse themselves from participating in the determination and the next Panel Member on the Roster will be enlisted in their place.
- 13 Review of the Code**
- 13.1 The Code will be reviewed at least every two years by an independent entity with legal or auditing expertise (or equivalent qualifications) capable of assessing the effectiveness of the Code and familiar with the energy industry (**Independent Firm**).
  - 13.2 The scope of the review will be determined by Energy Assured, the Code Manager and the Code Panel. The review will be conducted in consultation with the energy ombudsmen and the relevant energy regulators, government agencies and Consumer Advocacy Groups.
  - 13.3 The Independent Firm will have access to matters considered by the Code Panel, the Energy Assured Register, quarterly reports, Compliance Checks, Annual Reports and any other information necessary for the Independent Firm to assess and make recommendations on the effectiveness of the Code.
  - 13.4 The Independent Firm must produce a report with a list of recommendations.
  - 13.5 The report, recommendations and criteria used to select adopted recommendations will be provided to all parties consulted under clause 13.2. Where a recommendation is not adopted, Energy Assured will provide details as to why the recommendation was not adopted.
  - 13.6 It is an obligation on the Code Manager to provide quarterly progress reports to the Energy Assured Board and the Code Panel on the progress of the adoption of the recommendations.
  - 13.7 For the purposes of this clause 13, the review of the Code cannot make recommendations that change the objectives set out in the Energy Assured Constitution.

## **PART 4: ENERGY ASSURED REGISTER, RECRUITMENT AND TRAINING**

### **14 Energy Assured Register**

14.1 The Energy Assured Register is administered by the Code Manager.

14.2 Members must:

- (1) register all Sales Agents engaged by it on the Energy Assured Register;
  - (2) manage the Accreditation Status' of all Sales Agents; and
  - (3) manage their Sales Agents and operate and access the Energy Assured Register,
- in accordance with the Procedures Guideline (and summarised below).

<b>Accreditation Status</b>	<b>Description</b>	<b>Duration of Status</b>	<b>Privileges</b>
Provisional	Applies to new Sales Agents pending completion of training and passing of Competency Assessment.	Up to six weeks.	Can undertake Sales Activities under supervision by an Experienced Sales Agent after Off-job Training and Off-job Assessment have been successfully completed. Can display Energy Assured Logo.
Approved	Sales Agent has passed Formal Competency Assessment or Annual Competency Assessment by an approved Assessor.	1 year.	Can undertake Sales Activities. Can display Energy Assured Logo.
Development	Sales Agent has not passed Formal Competency Assessment or has committed a Level 2 Breach under the Code of Practice and is undergoing further training.	Up to 15 Business Days.	Can undertake Sales Activities under supervision by an Experienced Sales Agent. Can display Energy Assured Logo.
Suspended	Sales Agent suspended from undertaking Sales Activities pending outcome of investigation and determination of Deregistration Application as a result of an alleged Level 3 Breach under the Code of Practice.	Up to 15 Business Days or until the Deregistration Application is finally determined. The Suspension can be extended for a further 15 days where additional consideration is necessary.	Cannot undertake Sales Activities or display Energy Assured Logo.
Deregistered	Agent has been deregistered in accordance with the Sanctions Process.	5 Years.	Cannot undertake Sales Activities or display Energy Assured Logo.

Accreditation Status	Description	Duration of Status	Privileges
Inactive	Sales Agent on authorised leave.	Up to 3 Months.	Cannot undertake Sales Activities or display Energy Assured Logo.
Active	Sales Agent returned from leave but not yet re-taken and passed Formal Competency Assessment.	Generally up to 10 Business Days.	Can undertake Sales Activities under supervision by an Experienced Sales Agent. Can display Energy Assured Logo.
Leaver	Sales Agent is no longer engaged by Member or is "Inactive" for more than 3 months.	Unspecified.	Cannot undertake Sales Activities or display Energy Assured Logo.

14.3 Members must register all Assessors, Experienced Sales Agents and Sub-agent Principals on the Energy Assured Register.

## 15 Recruitment

15.1 Members must only engage Sales Agents that:

- (1) have sufficient knowledge and skills;
- (2) have sufficient relevant experience and training with supporting references; and
- (3) present themselves in a respectable manner,

to enable them to suitably perform the role of a Sales Agent, noting the important role that Sales Agents play as the 'public face' of the industry.

15.2 Members must only engage Sales Agents that have:

- (1) passed a 100-point identification check;
- (2) provided proof of address; and
- (3) passed a criminal history check, or have a criminal history check pending, in accordance with clause 16.1(2).

15.3 If a Sales Agent has been previously registered on the Energy Assured Register to another Member, the Member proposing to engage the Sales Agent may contact that Member to ascertain the Sales Agent's competency.

## 16 Training and Competency Assessment

16.1 A Member may only permit a Sales Agent to engage in Sales Activities on its behalf:

- (1) where the Sales Agent has successfully completed a Formal Competency Assessment by an approved Assessor; or
- (2) if the Member has deployed the Sales Agent in the field as part of On-job Training, or on a probationary basis pending a satisfactory criminal history check (or other) being obtained, where the Sales Agent is appropriately supervised until the Formal Competency Assessment has occurred.

- 16.2 For the avoidance of doubt, where the Member permitting a Sales Agent to engage in Sales Activities on its behalf under this clause 16 is a Comparator, only the Comparator is required to comply with this clause 16.
- 16.3 In order to pass a Formal Competency Assessment, a Member must ensure that a Sales Agent undertakes Off-job Training on at least the following matters:
- (1) the operation of the Code, in particular, the monitoring, Sales Complaint, disciplinary procedures and the Levels of breaches as well as the operation of the Energy Assured Register;
  - (2) the Energy Assured Standards and all Applicable Laws;
  - (3) the legislative and regulatory obligations applying to the supply of energy in the jurisdiction in which the Sales Agent is to operate, including the Energy Retailer's obligations and consumer rights;
  - (4) information about the Member necessary to fulfil the role;
  - (5) product knowledge and sales techniques to effectively perform the role;
  - (6) changes in the market and to products/services;
  - (7) respecting consumer privacy, ethnicity and diversity;
  - (8) recognition and treatment of vulnerable consumers;
  - (9) safety as it relates to the consumer and the Sales Agent;
  - (10) the role of the energy ombudsman;
  - (11) examples as to what constitutes misleading, deceptive or unconscionable conduct and false representation (inclusive of coercion and harassment) in the energy industry;
  - (12) what the Sales Agent must give to and disclose to the consumer; and
  - (13) any matters identified through consultation and addressed under clause 11,
- and must:
- (14) include defined monitoring procedures to ensure consistency of training delivery; and
  - (15) be effective and up to date.
- 16.4 A Member must ensure that a new Sales Agent also undertakes On-job Training before the Sales Agent can pass a Formal Competency Assessment.

## **PART 5: SALES COMPLAINTS HANDLING, COMPETENCE MONITORING AND SALES AGENT DISCIPLINE**

### **17 Sales Complaints made about conduct of Sales Agents**

17.1 Energy Retailers and Comparators must have an internal Sales Complaints Handling Process for receiving, recording and actioning Sales Complaints:

- (1) received from consumers, Consumer Advocacy Groups, any energy ombudsmen, energy regulator, government agency or other Member; and
- (2) referred by the Code Manager,

that complies with the applicable Australian Standard on complaints handling and, at a minimum, meets the requirements of this clause 17.

17.2 Comparators representing Energy Retailers must forward any Sales Complaint relating to, or applying to an Energy Retailer the Comparator represents that is:

- (1) received from consumers, Consumer Advocacy Groups, any energy ombudsman, energy regulator, government agency or other Member; or
- (2) referred to it by the Code Manager,

to the relevant Energy Retailer within 3 Business Days of receiving the Sales Complaint.

17.3 Where a Sales Complaint does not relate to, or apply to, any particular Energy Retailer that the Comparator represents, the Comparator must manage that Sales Complaint itself in accordance with this clause 17.

17.4 An Energy Retailer or a Comparator that has received a Sales Complaint must investigate it within 5 Business Days of receiving the complaint and deal with the Sales Complaint in accordance with relevant legislation and the Energy Retailer's or Comparator's internal practices. The Energy Retailer or Comparator must provide feedback to the complainant on the outcome of the Sales Complaint within 21 days of receiving the Sales Complaint and, where a Sales Complaint is substantiated, redress the complaint in accordance with the Applicable Laws and the relevant Energy Retailer's or Comparator's internal practices.

17.5 The Energy Retailer or Comparator, must provide consumers with the appropriate contact details for the relevant energy ombudsman should the Sales Complaint not be resolved to the consumer's satisfaction.

17.6 For each Sales Complaint, the Energy Retailer or Comparator, must record at least:

- (1) the date, or approximate date, of the incident;
- (2) the date of the Sales Complaint;
- (3) the reason for the Sales Complaint;
- (4) a date and description of how the Sales Complaint was resolved; and
- (5) the corrective action taken, if required, including disciplinary action taken against the Sales Agent and the Sales Agent's details.

17.7 Where it is proven, upon investigation of a Sales Complaint, that a Sales Agent has breached the Energy Assured Standards:

- (1) the breach must be attributed a Level 1, Level 2 or Level 3 Breach in accordance with clause 20;

- (2) disciplinary action must be taken against the Sales Agent in accordance with clause 21; and
- (3) the breach must be recorded in the Competence Record Register.

17.8 Annexure A summarises the operation of the Sales Complaints Handling Process.

## **18 Competence Monitoring**

18.1 Energy Retailers and Comparators must have procedures in place to monitor and record, on an ongoing basis, its Sales Agents' compliance with the Energy Assured Standards (including Applicable Laws) (**Competence Monitoring**) which must include but is not limited to:

- (1) for door to door sales, an independent Post Sale Verification Procedure that is completed and recorded for every consumer that enters into a contract with the Energy Retailer;
- (2) monthly random assessments of 5% of Sales Agents that have obtained an Approved Accreditation Status; and
- (3) an annual Formal Competency Assessment in accordance with the Procedures Guideline.

18.2 For the purposes of clause 18.1(1), the Post Sale Verification Procedure must be conducted and recorded by the responsible Energy Retailer independently of the Sales Agent, and must not be undertaken by any individual that performs door to door marketing on behalf of the Energy Retailer, but may include:

- (1) a call centre that is independent of the Energy Retailer; or
- (2) a separate verification team contained within the Energy Retailer's business.

18.3 For the purposes of clause 18.1(2), the assessment of Sales Agents may include, but is not limited to:

- (1) the "mystery shopping" of a sample of consumers that were contacted by Sales Agents but did not enter into a contract; or
- (2) assessments of Sales Agents undertaken whilst the Sales Agents perform Sales Activities where;
  - (a) the Sales Agent is randomly selected; and
  - (b) the assessment is performed by an Approved Assessor based on the On-Job Assessment Form contained in the Procedures Guideline.

18.4 Where it is proven, upon an investigation of conduct arising from Competence Monitoring, that a Sales Agent has breached the Energy Assured Standards:

- (1) the breach must be attributed a Level 1, Level 2 or Level 3 Breach in accordance with clause 20;
- (2) disciplinary action must be taken against the Sales Agent in accordance with clause 21; and
- (3) the breach will be recorded in the Competence Record Register.

## **19 Competence Record Register**

19.1 Energy Retailers and Comparators must operate a Competence Record Register that records all established breaches of the Energy Assured Standards (**Competence Record**) arising

from Sales Complaints made about Sales Agents under clause 17 and any breaches identified through the Competence Monitoring Process under clause 18.

19.2 Each Competence Record must contain:

- (1) details of the Sales Agent that breached the Energy Assured Standards;
- (2) the date of the breach and the date, or approximate date, of the incident;
- (3) details of how the breach was detected, be it through a Sales Complaint or the Competence Monitoring Process;
- (4) who raised the Sales Complaint or who performed the Competence Monitoring;
- (5) the date that the Level of breach was attributed;
- (6) the Level of breach attributed under clause 20;
- (7) the section(s) of the Energy Assured Standard or Applicable Law breached;
- (8) the State or Territory in which the breach occurred; and
- (9) a brief description of the breach.

19.3 Competence Records must be retained for a minimum of two years on the Competence Record Register.

19.4 The Competence Record Register will be reviewed by the Code Manager in the course of Compliance Checks.

19.5 Energy Retailers and Comparators must monitor the Competence Record Register on a regular basis to identify, investigate and address Systemic Issues. For example, Energy Retailers or relevant Comparators must monitor trends in Sales Complaints:

- (1) to identify whether a particular Sales Agent is recording higher complaints than other Sales Agents; and
- (2) to identify whether a larger number of complaints are being made in relation to a particular matter of compliance.

19.6 Where an Energy Retailer or a Comparator identifies a Systemic Issue under clause 19.5, the Energy Retailer or Comparator must take corrective action to address the deficiency and prevent against re-occurrence. Examples of corrective action that may need to be taken include, but are not limited to:

- (1) assessment and revision of training packages that are being provided to Sales Agents to address the issue identified; and
- (2) assessing the scope and appropriateness of On-job Training.

19.7 Where an Energy Retailer or Comparator has identified a Systemic Issue under clause 19.5, the Energy Retailer or Comparator must report the issue to the Code Manager as part of the Quarterly Reporting under clause 25.3(8).

19.8 Where an Energy Retailer or Comparator identifies a Systemic Issue which is in breach of a current law or regulation then this must be reported to the relevant energy regulator, or authority, in accordance with its regulatory obligations.



## 20 Levels of Breaches of Energy Assured Standards

20.1 For the purposes of clauses 17.7 and 18.4, if a Sales Agent breaches the Energy Assured Standards, the breach must be categorised as a Level 1, Level 2 or Level 3 Breach depending on the severity of the breach.

20.2 In determining the appropriate Level that is to be attributed to a breach by a Sales Agent, an Energy Retailer or Comparator must take into account the following matters:

- (1) the seriousness of the breach;
- (2) whether the breach has been repeated by the Sales Agent;
- (3) whether the breach is part of a persistent course of different breaches recorded against the Sales Agent; and
- (4) any mitigating or aggravating circumstances that warrant considering a different Level of breach.

20.3 For the purposes of clause 20.1:

- (1) A breach of an Energy Assured Standard will be a **Level 1 Breach** where the breach is minor. A minor breach would occur where there is a technical compliance failure or behaviour of a Sales Agent generally arising from poor procedures, where either a warning or some simple coaching or re-training is the most appropriate remedy. Examples of conduct which would constitute a Level 1 Breach include (but are not limited to):
  - (a) Sales Agent did not have their ID badge visible when contacting a consumer;
  - (b) Sales Agent failed to provide a consumer with complete details of the Energy Assured scheme;
  - (c) Sales Agent failed to record contact information on walk sheets; or
  - (d) Sales Agent was flippant or rude to the consumer.
- (2) A breach of an Energy Assured Standard will be a **Level 2 Breach** where it is a serious or persistent breach. A serious breach will occur where the arising breach is more than a technical or superficial breach of the Energy Assured Standards and that breach involved was central to the role of a Sales Agent or disclosures by a Sales Agent. Examples of conduct which would constitute a Level 2 Breach include (but are not limited to):
  - (a) two Level 1 Breaches in the course of three consecutive months;
  - (b) advising a consumer that they could only have the marketing information if they signed a contract;
  - (c) advising a consumer, by genuine mistake, that they will not incur early termination fees from their existing retailer, or that these would be waived by their existing retailer if they switch; or
  - (d) promising the consumer, by genuine mistake, a discount that does not apply to that particular consumer.
- (3) A breach of an Energy Assured Standard will be a **Level 3 Breach** where it amounts to wilful or gross misconduct. Wilful or gross breaches are breaches of the Energy Assured Standards that warrant dismissal and cannot be remedied through re-training. Examples of conduct which would constitute a Level 3 Breach include (but are not limited to):

- (a) two Level 2 Breaches in the course of six consecutive months;
- (b) forgery or fraud;
- (c) taking advantage of an individual, whom a reasonable person could tell was not capable of making an informed decision, for example an elderly person;
- (d) intentionally engaging in misleading or deceptive conduct;
- (e) advising a consumer that the Sales Agent had signed other people up in the street and named the consumers;
- (f) entering a consumer's premises without permission;
- (g) failing to disclose the true purpose of the visit; or
- (h) failing to leave the premises when requested including ignoring a Do Not Knock notice.

20.4 Where a Level 2 or Level 3 Breach is recorded against a Sales Agent, the responsible Energy Retailer or the responsible Comparator must review, to the extent practicable, the previous five consumer contracts generated by the Sales Agent before the identified breach and the five consumer contracts generated after the identified breach. Should the review identify that any of those contracts were not entered into in accordance with the Energy Assured Standards or Applicable Laws, the Energy Retailer or Comparator must contact the consumers concerned and rectify the breach.

20.5 Upon completion of its review, under clause 20.4, the Energy Retailer or Comparator must notify (where applicable) the relevant energy regulator of the breach, the action that was taken to address the breach, the remedial steps implemented and if appropriate, the proposed consumer redress.

## **21 Disciplining Sales Agents**

21.1 If a Member discovers that a Sales Agent is not meeting the Energy Assured Standards, the Member must:

- (1) notify the Sales Agent of the failure; and
- (2) if appropriate, implement a period of re-training or development.

21.2 If a Sales Agent has failed to comply with the Energy Assured Standards and a Level 2 Breach is attributed to the Sales Agent under clause 20, the Member must:

- (1) notify the Sales Agent of the failure;
- (2) implement a period of re-training or development; and
- (3) change the Sales Agent's status in the Energy Assured Register from "Approved" to "Development" for the period of re-training.

21.3 If it is alleged that a Sales Agent has failed to comply with the Energy Assured Standards such that if established, a Level 3 Breach would be attributed to the Sales Agent under clause 20, the Member must:

- (1) notify the Sales Agent of the allegation;
- (2) submit to the Code Manager a Deregistration Application in accordance with clause 22; and

- (3) change the Sales Agent's status in the Energy Assured Register from "Approved" to "Suspended" for the duration of and, if applicable, pending the outcome of a Deregistration Application.
- 21.4 Members must establish written procedures that detail the specific disciplinary action to be taken against a Sales Agent for various breaches of the Energy Assured Standards that reflect clauses 20 and 21.
- 22 Deregistration of Sales Agents**
- 22.1 A Member must apply to the Code Manager to deregister a Sales Agent where a Sales Agent has failed to comply with the Energy Assured Standards and a Level 3 Breach is attributed to the Sales Agent under clause 21 (**Deregistration Application**).
- 22.2 Deregistration Applications must be made to the Code Manager by either the Energy Retailer, or the Energy Marketer, in a manner that substantially conforms with the Form A set out in Annexure D.
- 22.3 The Code Manager must determine on the evidence before him or her:
  - (1) if there is sufficient evidence to establish that the Sales Agent breached the Code;
  - (2) if there is insufficient evidence to ascertain the extent of the breach, to seek additional information from the Energy Retailer, Energy Marketer, Sales Agent or any other source;
  - (3) if satisfied that there has been a breach of the Code, whether the breach of the Code or cumulative breaches of the Code warrant the deregistration of the Sales Agent and if so, to deregister the Sales Agent; or
  - (4) if not satisfied that the Sales Agent has breached the Code or that deregistration is not warranted, to dismiss the Deregistration Application.
- 22.4 Where the evidence supplied in a Deregistration Application does not include a statement by the Sales Agent, the Code Manager will contact the Sales Agent and invite the Sales Agent to make a statement. If a statement is received within five Business Days, it will be considered with other evidence provided in the Deregistration Application.
- 22.5 In making a determination under clause 22.3, the Code Manager must have regard to previous decisions made about the deregistration of Sales Agents so as to promote consistent treatment of Sales Agents.
- 22.6 The determination must be made by the Code Manager within 10 Business Days of the receipt of the Deregistration Application.
- 22.7 The Code Manager will record in writing his or her reasons for the determination, and provide a copy of these reasons, in a form that substantially conforms with Form B contained in Annexure E (**Deregistration Notice**). The Deregistration Notice must be provided to both the Member and the Sales Agent, at the addresses provided for in the Deregistration Application.
- 22.8 If a Sales Agent is deregistered, the deregistration will last for a period of five years from the issue of the Deregistration Notice after which time the Sales Agent may apply for a new registration and again engage in Sales Activities.
- 22.9 If a Sales Agent is not deregistered then the Accreditation Status of the Sales Agent will be returned to the last Accreditation Status that they were issued before their suspension.
- 22.10 Either the Sales Agent or the Member may appeal the determination under clause 22.3 to one member of the Code Panel in accordance with clause 29.

## **PART 6: REPORTING, COMPLIANCE CHECKS AND MEMBER DISCIPLINE**

### **23 Members' Constant Vigilance**

- 23.1 A Member must have a clear governance and control framework to monitor and encourage compliance with the Code on an ongoing basis.
- 23.2 Members must respond to questions from the Code Manager relating to their Code compliance within 2 Business Days.
- 23.3 Members must utilise the results of Sales Complaint Handling, Competence Monitoring and Compliance Check processes set out in this Code to pro-actively manage Code compliance.
- 23.4 Part 6 of this Code is separate to the rights of any relevant energy regulator to undertake audits, require reporting and take enforcement action in accordance with their powers and functions.

### **24 Compliance Checks**

- 24.1 Each Member must submit to a Compliance Check when required by the Code Manager. Compliance Checks will be conducted by the Code Manager periodically and at least annually.
- 24.2 The scope of the Compliance Checks and procedures to be tested will be determined by Energy Assured. In particular, and at a minimum, the Compliance Checks will cover:
  - (1) the adequacy of controls for compliance with the Code shared between an Energy Retailer and Energy Marketer, including the governance framework developed under clause 7.1(3);
  - (2) issues relating to contacting and contracting with consumers and ethical conduct of Sales Agents;
  - (3) the adequacy of recruitment, training, assessment and monitoring of Sales Agents;
  - (4) the adequacy of Sales Complaint handling processes;
  - (5) the consistency and accuracy of the Member's categorisation of breaches of the Energy Assured Standards in accordance with clause 20; and
  - (6) the sufficiency of record keeping and reporting.
- 24.3 The Compliance Checks may include random checks on Members and surprise field checks on Sales Agents. Otherwise, the Code Manager will give reasonable notice of Compliance Checks to the Member.
- 24.4 Members must give the Code Manager access to the information necessary for the purposes of the Compliance Checks unless to do so would cause the Member to breach any law or the terms of any agreement to which it is a party.
- 24.5 Energy Assured will prepare a detailed report of findings for each Member. This report will be provided to the relevant Member and any relevant energy regulator. Each report will:
  - (1) outline the areas reviewed;
  - (2) set out the results of the review;
  - (3) identify areas of non-compliance; and
  - (4) prescribe action plans agreed with the Member to address areas of non-compliance by the Member.

24.6 Energy Assured will prepare a consolidated report of the results of all Compliance Checks and provide this to the Energy Assured Board, Members, the Code Panel, and at the next scheduled Stakeholder Working Group meeting summarising:

- (1) the extent and type of breaches of the Energy Assured Standards;
- (2) the procedures and documentation that were reviewed;
- (3) an outline of any major or important instances of non-compliance, inclusive of potential industry wide systemic issues identified;
- (4) corrective measures that have been prescribed to address compliance issues; and
- (5) any other relevant observations.

## **25 Quarterly Reporting**

25.1 Each Energy Retailer and Comparator must prepare a report each quarter about its compliance with the Code (**Quarterly Report**).

25.2 Each Energy Retailer or Comparator must provide the Quarterly Report to the Code Manager within 14 days of the end of each quarter about its compliance with the Code in that quarter. The Code Manager may, at the request of an Energy Retailer or relevant Comparator, extend the deadline for the provision of a Quarterly Report by up to 7 additional days.

25.3 The scope of the Quarterly Reports will be agreed to between the Energy Retailer or Comparator and the Code Manager but must include at least:

- (1) the number of Sales Agents on the Energy Assured Registry registered to the Energy Retailer or Comparator;
- (2) the number and details of "Approved" Sales Agents that were randomly audited for each month of the quarter in accordance with clause 18.1(2);
- (3) the number of Formal Competency Assessments that were undertaken by the Member in accordance with clause 18.1(3) and the result;
- (4) relevant indicators of the extent to which the Energy Assured Register is being maintained by the Energy Retailer or Comparator;
- (5) the number of consumers contacted by, or on behalf of, the Energy Retailer or Comparator in the quarter by State, based on walk sheet data;
- (6) details of Sales Complaints received in the quarter, including but not limited to:
  - (a) the date of the incident;
  - (b) the date of the Sales Complaint;
  - (c) the nature of the Sales Complaint;
  - (d) the State or Territory in which the incident occurred;
  - (e) the date the Sales Complaint was resolved;
  - (f) whether the Sales Complaint was proven and recorded in the Competence Register and the Level of Breach attributed to the Sales Complaint;
- (7) any new Competence Record for the quarter;
- (8) any issues identified through monitoring the Competence Record Register under clause 19.6 and the corrective action undertaken;

- (9) the outcome of action taken under clause 20.4; and
- (10) progress made to implement action items arising from any Compliance Check, Warning Notice issued under clause 27 or Sanction imposed under clause 28.

## **26 Investigation of alleged Code breaches by Members**

26.1 The Code Manager must investigate all potential breaches of the Code by Members raised:

- (1) in Quarterly Reports;
- (2) through any Compliance Check; or
- (3) following the receipt of a complaint substantially in the form of Form C as set out in Annexure F (**Member Complaint**) from another Member, the energy ombudsman, Consumer Advocacy Groups, any energy regulator or regulatory body or the government (**Complainant**).

26.2 Where a complaint is received by the Code Manager from a consumer about the conduct of a Member, the Code Manager will refer the consumer:

- (1) back to the responsible Member to resolve the complaint directly if the consumer has not already done so; or
- (2) provide the consumer with contact details of the relevant energy ombudsman or regulator if the consumer is dissatisfied with the Member's response to their complaint.

26.3 For the purposes of clause 26.2(2) the relevant energy ombudsman or regulator can investigate the complaint independent to this Code or lodge a Sales Complaint in accordance with clause 26.1(3).

26.4 The Code Manager must:

- (1) seek additional information from the Member or Complainant or any other source if necessary;
- (2) ascertain whether the issue is attributable to the Energy Retailer or the Energy Marketer or both;
- (3) investigate and assess the issue as soon as reasonably practicable in order to minimise consumer dissatisfaction and to help raise industry standards; and
- (4) notify the Complainant of the outcome of the investigation.

## **27 Warning Notices**

27.1 Where an issue of compliance is identified by the Code Manager under clause 26, then the Code Manager must issue the responsible Member(s) with a notice warning them that they are suspected of having breached the Code and recommending that remedial action be undertaken to address the issue (**Warning Notice**).

27.2 The Warning Notice must specify (at a minimum):

- (1) the nature and extent of suspected Code breaches;
- (2) recommended corrective action to be undertaken, based on discussions undertaken with the Member where possible;
- (3) the timeframe in which the issue must be addressed;
- (4) whose responsibility it is to address the issue based on the investigation undertaken in clause 26.2 (be it the Energy Retailer and/or the Energy Marketer); and

- (5) the Sanction that will be likely to be sought under clause 28 if:
- (a) the issue is not addressed in accordance with the Warning Notice; or
  - (b) the Member does not establish (to the satisfaction of the Code Manager) that there is good reason why the Warning Notice cannot or should not be complied with in whole or in part because, for example:
    - (i) the suspected Code breaches did not occur;
    - (ii) satisfactory remedial action has already been undertaken; or
    - (iii) the corrective action recommended under clause 27.2(2) is inappropriate or cannot be reasonably undertaken in the timeframe specified under clause 27.2(3),

applying the principles set out in the flowchart in Annexure B.

27.3 Where the issue of compliance relates to a systemic or material breach in accordance with this clause 27, which is in contravention of an Energy Retailer's or Comparator's obligation under the law or regulations, then this breach must be reported by the Energy Retailer or Comparator respectively to the relevant regulator or authority.

## 28 Sanction Process

28.1 Subject to clause 27.2, the Code Manager must impose a Sanction on a Member if the Member fails to meet the obligations imposed on it under a Warning Notice and the Code Manager has not waived the requirement to comply with any aspect of that Warning Notice.

28.2 If the Code Manager determines to impose a Sanction under this clause 28, the Code Manager must impose a Sanction 1, 2, 3, 4, 5 or 6 based on the following:

Sanction No.	Description of Sanction	Description of Breach	Examples (which do not limit) of breaches that may attract the Sanction
1	<p>The Member provides a written undertaking to the Code Manager that the breach will not be repeated.</p> <p>Energy Assured board is notified of the breach; however the Member is not named.</p>	The breach is considered a <b>minor operational breach</b> .	<ul style="list-style-type: none"> <li>Minor failures in maintaining the Energy Assured Register properly.</li> <li>Not registering a Sales Agent, Experienced Sales Agent, Assessor or Sub-agent Principal in accordance with the Registry Process.</li> <li>Number of Sales Agents that passed Formal Competency Assessments undertaken for the month does not match with the amount of Sales Agents that obtained an Approved status in the Energy Assured Register.</li> <li>Not providing the Code Manager consistently with accurate Quarterly Reports.</li> <li>Failure to consistently meet threshold of random assessment of Sales Agents, in accordance with clause 18.1(2), as identified in the Quarterly Report based on the number of Sales Agents recorded with an Approved Accreditation Status on the Energy Assured Register.</li> <li>Failing to adhere to action plans that arise out Compliance Checks</li> </ul>

Sanction No.	Description of Sanction	Description of Breach	Examples (which do not limit) of breaches that may attract the Sanction
			<p>on minor compliance issues that are isolated and operational in nature and do not impact the public.</p> <ul style="list-style-type: none"> <li>Team Leaders, Managers or Sub-agency Principals act in a manner that is in conflict with the principles of the Code in their dealings with Sales Agents.</li> </ul>
2	<p>Formal letter of admonishment is issued to the Member.</p> <p>Member details to the Code Manager, its strategy to rectify the issue and implements an agreed action plan to prevent the problem(s) recurring, at its cost.</p> <p>Energy Assured board is notified of the Member's breach and the Member is named to the Energy Assured Board.</p>	<ol style="list-style-type: none"> <li>The breach is considered to be a <b>serious operational breach</b>;</li> <li>The breach is considered to be an isolated yet <b>material breach</b> of the Energy Assured Standards; or</li> <li>The Member has been issued three or more Sanction 1s in the course of three months.</li> </ol>	<ul style="list-style-type: none"> <li>Substantial failures in maintaining the Energy Assured Register.</li> <li>Not undertaking the adequate training of Sales Agents in accordance with the Code.</li> <li>Recruitment of a deregistered Sales Agent.</li> <li>Contracting with an Energy Marketer that is not a Member of Energy Assured.</li> <li>Failure to record and monitor the Level of Breaches of Sales Agents, as identified through quarterly reporting.</li> <li>Failure to adhere to action plans that arise out of Compliance Checks on major compliance issues that are isolated and operational in nature and do not impact the public.</li> <li>A trend that depicts a discrepancy in the application of Level 1, Level 2 and Level 3 Breaches in the Competence Record Register as compared to the type of Sales Complaints described under clause 20.</li> <li>Discrepancy detected between the Competence Record and the Quarterly Report that indicates that a Member did not undertake a review of contracts where a Sales Agent recorded a Level 2 or Level 3 Breach, in accordance with clause 20.4.</li> <li>Failure to adequately monitor Sub-agent Principal arrangements to ensure their Sales Agents are trained and disciplined appropriately.</li> </ul> <p><b>Material breach</b></p> <ul style="list-style-type: none"> <li>A Sales Agent commits a Level 2 or Level 3 Breach which was not properly detected and addressed by the Member, despite having the appropriate controls in place, and the breach impacted a large number of consumers.</li> <li>A Sales Agent breached the Energy Assured Standards and on investigation it was found that the Sales Agent was deregistered.</li> </ul>



Sanction No.	Description of Sanction	Description of Breach	Examples (which do not limit) of breaches that may attract the Sanction
			<ul style="list-style-type: none"> <li>A Sales Complaint is raised to the Code Manager about the conduct of a Sales Agent and on further investigation it was found that the Sales Agent was not registered properly on the Energy Assured Register.</li> <li>The Member did not ensure appropriate supervision of a Sales Agent whose Accreditation Status required the Sales Agent to be supervised and the Sales Agent breached the Energy Assured Standards whilst unsupervised.</li> </ul>
3	<p>Formal letter of admonishment is issued to the Energy Assured Member.</p> <p>Member details to the Code Manager, its strategy to rectify the issue and implements an agreed action plan to prevent the problem(s) reoccurring, at its cost.</p> <p>Energy Assured Board, the relevant energy regulator and the energy ombudsman are notified of the Member's breach and the Member is named to the Energy Assured board, the regulator and ombudsman.</p>	<p>The breach was a <b>systemic breach</b> of either:</p> <ol style="list-style-type: none"> <li>the Energy Assured Standards which impacted, or had the potential to impact a large number of consumers; or</li> <li>Operational breaches that are not isolated in nature and directly result in a breach of the Energy Assured Standards which impact a large number of consumers.</li> </ol>	<ul style="list-style-type: none"> <li>The quantity of Level 1, 2 or 3 Breaches for the quarter exceeds 1% of the number of consumers contacted for the quarter, as identified through the Sales Complaints provided for in the quarterly reports to the amount of homes visited taken from walk sheet data.</li> <li>Where under clause 26.1(3) the Code Manager receives statements that are intentionally misleading or deceptive in nature being made consistently in relation to a particular matter by one or more Sales Agents and/or the Member, to which the Member Complaint relates, cannot demonstrate that the breach was not an inherent issue with the Member's compliance to the Code or due to a specific, individual or isolated factor.</li> <li>Failure to take action under clause 19.7.</li> <li>Failure to review consumer contracts in accordance with clause 20.4, where the breach is not isolated and resulted in further breaches to the Energy Assured Standards.</li> <li>Continual failure of Sales Agents to complete walk sheets so that consumers cannot be contacted again by the Member under the Applicable Laws.</li> <li>Failure to adhere to action plans that arise out of Compliance Checks on major compliance issues.</li> </ul>
4	<p>Member appoints an independent Code Auditor at the Member's cost to audit the areas of activity where the breach(es) occurred.</p> <p>Following the audit,</p>	<ol style="list-style-type: none"> <li>Member has been issued three or more Sanction 2s in the course of six months; or</li> <li>Member has been issued two Sanction 2s and one Sanction 3 in the course of six months; or</li> </ol>	

Sanction No.	Description of Sanction	Description of Breach	Examples (which do not limit) of breaches that may attract the Sanction
	<p>Member details to the Code Manager its strategy to rectify the issue and implements an agreed action plan at its cost to prevent the problem(s) recurring.</p> <p>Formal Letter of admonishment is issued to the Energy Assured Member.</p> <p>Energy Assured board, the relevant energy regulator and the energy ombudsman are notified of the breach and the Member is named to the Energy Assured Board, Regulator and Ombudsman.</p>	3. Member has been issued two Sanction 3s in the course of six months.	
5	<p>As per Sanction 3.</p> <p>Additionally, other Stakeholders and the public will also be notified of the breach.</p>	<p>1. Member has failed to comply with agreed action plan arising from audit conducted under Sanction 4; or</p> <p>2. two Sanction 4s have been imposed on the Member in the course of twelve months.</p>	
6	<p>Member will be expelled (permanently or temporarily) and the Member's membership of Energy Assured cancelled.</p> <p>A public statement will be issued that identifies the Member, states the section of the Code that has been breached and the period of Deregistration.</p>	<p>1. One Sanction 5 has been imposed and the Member continues to fail to comply with the agreed action plan arising from the audit conducted under Sanction 4; or</p> <p>2. two Sanction 5s have been imposed on the Member in the course of twelve months.</p>	

28.3 For the purposes of clause 28.2:

- (1) a **minor operational breach** is a breach of the Code that is operational and minor in nature, however, does not have a direct public facing impact. A minor operational breach will occur when the breach is a small technical or superficial breach of the operations of the Code;
- (2) a **serious operational breach** is a breach of the Code that is operational and serious in nature, however, does not have a direct public facing impact. A serious operational breach will occur when the breach is more than a technical or superficial breach of the operations of the Code, and is a clear contravention of a Member's obligations under the Code;
- (3) a **material breach** is a significant breach of the Energy Assured Standards that is isolated in nature yet has impacted, or has the potential to impact, a large number of

consumers. A material breach will occur when the breach is a breach of the Energy Assured Standards, and where a Member can demonstrate that the breach was not an inherent issue with the Members' compliance to the Code, and was rather, due to a specific, individual, or isolated factor; and

- (4) a **systemic breach** is a breach of the Energy Assured Standards, that is not isolated in nature and may have affected, or have the potential to affect, a large number of consumers. A systemic breach will occur when the arising breach is a breach of the Energy Assured Standards and where a Member cannot demonstrate that the breach is not an inherent overall issue with the Members' compliance to the Code. For the purposes of this Code where a minor or serious operational breach occurs that results in a direct breach of the Energy Assured Standards on a large number of consumers, and is not considered an isolated incident, then this would be categorised as a systemic breach.
- 28.4 In making a determination under clauses 27, 28.1 and 28.2, the Code Manager must have regard to:
  - (1) any previous Warning Notice or Sanction imposed on the Member in the past two years;
  - (2) previous decisions made under a Warning Notice about the Sanctioning of Members so as to promote consistency of treatment of Members under this clause 28; and
  - (3) costs of compliance for Members by ensuring that any action required is proportionate to the issue that it seeks to remedy. As far as the law allows, the Code Manager will take account of the circumstances of the case and the attitude of the Member when considering action.
- 28.5 Where an Energy Retailer engages an Energy Marketer (including a Comparator), and upon investigation it is found that a breach, or area of non-compliance, is attributable to the Energy Marketer, then the Code Manager or Code Panel (as the case may be) may determine that either:
  - (1) both the Energy Retailer(s) and Energy Marketer is subject to the Sanction;
  - (2) a different Sanction is imposed on the Energy Marketer to that imposed on the Energy Retailer(s); or
  - (3) only the Energy Marketer receives the Sanction.
- 28.6 Unless immediate remedial action is required before a Sanction is imposed, the Code Manager will provide an opportunity for the Member to discuss the circumstances of the failure to meet its obligations under the Warning Notice and the proposed Sanction and, if possible, resolve points of difference. Following that discussion, or where immediate action is required, the Code Manager must issue a notice that substantially conforms with Form D as set out in Annexure G (**Notice of Breach**). The Notice of Breach must record, in writing, the Code Manager or Panel Member's reasons for the determination and include a copy of all documents and information supplied to or obtained by him or her in reaching that determination.
- 28.7 The Code Manager must serve the Notice of Breach on the Member by forwarding the Notice of Breach by ordinary pre-paid post to the registered office of the Member and/or to any other postal address, electronic address or fax number provided by the Member.
- 28.8 The Sanction proposed will be deemed to be accepted by the Member, unless a notice of appeal is lodged in accordance with clause 30 within 10 Business Days of the Date of Service of the Notice of Breach.
- 28.9 Where the proposed Sanction is more significant than a Sanction 1, one member of the Code Panel must approve the Sanction in accordance with clause 28.10 before it can be imposed.

28.10 The Code Manager must provide the Panel Member with a draft Notice of Breach prepared as though it was to be provided to the Member under clause 28.6. The Panel Member must consider the Member's conduct and proposed Sanction as though it were the Code Manager under clauses 28.1 to 28.5 and in doing so:

- (1) must consider the proposed Sanction in accordance with the preliminary determination made by the Code Manager and the evidence before him or her;
- (2) may seek additional information or evidence in relation to the alleged breach from the Member or any other source;
- (3) must either uphold the determination of the Code Manager, or substitute his or her determination for that of the Code Panel Member;
- (4) inform the Code Manager of the determination within 10 Business Days of his or her receipt of the draft Notice of Breach; and
- (5) record in writing his or her reasons for the decision.

## PART 7: APPEALS

### 29 Sales Agent Appeal Process

- 29.1 Appeals about a determination of the Code Manager under clause 22 can be made by either the Sales Agent or Member (**Appellant**) by delivering to the Code Manager a Notice of Appeal (within 10 Business Days of the Date of Service of the Deregistration Notice) that substantially conforms with Form E as set out in Annexure H .
- 29.2 The Notice of Appeal shall not be deemed to have been delivered unless and until the prescribed sum has been paid, as provided for in Annexure C.
- 29.3 The Code Manager must refer the appeal to a single Panel Member for determination within 5 Business Days of receiving the Notice of Appeal, and the Panel Member must determine the appeal within 10 Business Days of his or her receipt of the Notice of Appeal from the Code Manager.
- 29.4 The Code Manager and Panel Member may, at their absolute discretion, grant an extension of time to the Appellants to provide further information.
- 29.5 The appeal shall be on one or more of the following grounds, but no other:
- (1) the Code Manager's discretion exercised pursuant to clause 22.3 was not exercised reasonably;
  - (2) the Appellant was denied natural justice; or
  - (3) new and material evidence has come into the possession of the Appellant at a time such that it was not possible for the new and material evidence to be provided to the Code Manager for his or her consideration prior to the Code Manager's determination.
- 29.6 Appeals are conducted and determined on the parties' written submissions, and information and documents provided by the parties, the Code Manager or from any other source.
- 29.7 The Panel Member shall:
- (1) follow any policy formulated by Energy Assured for the purposes of conducting appeals, and any policies established under clause 12.4;
  - (2) consider the allegation(s) *de novo* insofar as it is relevant to the ground of appeal;
  - (3) uphold the determination of the Code Manager or substitute his or her determination for that of the Code Manager;
  - (4) advise the Code Manager of the determination within 10 Business Days of determining the appeal and any required action including but not limited to the removal of the 'Deregistered' Accreditation Status of the Sales Agent on the Energy Assured Register should the deregistration be revoked; and
  - (5) record in writing his or her reasons for the determination.
- 29.8 For the sake of clarity:
- (1) the Panel Member's determination with respect to the grounds raised in the appeal is final and there is no further appeal; and
  - (2) the determination of the Code Manager to Deregister a Sales Agent remains in force until the Panel Member determines otherwise on appeal.

### **30 Member Appeal Process**

- 30.1 To appeal a determination of the Code Manager or single Panel Member, the Member must deliver to the Code Manager a Notice of Appeal (within 10 Business Days of the Date of Service of the Notice of Breach) that substantially conforms with Form F as set out in Annexure I.
- 30.2 The Notice of Appeal shall not be deemed to have been delivered unless, and until the prescribed sum has been paid, as provided for in Annexure C.
- 30.3 The Member may appeal the Sanction as follows:
- (1) an appeal against Sanction 1 is made to a single Panel Member,
  - (2) an appeal against Sanction 2 or 3 is made to a single Panel Member or 3 Panel Members at the election of the Member, and
  - (3) an appeal against Sanctions 4 to 6 is made to 3 Panel Members.
- 30.4 The Code Manager shall refer the Notice of Appeal to the Panel Member(s) for determination within 5 Business Days of the receipt of the Notice of Appeal, and the Panel Member(s) shall determine the appeal within 10 Business Days of his, her or their receipt of the Notice of Appeal.
- 30.5 The single Panel Member who is responsible for the issue of a Notice of Breach or any other determination on appeal shall not be one of the three (3) Panel Members dealing with the appeal.
- 30.6 The Code Manager or Panel Member(s) may, at his, her or their discretion, grant an extension of time to the Member to provide further information.
- 30.7 The appeal shall be on one or more of the following grounds, but no other:
- (1) the Code Manager or Panel Member's discretion was not exercised reasonably;
  - (2) the Member was denied natural justice; or
  - (3) new material evidence has come into the possession of the Member at a time such that it was not possible for the new material evidence to be provided to the Code Manager or Panel Member for their consideration prior to the Code Manager's determination.
- 30.8 Appeals are conducted and determined on the parties' submissions, information and documentation provided by the parties and the Code Manager or from any other source.
- 30.9 At his, her or their discretion, the Panel Member(s) and/or Code Manager may determine that the determination of the appeal be conducted by a hearing in person or by teleconference if the Sanction is of sufficient gravity to warrant such a hearing. Legal representation is not permitted at the hearing, but legal assistance is permitted.
- 30.10 The Code Manager and Panel Member(s) shall follow any policy formulated by Energy Assured for the purposes of the appeal.
- 30.11 The Panel Member(s):
- (1) must follow any policy formulated by Energy Assured for the purposes of conducting appeals, and any policy under clause 12.4.
  - (2) must consider the breach *de novo* insofar as it is relevant to a ground of appeal in the appeal;

- (3) may seek additional information or evidence in relation to the breach from the responsible Energy Retailer, Comparator, Agent or any other source;
  - (4) must either uphold the determination of the Code Manager or Panel Member, or substitute his, her or their determination for that of the Code Manager or Panel Member;
  - (5) inform the Code Manager of the outcome within 10 Business Days of determining the appeal and of any action that must be taken under the determination, including the removal of the Warning Notice and Sanction recorded against records of that Member under clause 28.4; and
  - (6) must record in writing his, her or their reasons for the determination.
- 30.12 The determination of the appeal by the Panel Member(s) is final. For the sake of clarity, there is no further appeal.
- 30.13 The Code Manager shall notify the parties of the determination of the appeal at the address provided in the Notice of Appeal or at any other address provided by the parties.

## DICTIONARY

In this Code:

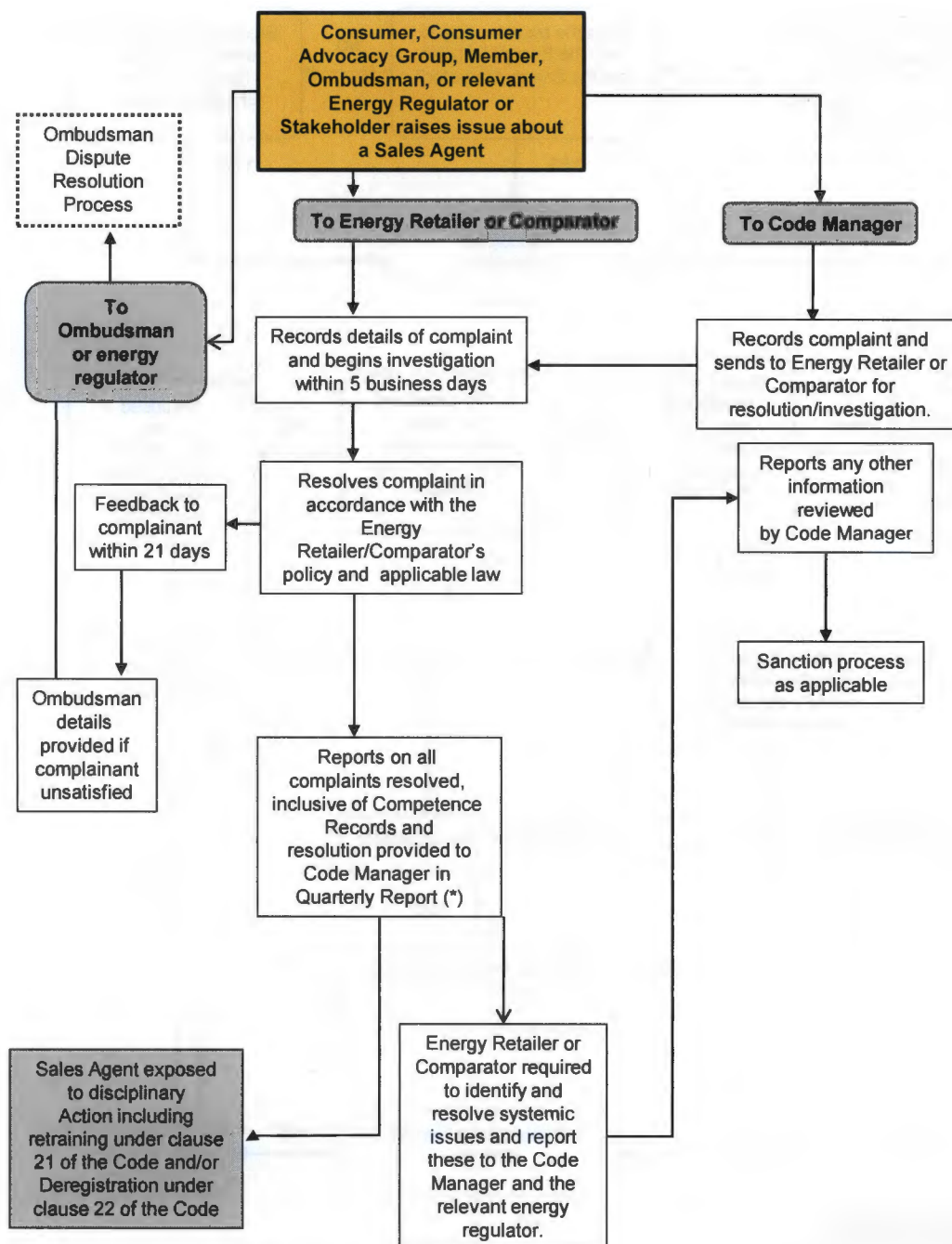
- (1) **Accreditation Status** means one of the levels of accreditation that may be attained by a Sales Agent as set out in the Procedures Guideline;
- (2) **Annual Report** means a report prepared by Energy Assured under clause 9.6;
- (3) **Applicable Laws** means all rules, regulations, codes, statutes, guidelines, licences, legislation, orders in council, tariffs, proclamations, directions or standards that relate to the marketing, sale and supply of energy;
- (4) **Assessor** means an individual that has met the qualifications set out in the Procedures Guideline;
- (5) **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth);
- (6) **Business Day** means a day not being a Saturday, a Sunday or a public holiday in the jurisdiction in which the Sales Agent conducts Sales Activities;
- (7) **Code** means this Code of Practice and any documents incorporated in it, including the Procedures Guideline;
- (8) **Code Manager** means the individual appointed by Energy Assured to carry out the day to day administration and management of the Code whose role is set out in clause 10;
- (9) **Code Panel** means the panel of people who are independent of Energy Assured, the Code Manager, and the Members whose role is set out in clause 12;
- (10) **Comparator** means an Energy Marketer that engages in Sales Activities for more than one Energy Retailer at a customer's premises;
- (11) **Competence Record Register** means the record that is used to measure Levels of breaches that are recorded against a Sales Agent under clause 19;
- (12) **Compliance Check** means an activity conducted by the Code Manager to check a Member's compliance with the Code. Activities can include, but are not limited to desktop audit, site visits, Sales Agent interviews and mystery shopping;
- (13) **Consumer Advocacy Group** means any non-government consumer or community organisation that provides a voice for consumers;
- (14) **Date of Service** is deemed to be three (3) Business Days after the Notice of Breach is posted, faxed or emailed to the Member;
- (15) **Deregistration Application** means an application made to the Code Manager requesting that a Sales Agent be deregistered from the Energy Assured Register;
- (16) **Energy Assured** means Energy Assured Limited;
- (17) **Energy Assured Logo** means the Energy Assured logo that demonstrates that the Sales Agent complies with this Code;
- (18) **Energy Assured Register** means the database register of Sales Agents accredited under the Code which is administered and monitored by Energy Assured;
- (19) **Energy Assured Standards** means the standards for the conduct of Sales Activities as set out in clauses 3 to 6;



- (20) **Energy Marketer** means a company that engages in Sales Activities on behalf of Energy Retailers;
- (21) **Energy Retailer** means an entity that holds a valid licence or similar authorisation, issued by the relevant energy regulator, to retail electricity and/or gas in the State or Territory to which the retail licence relates;
- (22) **Experienced Sales Agent** is a Sales Agent that has met the conditions contained in clause 10.2 of the Procedures Guideline. Experienced Sales Agents must be registered on the Energy Assured Register;
- (23) **Formal Competency Assessment** means an assessment of the competency of a Sales Agent to comply with the Energy Assured Standards that must be undertaken by a Sales Agent before they can achieve or maintain an Accreditation Status that enables them to conduct Sales Activities unsupervised;
- (24) **Level** means the level of a breach of the Energy Assured Standards, as categorised in accordance with clause 20;
- (25) **Level 1, 2 or 3 Breach** means a breach of the Energy Assured Standards that has been categorised in accordance with clause 20;
- (26) **Marketing Codes** means the relevant jurisdictional Marketing Codes that govern face to face sales in the retail energy market;
- (27) **Marketing Material** means the marketing material developed by Energy Assured in accordance with clause 9.4(2), which contains the information set out in clause 9.5;
- (28) **Member** means an Energy Retailer or Energy Marketer that has signed the Energy Assured membership form which indicates their agreement to abide by Energy Assured Constitution and in doing so, agreed to adhere to this Code;
- (29) **Off-job Training** means a classroom-based Sales Agent induction program which should be conducted in a formal environment by an individual that is qualified to provide such training;
- (30) **On-job Training** means field training undertaken by a Sales Agent under the supervision of an Experienced Sales Agent;
- (31) **Panel Member** means a member of the Code Panel;
- (32) **Procedures Guideline** means the procedural rules that underpin this Code to which Members must adhere to in order to comply with this Code;
- (33) **Post Sale Verification Procedure** means a procedure whereby a consumer is communicated with after they have entered into a new energy supply contract via a door to door sale and before the consumer is transferred to the new Energy Retailer. The Post Sale Verification Procedure is to verify and confirm that the consumer has entered into a new energy supply contract and that the consumer was satisfied with the way that the sale was conducted. As a minimum, the Post Sale Verification Procedure must involve asking the consumer the following verification questions:
  - (a) Do you understand that you are changing from your current retailer to "retailer YYY"? Could you please confirm that you accept our offer and agree to proceed with the switch request from your current retailer to "retailer YYY" for the retail supply of electricity and/or gas to your premises?
  - (b) Do you understand that you have a ten business day cooling off period in which you can cancel this contract without incurring any exit fees?
  - (c) Do you understand that you should receive one more final bill from your current retailer and that the next one will be from "retailer YYY"?

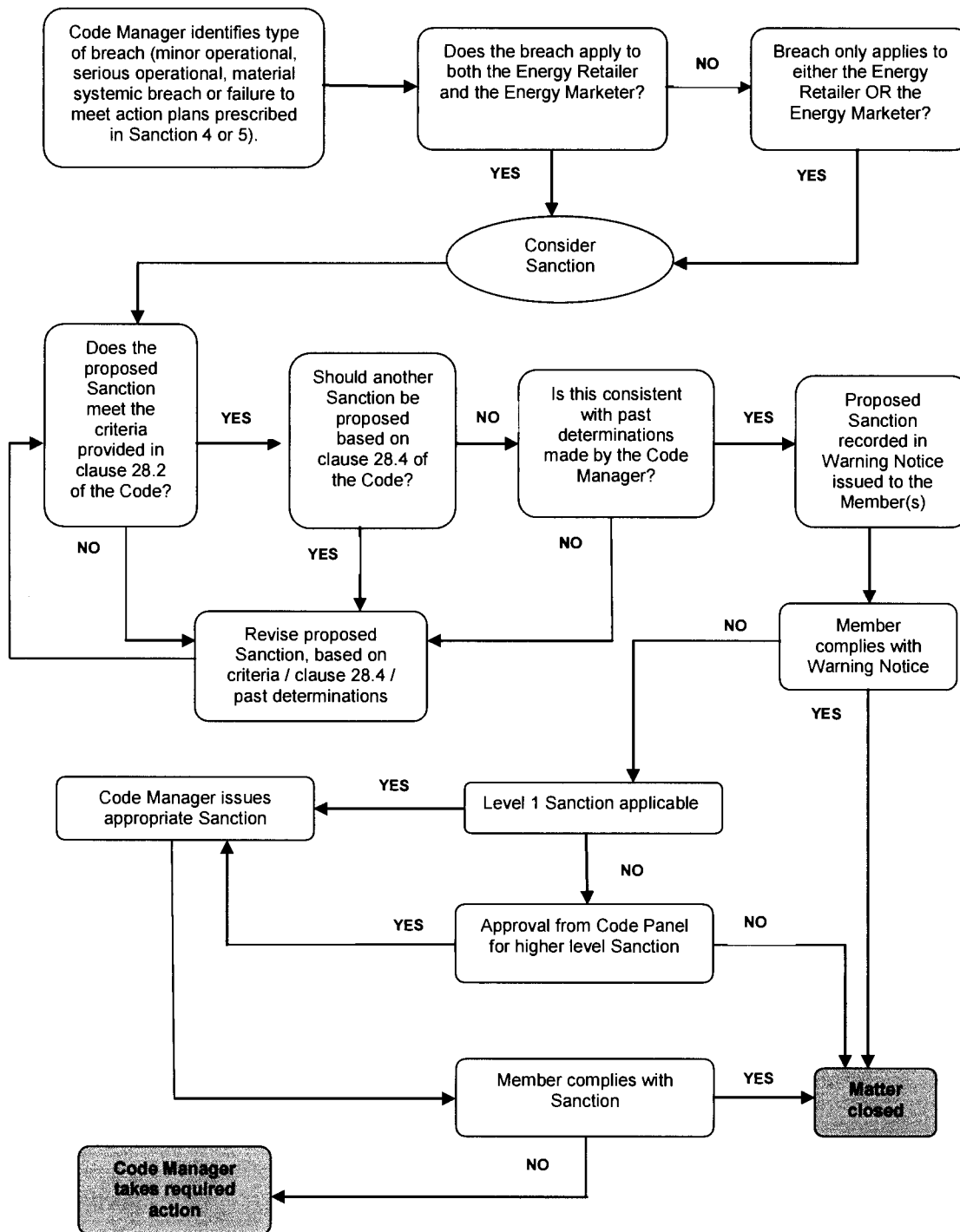
- (d) Has the Sales Agent provided you with information on the Energy Assured Code of Practice?
- (34) **Sales Activities** means the face to face marketing of energy supply to consumers, including through door to door, kiosk, and other marketing mediums, but excluding marketing that occurs at the premises of an Energy Retailer;
- (35) **Sales Agent** means any individual authorised by a Member who solely represents a Member (and/or a Member's associated companies) for the purposes of engaging in Sales Activities, where the principal function of such individual is to market either energy supply alone or energy supply and other domestic utility services to domestic consumers;
- (36) **Sales Complaint** means a complaint made by a consumer, energy ombudsman, relevant energy regulator, government agency, Consumer Advocacy Group or other interested party about a Sales Agent's Sales Activities;
- (37) **Sales Complaints Handling Process** means the process for handling Sales Complaints established by an Energy Retailer under clause 17.1 or Comparator under clause 17.2;
- (38) **Sanction** means disciplinary action or any other sanction imposed on a Member under clause 28;
- (39) **SIDN** means the sales agent identification number allocated to a Sales Agent when they are first registered on the Energy Assured Register;
- (40) **Sub-agent Principal** means an entity engaged by an Energy Marketer to undertake Sales Activities on its behalf;
- (41) **Systemic Issue** means a systemic breach as defined in clause 28.3; and
- (42) **Warning Notice** has the meaning given to it in clause 27.

## Annexure A - Sales Complaint Handling Process (Flow Chart)



(\*) Unresolved complaints are reported at the end of the complaint and roll over to subsequent month's reporting until resolved.

## Annexure B - Determining an Appropriate Member Sanction (Flow Chart)



**Annexure C - Security for Appeal** - effective 16 January 2014. Fees increase 5% each year.

Appellant	Matter Appealed	Number of Panel Members Hearing the Appeal	Cost
Sales Agents	Deregistration	1	\$110.25
Energy Retailers	Sanction 1	1	\$330.75
	Sanction 2	1	\$330.75
	Sanction 2	3	\$992.25
	Sanction 3	1	\$330.75
	Sanction 3	3	\$992.25
	Sanction 4	3	\$992.25
	Sanction 5	3	\$992.25
	Sanction 6	3	\$992.25
Energy Marketer	Sanction 1	1	\$330.75
	Sanction 2	1	\$330.75
	Sanction 2	3	\$992.25
	Sanction 3	1	\$330.75
	Sanction 3	3	\$992.25
	Sanction 4	3	\$992.25
	Sanction 5	3	\$992.25
	Sanction 6	3	\$992.25

1. Appeals shall be accompanied by cash or a cheque drawn in favour of "Energy Assured Limited" for the prescribed sum set out above or may be electronically transferred to Energy Assured's bank account.
2. The Code Manager may, following a request by an Appellant, agree to waive the sum payable above on hardship grounds.
3. The Panel Member(s) determining the appeal may determine in his, her or their absolute discretion that the Sales Agent or Member is liable for Energy Assured's reasonable costs of conducting the appeal and the quantum of those costs, taking into account again any request by an Appellant for a waiver or reduction of the costs on hardship grounds.
4. If the deregistration or Sanction is dismissed on appeal, the Appellant will not be liable for the costs of the appeal, and any monies paid to Energy Assured for the costs of the appeal will be returned to the Appellant.
5. If the complaint is not dismissed on appeal, the Code Manager shall issue a tax invoice for the costs of the appeal as determined by the Panel Member(s).
6. Members and Sales Agents agree and undertake to pay to Energy Assured the costs of conducting the appeal as determined by the Panel Member(s) within twenty eight (28) days of receiving a tax invoice from Energy Assured.
7. The costs are effective as of 1 January 2014, and will escalate by 5% per annum thereafter.

## Annexure D - Form A - Deregistration Application

<b>Name of Sales Agent*</b>	
<b>Address of Sales Agent*</b>	
<b>Contact details of Sales Agent*</b> (fax, email, home phone, telephone, other contacts of Sales Agent)	
<b>SIDN*</b>	
<b>Name of Member complainant*</b>	
<b>Address of Member complainant</b>	
<b>Section(s) of Code allegedly breached*</b>	
<b>Description of actions, omissions and circumstances which comprise the alleged breach*</b>	
<b>Evidence in support of the alleged breach</b> (Attach any documents you wish to be considered)	
<b>Steps taken to notify Sales Agent of the Sales Complaint and application to deregister the Sales Agent*</b>	
<b>Details of previous breaches of the Code by the Sales Agent</b>	
<b>Response and any documents received from the Sales Agent*</b>	
<b>Date of Deregistration Application</b>	

### IMPORTANT NOTES

- 1 Fields marked with an asterisk (\*) are mandatory. Failure to complete mandatory fields will result in the rejection of the application.
- 2 Failure to provide sufficient information or evidence about the Complaint may result in the dismissal of the Complaint.
- 3 Note that a copy of this Deregistration Application and any other particulars, information and documents provided with it or at any other time during the determination of the application will be made available to the Sales Agent named in the Deregistration Application.
- 4 In making a Deregistration Application the Member warrants that:
  - (1) the information and facts provided in and to be inferred from the Deregistration Application are accurate and true to the best of their knowledge and are not misleading in any material way;
  - (2) information provided to the Code Manager may be communicated, published, recorded and audited or used in any other way provided for by the Code, and an authority to use the information has been obtained from the relevant person;
  - (3) if the response of the Sales Agent is not in writing, by providing particulars of the response, the Member has made all reasonable attempts to contact the Sales Agent to notify him or her of the Sales Complaint and provided the Sales Agent with a reasonable opportunity to respond to the Sales Complaint; and
  - (4) the Member has submitted with Form A the Sales Agent's response to the Sales Complaint, by providing a copy of any written response by the Sales Agent.
- 5 Decisions by the Code Manager are presumed to be reasonable and objective.
- 6 Sales Agents and Members acknowledge that they have:
  - (1) no right of action in any court or jurisdiction; and
  - (2) no right to damages or any form of compensation or indemnity against Energy Assured or any officer or subcontractor of Energy Assured as a consequence of
    - (a) any costs of any nature which the Sales Agent or Member may incur (including, but not limited to, legal costs) in answering the Deregistration Application; or
    - (b) any losses or damages of any nature (including claims based on defamation, negligence and breach of privacy) which the Sales Agent or Member may incur directly or indirectly due to actions or omissions of the Code arising out of or in connection to the Deregistration Application, including but not limited to findings and Deregistration imposed by the Code Manager.
- 7 The Code Manager shall use their best endeavours to meet the time-limits set out in the Code, but may extend the time-limits if they have a reasonable excuse. Failure to meet any time-limits does not invalidate acts or omissions undertaken pursuant to or incidental to the Deregistration Application.
- 8 The Code Manager shall maintain a record of all correspondence and documents relating to the Deregistration Application and the determination (including on appeal) for a period of 2 years.

## Annexure E - Form B - Deregistration Notice

<b>Name of Sales Agent</b>	
<b>Address of Sales Agent</b>	
<b>Contact details of Sales Agent</b> (fax, email, home phone, telephone, other contacts of Sales Agent)	
<b>Energy Assured ID Number</b>	
<b>Particulars of breach(es)</b>	
<b>Evidence</b>	
<b>Deregistration period</b>	
<p>Copies of the Code of Practice and other relevant documents (including policies) are available from the Code Manager on request. You should review these documents carefully and contact the Code Manager if you have any queries.</p>	
<b>Date of issue</b>	



## Annexure F - Form C - Member Complaint

<b>Name of Member*</b>	
<b>Date of Complaint*</b>	
<b>Section of Code allegedly breached*</b>	
<b>Description of actions, omissions and circumstances comprising the alleged breach*</b>	
<b>Evidence in support of the above (attach any documents you wish to be considered)</b>	
<b>Details of previous known breaches of the Code</b>	
<b>Date of receipt of Member Complaint</b>	

## IMPORTANT NOTES

- 1 Fields marked with an asterisk (\*) are mandatory. Failure to complete mandatory fields will result in the rejection of the application.
- 2 Failure to provide sufficient information or evidence about the Member Complaint may result in the dismissal of the Member Complaint.
- 3 Note that a copy of this Member Complaint and any other particulars, information and documents provided with it or at any other time during the determination of the application will be made available to the Member named in the Member Complaint.
- 4 In making a Member Complaint you warrant that:
  - (1) the information and facts provided in and to be inferred from the Member Complaint and during the course of the determination are accurate and true to the best of your knowledge and are not misleading in any material way; and
  - (2) information provided to the Code Manager or the Panel Member may be communicated, published, recorded and audited or used in any other way provided for by the Code, and an authority to use the information has been obtained from the relevant person.
- 5 Decisions by the Code Manager and members of the Panel are presumed to be reasonable and objective.
- 6 Members acknowledge that they have:
  - (1) no right of action in any court or jurisdiction; and
  - (2) no right to damages or any form of compensation or indemnity against Energy Assured or any officer or subcontractor of Energy Assured as a consequence of
    - (a) any costs of any nature which the Member may incur (including, but not limited to, legal costs) in answering the Complaint; or
    - (b) any losses or damages of any nature (including claims based on defamation, negligence and breach of privacy) which the Member may incur directly or indirectly due to actions or omissions of the Code Manager or Panel Member(s) arising out of or in connection to the Member Complaint, including but not limited to findings and Sanctions imposed by the Code Manager or a member of the Panel.
- 7 The Code Manager and Panel Member(s) shall use their best endeavours to meet the time-limits set out in the Code, but may extend the time-limits if they have a reasonable excuse. Failure to meet any time-limits does not invalidate acts or omissions undertaken pursuant to or incidental to the determination.
- 8 The Code Manager shall maintain a record of all correspondence and documents relating to Member Complaint and the determination of complaints (including on appeal) for a period of 2 years.
- 9 The Code Manager and/or Panel Member(s) may refer a Member Complaint to a government agency where appropriate as determined under the Code.
- 10 Any person providing information to the Code Manager and/or Panel Member(s) pursuant to the Sanctions process agrees and understands that the information may be communicated, recorded and audited.
- 11 Members shall ensure that their contact details for Service of a Notice of Breach and the receipt of reasons, determinations and other correspondence are given to the Code Manager and are up to date at all times.

## Annexure G - Form D - Notice of Breach

ISSUED IN ACCORDANCE WITH CLAUSE 28.6 OF THE CODE OF PRACTICE

<b>Name of Member</b>	
<b>Section(s) of Code found to be breached</b>	
<b>Particulars of breach</b>	
<b>Evidence in support of the breach(es)</b>	
<b>Sanction and any particulars and terms</b>	
<p>Copies of the Energy Assured Constitution, Code of Practice, Procedures Guidelines, and other relevant documents (including policies) are available from the Code Manager on request. You should review these documents carefully and contact the Code Manager if you have any queries.</p>	
<b>Date of issue</b>	

**Annexure H - Form E - Notice of Appeal (Sales Agent)**

<b>Name of Appellant*</b>	
<b>Contact details of Appellant*</b>	
<b>Name of the Complainant*</b>	
<b>Energy Assured ID Number</b>	
<b>Ground(s) of appeal*</b>	
<b>Particulars of ground(s) of appeal</b>	
<b>Evidence in support of appeal</b> (Attach any documents you wish to be considered).	
<b>Determination to which the appellant will consent</b>	

You must enclose a cash or cheque in the sum of \$\_\_\_\_\_ made payable to "Energy Assured Limited" as security for the costs of the appeal. This sum will be repaid if your appeal is successful.

<b>Date of receipt of Notice of Appeal</b>	
<b>Panel Member that will be hearing the appeal:</b>	
<b>Date Referred to Panel Member:</b>	

## IMPORTANT NOTES

- 1 Fields marked with an asterisk (\*) are mandatory. Failure to complete mandatory fields will result in rejection of the Notice of Appeal.
- 2 Failure to provide sufficient information or evidence about the complaint may result in dismissal of the appeal.
- 3 In making an appeal, you warrant that:
  - (1) the information and facts provided in and to be inferred from the appeal and during the course of the appeal determination are accurate and true to the best of your knowledge and are not misleading in any material way; and
  - (2) information provided to the Panel Member may be communicated, published, recorded and audited or used in any other way provided for by the Code, and an authority to use the information has been obtained from the relevant person.
- 4 Decisions by the member of the Panel are presumed to be reasonable and objective.
- 5 Sales Agents and Members acknowledge that they have:
  - (1) no right of action in any court or jurisdiction; and
  - (2) no right to damages or any form of compensation or indemnity against Energy Assured or any officer or subcontractor of Energy Assured as a consequence of any costs of any nature which the Sales Agent or Member may incur (including, but not limited to, legal costs) in answering the appeal; or
  - (3) any losses or damages of any nature (including claims based on defamation, negligence and breach of privacy) which the Sales Agent or Member may incur directly or indirectly due to actions or omissions of the Code Manager or Panel Member(s) arising out of or in connection to the appeal, including but not limited to findings and final determination imposed by the member of the Panel.
- 6 The Panel Member shall use their best endeavours to meet the time-limits set out in the Code, but may extend the time-limits if they have a reasonable excuse. Failure to meet any time-limits does not invalidate acts or omissions undertaken pursuant to or incidental to the appeal.
- 7 Time is of the essence for delivery of any appeal. However, the Panel Member(s) may, at their absolute discretion, determine the appeal if he, she or they believe there were reasonable grounds for the Appellant failing to comply with the relevant time-limit.
- 8 The Code Manager shall maintain a record of all correspondence and documents relating to appeal and the determination of the appeal for a period of 2 years.
- 9 Any person providing information to the Code Manager and/or Panel Member(s) pursuant to the appeal agrees and understands that the information may be communicated, recorded and audited.

**Annexure I - Form F - Notice of Appeal (Member)**

<b>Name of Appellant*</b>	
<b>Contact details of Appellant for correspondence*</b>	
<b>Name of other party to Complaint*</b>	
<b>Ground(s) of appeal*</b>	
<b>Particulars of ground(s) of appeal*</b>	
<b>Evidence in support of appeal</b>	
<b>Sanction to which the Appellant will consent</b>	
<b>Time requested to provide further information not contained in this Notice of Appeal and Reasons</b>	

You must enclose cash or a cheque in the sum of \$\_\_\_\_\_ made payable to "Energy Assured Limited" as security for the costs of the appeal. This sum will be repaid if your appeal is successful.

\_\_\_\_\_  
\*Signature

\_\_\_\_\_  
\*Print Name

<b>Date of receipt of Notice of Appeal</b>	
<b>Panel Member(s) that will be hearing the appeal:</b>	
<b>Date referred to Panel Member:</b>	

## IMPORTANT NOTES

- 1 Fields marked with an asterisk (\*) are mandatory. Failure to complete mandatory fields will result in rejection of the Notice of Appeal.
- 2 Failure to provide sufficient information or evidence about the complaint may result in dismissal of the appeal.
- 3 In making an appeal, Appellants warrant that:
  - (1) the information and facts provided in and to be inferred from the Complaint and the Appeal and during the course of the Complaints Process are accurate and true to the best of their knowledge and are not misleading in any material way; and
  - (2) information provided to the Code Manager or Complaints Panel may be communicated, published, recorded and audited or used in any other way provided for by the Complaints Process, and an authority to use the information has been obtained from the relevant person.
- 4 Decisions by the Code Manager and members of the Panel are presumed to be reasonable and objective.
- 5 Members acknowledge that they have:
  - (1) no right of action in any court or jurisdiction; and
  - (2) no right to damages or any form of compensation or indemnity against Energy Assured or any officer or subcontractor of Energy Assured as a consequence of any costs of any nature which the Member may incur (including, but not limited to, legal costs) in answering the Complaint; or
  - (3) any losses or damages of any nature (including claims based on defamation, negligence and breach of privacy) which the Member may incur directly or indirectly due to actions or omissions of the Code Manager or Panel Member(s) arising out of or in connection to the appeal, including but not limited to findings and Sanctions imposed by the Code Manager or a member of the Panel.
- 6 The Code Manager and Panel Member(s) shall use their best endeavours to meet the time-limits set out in the Code but may extend the time-limits if they have a reasonable excuse. Failure to meet any time-limits does not invalidate acts or omissions undertaken pursuant to or incidental to the appeal.
- 7 Time is of the essence for delivery of any appeal. However, the Code Manager and/or Panel Member(s) may, at their absolute discretion, determine the appeal if he, she or they believe there were reasonable grounds for the Appellant failing to comply with the relevant time-limit.
- 8 The Code Manager shall maintain a record of all correspondence and documents relating to appeal and the determination of appeal for a period of 2 years.
- 9 Any person providing information to the Code Manager and/or Panel Member(s) pursuant to the appeal agrees and understands that the information may be communicated, recorded and audited.

# Energy Assured Limited Procedures Guideline

## Introduction

### 1 Aims

- 1.1 This document is called the Energy Assured Limited Procedures Guideline (**Procedures Guideline**).
- 1.2 The Code of Practice (**Code**) and this Procedures Guideline, provide Members with a uniform and standardised industry approach for:
- (1) training and recruiting Sales Agents;
  - (2) tracking and registering Sales Agents;
  - (3) assessing Sales Agents through an accreditation process;
  - (4) ensuring Member compliance;
  - (5) dealing with Sub-agent Principals;
  - (6) applying a framework in which Members can apply to the Code Manager to deregister a Sales Agent from the Energy Assured Register for material breaches of the Energy Assured Standards; and
  - (7) the appeal process for Sales Agents and Members.

### 2 Interpretation

- 2.1 This Procedures Guideline sets out the procedures, principles and processes that underpin the Code for the operation of the Energy Assured Scheme for:
- (1) registering and maintaining Sales Agents on the Energy Assured Register;
  - (2) recruiting, training and assessing Sales Agents;
  - (3) the application of fees; and
  - (4) dealing with Sub-agent Principals.
- 2.2 If any part of this Procedures Guideline is inconsistent with the Code, the Code will prevail to the extent of the inconsistency.
- 2.3 Capitalised words appearing in this Procedures Guideline have the meaning given to them in the Dictionary section, are defined in the Code or defined in **bold** in the body, of this Procedures Guideline.

### 3 Operational Personnel

- 3.1 Each Member must ensure that they have an appropriate governance framework and operational personnel to comply with the Code and this Procedures Guideline including appointing personnel to fulfil the roles set out in Annexure C.



## Energy Assured Register

### 4 Registration of Sales Agents, Assessors and Sub-agent Principals =

#### 4.1 Members must:

- (1) obtain the following information about each Sales Agent, Assessor and Sub-agent Principal (as applicable)(**Registree**) ("**Details**") in writing:
  - (a) first name;
  - (b) middle name;
  - (c) surname;
  - (d) date of birth;
  - (e) passport number or Australian driver's licence number or proof of ID number;
  - (f) Australian State or Territory of residence;
  - (g) photograph; and
  - (h) any additional information required by the Code Manager from time to time.
- (2) ensure that the Registree understands that the Details will be used on the Energy Assured Register, how those Details will be used, and who will have access to those Details;
- (3) obtain the written agreement of the Registree to use their Details on the Energy Assured Register; and
- (4) retain copies of the Details and the written agreements signed by each Registree.

#### 4.2 Before the Sales Agent undertakes Sales Activities, the Member must create or update a record for each Sales Agent engaged by it by populating the Energy Assured Register with the Details about each Sales Agent along with the following information (**Sales Agent Profile**):

- (1) Sales Agent ID number given by the Member;
- (2) Energy Retailer;
- (3) Energy Marketer (if applicable);
- (4) start date;
- (5) Accreditation Status;
- (6) award date;
- (7) extension award date (if applicable);
- (8) expiry date;
- (9) extension expiry date;
- (10) Confirmation of criminal history check and 100 point identity check;
- (11) if the Sales Agent is an Experienced Sales Agent, that fact; and
- (12) any additional information required by the Code Manager from time to time.

- 4.3 Upon the creation of each Sales Agent Profile, the Sales Agent will be allocated a unique Sales Agent Identity Number (**SIDN**).
- 4.4 The SIDN will be the primary means by which the Member will store records on the Energy Assured Register. The SIDN can be different to a Sales Agent's ID number issued by the Member.
- 4.5 Once a SIDN is issued, the Member can affix the Energy Assured Logo to the Member's Identification Badge, highlighting to the consumer that the Sales Agent is being accredited under the Energy Assured Scheme.
- 4.6 In addition to Sales Agents, Members must register all Experienced Sales Agents, Assessors and Sub-agent Principals that they engage, on the Energy Assured Register.

## **5 Register Maintenance**

- 5.1 Members must ensure that the data contained in the Energy Assured Register is accurate and up-to-date within the timeframes prescribed in this Procedures Guideline.
- 5.2 All Members must routinely check the Energy Assured Register for all Sales Agent recruits during both the recruitment process and when creating or updating a Sales Agent Profile.
- 5.3 Members must keep a record of Sales Agent's details that will reconcile with information contained in the Energy Assured Register.
- 5.4 Each Member must carry out a monthly reconciliation between the Sales Agents detailed on the Energy Assured Register for that Member and the Member's own internal database of Sales Agents (**Reconciliation**). The Reconciliation should be prepared in accordance with the guidance notes issued by the Code Manager and should be submitted to the Code Manager at the same time as an Energy Retailer would be required to submit a Report under the Code.

## **6 Access to Energy Assured Register**

- 6.1 A Member will only be permitted to access the Sales Agent Profiles of Sales Agents directly or indirectly engaged by it. A Member will not have access to the Sales Agent Profiles of Sales Agents engaged by other Members unless:
  - (1) the Member is an Energy Retailer and those Sales Agents are engaged indirectly by the Energy Retailer through an Energy Marketer; or
  - (2) the Sales Agent has been given an Accreditation Status of Leaver or Deregistered.
- 6.2 The Code Manager may inform any Member of the deregistration of any Sales Agent.
- 6.3 Any Member may view the following details of any Sales Agent registered on the Energy Assured Register, in accordance with clause 6.1:
  - (1) first name;
  - (2) middle name;
  - (3) surname;
  - (4) Sales Agent photograph;
  - (5) SIDN; and
  - (6) history of Accreditation Status.
- 6.4 In order to view the information about a Sales Agent listed in clause 6.2, a Member must have the Sales Agent's date of birth and one of the following:

- (1) SIDN; or
- (2) passport number; or
- (3) driver's licence number (Class C or Class R); or
- (4) proof of ID number.

- 6.5 Each Member may nominate persons who are authorised to access the Energy Assured Register on its behalf (**Authorised Users**). The role of an Authorised User is set out in Annexure C. Members must provide up to date details of Authorised Users and their level of permitted access to the Code Manager on a quarterly basis.
- 6.6 The Code Manager may access any Sales Agent Profile recorded on the Energy Assured Register.
- 6.7 Energy Assured and Members must ensure that they have procedures in place to protect the confidentiality of the information contained on the Energy Assured Register and protect the privacy of Sales Agents.

## 7 Accreditation Procedures

- 7.1 In this clause 7, a reference to a Member is a reference to the Member that has engaged the Sales Agent.
- 7.2 The Sales Agent's Accreditation Status and corresponding privileges may be one of the following:

Accreditation Status	Description	Duration of Status	Privileges
Provisional	Applies to new Sales Agents pending completion of training and passing Competency Assessment.	Between four and six weeks.	<ul style="list-style-type: none"> <li>• Can undertake Sales Activities under supervision by an Experienced Sales Agent after Off-job Training and Off-job Assessment have been successfully completed.</li> <li>• Can display Energy Assured Logo.</li> </ul>
Approved	<ul style="list-style-type: none"> <li>• Sales Agent has passed a Formal Competency Assessment by an Assessor.</li> <li>• Sales Agent has passed an Annual Competency Assessment by an Assessor.</li> </ul>	1 year.	<ul style="list-style-type: none"> <li>• Can undertake Sales Activities.</li> <li>• Can display Energy Assured Logo.</li> </ul>
Development	Sales Agent has not passed a Formal Competency Assessment or has committed a Level 2 Breach under the Code and is undergoing further training.	Up to 15 Business Days.	<ul style="list-style-type: none"> <li>• Can undertake Sales Activities under supervision by an Experienced Sales Agent.</li> <li>• Can display Energy Assured Logo.</li> </ul>
Suspended	Sales Agent suspended from undertaking Sales Activities pending outcome of investigation and determination of a	Up to 15 Business Days or until the Deregistration Application is	Cannot undertake Sales Activities or display Energy Assured Logo.

Accreditation Status	Description	Duration of Status	Privileges
	Deregistration Application as a result of an alleged Level 3 Breach under the Code.	finally determined. The Suspension can be extended for a further 15 days where additional consideration is necessary.	
Deregistered	Agent has been deregistered in accordance with the Code.	5 Years.	Cannot undertake Sales Activities or display Energy Assured Logo.
Inactive	Sales Agent on authorised leave.	Up to 3 Months.	Cannot undertake Sales Activities or display Energy Assured Logo.
Active	Sales Agent returned from leave but not yet re-taken and passed Formal Competency Assessment.	Generally up to 10 Business Days.	<ul style="list-style-type: none"> <li>• Can undertake Sales Activities under supervision by an Experienced Sales Agent.</li> <li>• Can display Energy Assured Logo.</li> </ul>
Leaver	Sales Agent is no longer engaged by Member or is "Inactive" for more than 3 months.	Unspecified.	Cannot undertake Sales Activities or display Energy Assured Logo.

### 7.3 Provisional Accreditation Status

A Member may enter a Provisional Accreditation Status for a Sales Agent in the Energy Assured Register:

- (1) if a Sales Agent has never been registered on the Energy Assured Register or was deregistered from the Energy Assured Register more than five years ago, after the process specified in clauses 4.1 and 4.2 has been followed; or
- (2) if a Sales Agent is already registered on the Energy Assured Register but had a Leaver Accreditation Status, the Member must log into the Energy Assured Register, search for the Sales Agent and update all information contained in the Energy Assured Register with the Sales Agent's Details in accordance with clauses 4.1 and 4.2. If there are any discrepancies between the information existing on the Energy Assured Register about a Sales Agent and the Details provided, an explanatory note must be placed on record in the Sales Agent's file.

The first day that the Sales Agent engages in Sales Activities in the field will be listed as the start date in the Energy Assured Register for that Sales Agent (**Start Date**).

### 7.4 Approved Accreditation Status

A Sales Agent's Provisional Accreditation Status will automatically change to Approved four weeks after the Start Date (**Award Date**). The Member must ensure that the Sales Agent has passed the Formal Competency Assessment prior to the Award Date.

If a Sales Agent does not pass the Formal Competency Assessment by the Award Date, but is considered to have the potential to do so, the Provisional Accreditation Status period can be

extended for a further two weeks and a new Award Date must be noted in the Energy Assured Register (**Extension Award Date**). The Compliance Manager (whose role is set out in Annexure C), or their authorised delegate, must agree to the Provisional Accreditation Status being extended to the Extension Award Date. The Extension Award Date must be noted on the Energy Assured Register, and be kept on record for Compliance Check purposes.

The Approved Accreditation Status will expire twelve months from the Award Date, or the Extension Award Date (**Expiry Date**).

One month before the Expiry Date, a notice in writing will be sent to the Member through the Energy Assured Registry stating the date on which the Sales Agent's Accreditation Status will expire.

Before the Expiry Date, the Sales Agent must pass a Formal Competency Assessment.

Should an Agent not pass the Formal Competency Assessment before the Expiry Date, the Member must seek an extension of up to a period not exceeding 4 weeks past the Expiry Date (**Extension Expiry Date**) and reflect a change in status in the Energy Assured Register as depicted in clauses 7.5 or 7.6. The Compliance Manager or their authorised delegate must agree to the extension of the Expiry Date to the Extension Expiry Date. The Extension Expiry Date must be noted on the Energy Assured Register, and be kept on record for Compliance Check purposes.

On the Expiry Date, or the Extension Expiry Date, the Energy Assured Register will automatically renew the Sales Agent's Approved Accreditation Status for a further 12 months (resetting the Expiry Date for a further 12 months); unless the Member advises that the Sales Agent has not passed the Formal Competency Assessment.

#### 7.5 Development Accreditation Status

A Member must enter a Development Accreditation Status for a Sales Agent in the Energy Assured Register:

- (1) if a Sales Agent with an Approved Accreditation Status is found not to have been meeting the Energy Assured Standards in accordance with the Code and a period of re-training or development is assessed as being necessary; and
- (2) within five Business Days of determining that the Sales Agent does not meet the Energy Assured Standards.

The relevant training and development must be undertaken and a Formal Competency Assessment must be performed within ten Business Days of the Development Accreditation Status being entered for the Sales Agent. After that time, the Sales Agent must be given an Approved or Suspended Accreditation Status as the case may be.

#### 7.6 Suspended Accreditation Status

Where a Member is of the reasonable belief that a Sales Agent has breached the Energy Assured Standards in a way that may warrant Deregistration, the Member must enter a Suspended Accreditation Status for the Sales Agent in the Energy Assured Register and that status will remain on the Energy Assured Register for the Sales Agent until the investigation of the Sales Agent's conduct is completed (**Suspension Period**).

The Member must inform the Sales Agent in writing that the Sales Agent's Energy Assured Accreditation Status will be suspended pending the outcome of a thorough investigation (**Suspension Notice**). The Suspension Notice must contain:

- (1) details of the Sales Agent's right to appeal under clause 29 of the Code should suspension lead to a Deregistration Application; and
- (2) a direction that within one Business Day, the Sales Agent must cease to undertake Sales Activities on behalf of the Member, cease to use the Energy Assured Logo

when conducting Sales Activities and return any identification that displays the Energy Assured Logo.

Wherever possible, and subject to a Member's documented disciplinary procedures, the Suspension Period should not be greater than 15 Business Days or until the Deregistration Application is finally determined. An extension of 15 days can be entered in the Register by the Member if additional time is required to conclude the investigation into their conduct.

If, at the end of the Suspension Period, there is found to be no issue regarding a Sales Agent's competence, the Sales Agent's Accreditation Status will be returned to the Accreditation Status which was registered immediately prior to their suspension and the details of the suspension will be removed from the Energy Assured Register.

If, at the end of the Suspension Period, the Sales Agent is found to have failed to meet the Energy Assured Standards in a way that warrants Deregistration, the Member must make an application to the Code Manager to Deregister the Sales Agent from the Energy Assured Register in accordance with the Code.

#### 7.7 Deregistration Accreditation Status

A Member who finds that a Sales Agent no longer meets the Energy Assured Standards in a manner that cannot be remedied by re-training and development must, in accordance with the Member's internal procedures, make a Deregistration Application.

Deregistration from the Energy Assured Register will usually occur after a Suspension Period. However, if a serious breach of the Energy Assured Standards has occurred there is no requirement that there first be a Suspension Period.

Where a Member lodges a Deregistration Application, the Member must send the Sales Agent a notice in writing (by recorded delivery) that the Member has made a Deregistration Application (**Deregistration Notice**). The Deregistration Notice must contain:

- (1) details of the Sales Agent's right to appeal under clause 29 of the Code; and
- (2) a direction that within 1 Business Day, the Sales Agent must cease to undertake Sales Activities on behalf of the Member cease to use the Energy Assured Logo when conducting Sales Activities and return any identification that displays the Energy Assured Logo.

The Code Manager will review the Deregistration Application including evidence provided and administer any resulting Deregistration in accordance with the Code. If the evidence does not include a statement by the Sales Agent, the Code Manager will write to the Sales Agent inviting the Sales Agent to submit a statement prior to determining the Deregistration Application. The Sales Agent will have five Business Days to provide that statement.

#### 7.8 Inactive/Active Accreditation Status

A Member must enter an Inactive Accreditation Status for a Sales Agent in the Energy Assured Register where the Sales Agent has an Approved Accreditation Status but has temporarily ceased Sales Activities on behalf of a Member (but has not left the Member). The Member must update the Energy Assured Register to reflect the change in the Sales Agent's Accreditation Status within 5 Business Days of the Sales Agent being deemed "Inactive".

If a Sales Agent's Accreditation is Inactive for more than 3 months, the Sales Agent's Accreditation Status will be automatically changed to "Leaver".

During any period that the Sales Agent has an Inactive Accreditation Status, the Member must not allow the Sales Agent's SIDN to be used, and must maintain any of the Sales Agent's collateral displaying the Energy Assured Logo at its premises.

A Member may enter an Active Accreditation Status for a Sales Agent where the Sales Agent has an Inactive Accreditation Status and wishes to re-commence Sales Activities on behalf of

the Member. The Member must update the Energy Assured Register to reflect the change in the Sales Agent's Accreditation Status within 15 Business Days of the Sales Agent returning from leave. During the Active Accreditation Status period the Sales Agent must undertake Sales Activities under supervision of an Experienced Sales Agent until deemed competent to resume Sales Activities under an "Approved Status" after completing an On-job Assessment.

#### 7.9 Leaver Accreditation Status

A Member must enter a Leaver Accreditation Status for a Sales Agent in the Energy Assured Register where the Sales Agent leaves the employment or engagement of the Member or has had an Inactive Accreditation Status for more than 3 months. The Member must update the Energy Assured Register to reflect the change in the Sales Agent's Accreditation Status within 5 Business Days of the Sales Agent no longer being engaged by the Member.

### 8 Registration Fees

- 8.1 A Member must pay a fee (**Registration Fee**) to Energy Assured when the Sales Agent is first registered by the Member on the Energy Assured Register (**Provisional Fee**) and when the Sales Agent attains an Approved Accreditation Status (**Approved Fee**).
- 8.2 A Provisional Fee is payable in relation to a Sales Agent six days from the Start Date. Should the Sales Agent no longer be employed by the Member on that date, the Member should remove the Sales Agent from the Energy Assured Register, and no Provisional Fee will be incurred.
- 8.3 An Approved Fee is payable in relation to a Sales Agent on the Award Date, or the Extension Award Date (as applicable).
- 8.4 An Approved Fee is also payable every 12 months on the Expiry Date or Extension Expiry Date (as applicable), to maintain a Sales Agent's Accreditation Status.
- 8.5 Registration Fees will be collated and forwarded to the Member in electronic format for payment (**Batch Bill**) on the same date each month (**Batch Date**). A Member must pay a Batch Bill within 14 days of the Batch Date. The Batch Bill will be based on all Provisional and Approved Fees due for the month preceding the Batch Date.
- 8.6 Registration Fees will be determined by the Board of Energy Assured.

## Recruitment, Training and Competence

### 9 Recruitment

- 9.1 Members may only engage Sales Agents that have:
  - (1) sufficient knowledge and skills;
  - (2) sufficient previous relevant experience and training with supporting references; and
  - (3) an appropriate demeanour and present themselves in a respectable manner,to enable them to suitably perform the role of a Sales Agent, noting the important role that Sales Agents play as the 'public face' of the industry.
- 9.2 Members may only engage Sales Agents that have:
  - (1) passed a 100-point identification check in accordance with Annexure A;
  - (2) provided relevant Details and consented to the use of those Details for the Energy Assured Register;
  - (3) provided proof of address; and

- (4) passed a criminal history check.
- 9.3 A record must be kept in the Sales Agent's HR file by the Member that provides consent for the criminal history check, the date the check was requested, the report, and any subsequent action taken as a result of the report, subject to the Member's Recruitment Policy.
- 9.4 When a Sales Agent has previously been listed on the Energy Assured Register and has provided a SIDN, the Member must obtain the consent of the Sales Agent to review the Sales Agent's Accreditation Status history in the Energy Assured Register and may contact the Energy Assured Member which previously engaged the Sales Agent for reference purposes. Where a Sales Agent has not previously been registered on the Energy Assured Register, the Member must obtain appropriate references in accordance with the Member's internal recruitment policies.
- 9.5 Members must keep a record of all background checks and eligibility checks on the Sales Agent's file.
- 9.6 If a Sales Agent ceases to represent the Member, a copy of his or her record must be retained by the Member for a minimum of 12 months.

## 10 Training

- 10.1 All new Sales Agents must undergo:
  - (1) Off-job Training; and
  - (2) On-job Training under the supervision of an Experienced Sales Agent whilst on a Provisional Accreditation Status.
- 10.2 For the purposes of clause 10.1(2), an Experienced Sales Agent must be registered within the Energy Assured Register as an Experienced Sales Agent and at the time of conducting the supervision have:
  - (1) an Approved Accreditation Status under the Energy Assured Register;
  - (2) not had a breach of the Energy Assured Standards registered against their performance in last 12 months in the Competence Register Record; and
  - (3) been provided with training to effectively supervise new Sales Agents under the Energy Assured Standards.
- 10.3 Members must ensure that the outcomes of the Off-job Training and On-job Training are clearly documented to ensure consistency in the training methodologies used.
- 10.4 Off-job Training can be run in conjunction with On-job Training as long as the new Sales Agents do not meet with consumers unsupervised until they have passed an Off-job Assessment.
- 10.5 Whilst it is the responsibility of the Member to ensure that Sales Agents are trained appropriately to standards that meet the requirements of Applicable Laws, there are a number of minimum requirements that must be covered in Off-job Training as set out in the Code.
- 10.6 Each new Sales Agent must complete a written assessment that demonstrates that the Sales Agent has successfully attended and understood the Member's Off-job Training (**Off-job Assessment**). The Member must keep the Off-job Assessment in the Sales Agent's file, signed and dated by the Sales Agent and the trainer that conducted the Off-job Training.
- 10.7 During On-job Training, the new Sales Agent must demonstrate the ability to perform to the Energy Assured Standards as determined by the Member, including demonstrating the ability to promote and sell the product. The Sales Agent must be assessed on their performance (**On-job Assessment**) based on the sample provided in Annexure B and in accordance with



Annexure D. The Member must keep the On-job Assessment in the Sales Agent's file, signed and dated by the Sales Agent and the individual who conducted the On-job Training.

10.8 Prior to obtaining an Approved Accreditation Status, the new Sales Agent must demonstrate that they are competent in, and can consistently meet, all of the Energy Assured Standards by completing a Formal Competency Assessment. The Formal Competency Assessment:

- (1) must be based on the sample provided in Annexure B;
- (2) must be in accordance with Annexure D;
- (3) must be administered by an Assessor who must observe the Sales Agent directly and consider other key performance evidence, as determined by the Member; and
- (4) cannot be completed until the Sales Agent has successfully completed the On-job Assessment and Off-job Assessment.

10.9 For the purposes of clause 10.8 (3), an Assessor must be registered within the Energy Assured Register at the time of conducting the supervision, be independent of the Sales Agent and the Sales Agent's supervisor/team leader and have:

- (1) worked for a Member for not less than three months;
- (2) an Approved Accreditation Status under the Energy Assured Register;
- (3) not had a breach of the Energy Assured Standards registered against their performance under the Competence Records Register in last 12 months; and
- (4) been provided with training to effectively assess new Sales Agents under the Energy Assured Standards,

or have been engaged externally by the Member to perform the role of Assessor and have received appropriate training to perform assessments on Sales Agents under the Energy Assured Standards.

10.10 Members must ensure that they have policies and procedures in place that detail the requirements in conducting a Formal Competency Assessment on a Sales Agent.

10.11 Stages of Accreditation in the first 4 weeks:

Training/Assessment Outcome	Accreditation Status	Sales Agent Privileges
Completion of Off-job Training	Provisional	If passed "Off-job Assessment" can commence On-job Training.
Commencement of On-job Training	Provisional	Must be accompanied by an Experienced Sales Agent when visiting consumers.  When deemed competent and passed "On-job Assessment" can visit consumers unsupervised, however with ongoing support.
Formal Competency Assessment (within 4 weeks)	Approved	When deemed competent and reviewed by qualified Assessor under a Formal Competency Assessment, may visit consumers alone with normal supervision.
Assessments demonstrate Sales Agent has not been operating to the Energy Assured Standards	<ul style="list-style-type: none"> <li>Withdrawn for serious or persistent Sales</li> </ul>	See clause 7.

	<p>Complaints or misconduct; or</p> <ul style="list-style-type: none"> <li>• Changed back to Development if was at Approved.</li> </ul>	
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## 11 Annual Competency Assessment

- 11.1 In addition to the training and assessment that must be undertaken by a new Sales Agent in accordance with clause 10, Members must ensure that they conduct a Formal Competency Assessment on Sales Agents with an Approved Status each year before the Expiry Date (**Annual Competency Assessment Process**).
- 11.2 The Annual Competency Assessment Process will be reviewed by the Compliance Manager (whose role is set out in 0Annexure C) to ensure that it is carried out against the Energy Assured Standards.
- 11.3 The Code Manager will review the Annual Competency Assessment Process to ensure consistency across all Members.
- 11.4 The Code Manager retains the right to visit Members in order to verify that appropriate measures are being taken in respect of the Annual Competency Assessment Process.
- 11.5 Roles & responsibilities of individuals involved in the Annual Competency Assessment Process are set out in Annexure C.
- 11.6 Members must ensure that they keep a record of Sales Agent assessments, including results of the Formal Competency Assessment, and the date by which the next Formal Competency Assessment must be administered.
- 11.7 Members must:
- (1) appoint and train their Assessors/Experienced Sales Agent and keep records of those appointments and training;
  - (2) ensure that for all assessments conducted on Sales Agents that a record of which Assessor/Experienced Sales Agent conducted the assessment is maintained;
  - (3) demonstrate to the Compliance Manager that the Member has adequate internal control processes to monitor the quality and consistency of the work of Assessors/Experienced Sales Agents including:
    - (a) sampling the assessments of Assessors/Experienced Sales Agents to ensure consistency and quality in assessments conducted;
    - (b) ensuring up to date records of internal verification and sampling activity are maintained and these are available for Energy Assured Compliance Check purposes;
    - (c) ensuring that Assessors/Experienced Sales Agents remain competent to assess and are provided with information and guidance to ensure that they understand their responsibilities under the Energy Assured Standards and are provided guidance on the Sales Complaint Handling Process;
    - (d) ensuring that all assessment forms are signed by both the Sales Agent and the Assessor/Experienced Sales Agent performing the assessment; and
    - (e) where a failure in an assessment is identified, have in place procedures to review previous assessments done by the Assessor/Experienced Sales Agent where the failure has been identified, and, if required, conduct reassessments of any suspect historical assessments.

- (4) where an Assessor/Experienced Sales Agent has breached their responsibilities in ensuring Sales Agents are competently assessed under the Energy Assured Standards, have procedures in place to ensure that corrective action is taken, which may include Deregistration.

## 12 Sub-agent Principals

Energy Marketers may engage Sub-agent Principals to conduct Sales Activities on their behalf. Energy Marketers must ensure that Sub-agent Principals and their managers must meet the Energy Assured Standards and Members may be sanctioned for failing to adequately manage Sub-agency principals or their Sales Agents.

## Dictionary

### 13 Definitions

#### 13.1 In this Procedures Guideline:

- (1) **Accreditation Status** means one of the levels of accreditation that may be attained by a Sales Agent as set out in clause 7;
- (2) **Applicable Law** means all rules, regulations, codes, statutes, guidelines, licences, legislation, orders in council, tariffs, proclamations, directions or standards that relate to the marketing, sale and supply of energy;
- (3) **Business Day** means a day that is not a Saturday, Sunday or public holiday in jurisdiction in which the Sales Agent conducts Sales Activities;
- (4) **Code Manager** means the individual appointed by Energy Assured to carry out the day to day administration and management of the Code whose role is set out in the Code;
- (5) **Code** means the Code of Practice and any documents incorporated in this Procedures Guideline;
- (6) **Code Panel** means the panel of people who are independent of the Energy Assured, the Code Manager and the Members whose role is set out in the Code;
- (7) **Competence Assessment Process** means controls, processes and systems that enable the assessment of the competency of Sales Agents to comply with the Energy Assured Standards;
- (8) **Competence Records Register** means the record that is used to measure Levels of breaches that are recorded against a Sales Agent under clause 19 of the Code;
- (9) **Deregistration Application** means an application made to the Code Manager requesting that a Sales Agent be deregistered from the Energy Assured Register;
- (10) **Energy Assured** means Energy Assured Limited;
- (11) **Energy Assured Logo** means the Energy Assured logo that demonstrates that the Sales Agent complies with this Code;
- (12) **Energy Assured Register** means the database register of Sales Agents accredited under the Energy Assured Scheme which is administered and monitored by Energy Assured;
- (13) **Energy Assured Scheme** means the training and accreditation scheme for Sales Agents;

- (14) **Energy Assured Standards** means the standards for the conduct of Sales Activities as set out in the Code;
- (15) **Energy Marketer** means a company that engages in Sales Activities on behalf of Energy Retailers;
- (16) **Energy Retailer** means an entity that holds a valid licence or similar authorisation, issued by the relevant government regulator, to retail electricity and/or gas;
- (17) **Formal Competency Assessment** means an assessment of the competency of the Sales Agent to comply with the Energy Assured Standards that must be undertaken by a Sales Agent before they can achieve or maintain an Accreditation Status that enables them to conduct Sales Activities unsupervised;
- (18) **Member** means an Energy Retailer or Energy Marketer that has signed the Energy Assured Constitution and in doing so, agreed to adhere to this Code;
- (19) **Off-job Training** means a classroom-based Sales Agent induction program which should be conducted in a formal environment by an individual that is qualified to provide such training;
- (20) **On-job Training** means field training undertaken by a Sales Agent under the supervision of an experienced Sales Agent;
- (21) **Sales Activities** means the face-to-face marketing of energy supply to consumers;
- (22) **Sales Agent** means any individual authorised by a Member who solely represents a Member (and/or a Member's associated companies) for the purposes of engaging in Sales Activities where the principal function of such individual is to market energy supply alone or energy supply and other domestic utility services to domestic consumers;
- (23) **Sales Complaint** means a complaint made by a consumer, Consumer Advocacy Group, energy ombudsman, relevant regulator, government agency or other interested party about a Sales Agent's Sales Activities;
- (24) **Sales Complaint Handling Process** means the process for handling Sales Complaints established by an Energy Retailer under the Code;
- (25) **Sanction** means disciplinary action or any other sanction imposed on a Member under the Code; and
- (26) **SIDN** means Sales Agent Identification Number allocated to a Sales Agent when they are first registered on the Energy Assured Register.

## Annexure A

### 100-point identification check

IDENTIFICATION	SCORE	SIGHTED
<b>Primary</b>		
Passport – a current passport or expired passport (can be expired maximum of two years, but not cancelled)	70	
Citizenship certificate – or certified copy	70	
Birth Extract/Birth certificate – or certified copy	70	
<b>Secondary</b>		
Licence issued under an Australian State law (e.g. Drivers licence)	40	
Identification Card issued under an Australian State Law (e.g. Proof of Age)	40	
Employment ID		
• ID card issued by employer (name & address)	35	
• ID card issued by employer (name only)	25	
Letter from employer (within last two years)		
• Confirming name and address	35	
Student ID Card (Tertiary)		
• Must contain a photo and/or signature	40	
Rates Notice	25	
Credit/debit cards/passbooks (only one per institution)	25	
Medicare Card (signature not required)	25	
Membership card (club, union or trade, professional bodies)	25	
Foreign Driver License (name & signature)	25	
Records of a public utility – phone, water, gas or electricity bill (must have name & address)	25	
Rent receipt from a licensed real estate agent	25	
Recent arrival in Australia– Valid Passport	100	
<b>TOTAL</b>		

## Annexure B

### On-job Assessment Form (Sample)

Sales Agent	Name	SIDN	
	Date of Assessment	Date of previous Assessment	
Assessor	Name	SIDN	
Personal Preparation	Appearance meets Member's standards	YES	NO
	ID card visible, current and in good condition	YES	NO
	Sales presenter up to date and complete	YES	NO
	Walk sheet process understood	YES	NO
Out in the field	Uses walk sheet (or equivalent) accurately	YES	NO
	Respects "do not knock" notices	YES	NO
	Respects property, customer privacy and OH&S obligations	YES	NO
Approach to Consumer	States name	YES	NO
	Presents ID	YES	NO
	Correctly states purpose of visit	YES	NO
	Advises customer that the Sales Agent must leave if asked to do so	YES	NO
	States name of Company (Member) they represent	YES	NO
	Establishes consumer is decision maker or authorised to enter into a contract	YES	NO
Presentation	Uses sales presenter during sales pitch	YES	NO
	Carries out accurate price comparisons	YES	NO
	Correct feature of the product is given (inclusive of eligibility for concessions, rebates or grants)	YES	NO



	Does not use cooling off period as a sales pitch	YES	NO
	Does not provide false, derogatory or misleading statements	YES	NO
	Recognises when to end visit	YES	NO
Sales Agent behaviours	Courteous & Professional	YES	NO
	Does not exaggerate or use high pressure techniques	YES	NO
	Takes into account ethnicity/diversity	YES	NO
	Recognises and respects a vulnerable situation	YES	NO
	Obtains explicit informed consent to switch energy retailer	YES	NO
Contract	Ensures the customer has a copy of the contract & right to cancel notice	YES	NO
	Ensures the customer has welcome pack inclusive of complaints procedure	YES	NO
	Ensures the customer has pricing form	YES	NO
	Ensures the customer has written acknowledgement & price fact sheet where required	YES	NO
	Ensures the customer has contact details	YES	NO
	Leaves Energy Assured marketing material	YES	NO
	Ensures the sales verification call is conducted appropriately without any coaching by the Sales Agent	YES	NO
Contract administration	All fields filled in correctly	YES	NO
	Signed and dated by completed correctly	YES	NO
	Signed by agent with SIDN easily displayed	YES	NO
Other	Understands Sales Complaints & Breach Levels that could be raised against them	YES	NO
	Displays behaviours that addresses a Sales Complaint (if applicable)	YES	NO
	Sales Agent Cancellation Rate within average benchmark	YES	NO
	Other Key Performance Indicators	YES	NO

## Annexure C

### Roles and Responsibilities

<b>Role</b>	<b>Appointed by</b>	<b>Responsibilities within the Assessment &amp; Monitoring Process</b>
Energy Assured Code Manager	Energy Assured Board	<ul style="list-style-type: none"> <li>• Undertakes all responsibilities outlined in CI 10.2 of the Code.</li> </ul>
Energy Assured Code Operations Manager	Energy Assured CEO	<ul style="list-style-type: none"> <li>• Assists the Code Manager in the day to day administration and management of the Code.</li> </ul>
Energy Assured Compliance Manager	Energy Retailer	<ul style="list-style-type: none"> <li>• Oversees the operation of the Energy Assured Scheme and fully understands the Member's obligations under the Code and Procedures Guideline.</li> <li>• Ensures that the Energy Marketer that they may use adheres to the Code and this Procedures Guideline.</li> <li>• Ensures that all systems and procedures are open to the scrutiny of the Code Manager as requested and within the prescribed time frames.</li> <li>• Ensures compliance under the Code and Procedures Guidelines by ensuring that:               <ol style="list-style-type: none"> <li>i. Sales Agents are recruited as determined in accordance with the Code and Procedures Guideline;</li> <li>ii. appropriate measures are adopted to ensure that Sales Agents are competent under the Energy Assured Standards;</li> <li>iii. the registration process is being followed;</li> <li>iv. Sales Agents are properly assessed under the Formal and Annual Competency Assessments;</li> <li>v. issues are monitored as determined in the Sales Complaints Handling Process and the Competence Register; and</li> <li>vi. that there is appropriate documentation, systems and processes to meet these requirements.</li> </ol> </li> <li>• Responsible for applications to Code Manager for deregistration of Sales Agent.</li> <li>• Provides Compliance Reports to Code Manager.</li> <li>• Liaises with Code Manager.</li> </ul>
Member Operations Manager	Member	<ul style="list-style-type: none"> <li>• Providing assistance and support to Assessors.</li> <li>• Providing information that supports application for change in Accreditation Status of the Sales Agent.</li> <li>• Ensuring Assessors are accurately interpreting the Energy Assured Standards and have the systems in place that identify discrepancy with interpretations.</li> <li>• Monitoring that all assessments are fair, valid, qualitative and reliable.</li> <li>• Liaising with the Compliance Manager.</li> </ul>



Role	Appointed by	Responsibilities within the Assessment & Monitoring Process
		<ul style="list-style-type: none"> <li>Monitoring the Energy Assured Register, the Sales Complaint Handling Process and the Competence Register.</li> <li>Ensuring that all relevant information is provided to the Assessors to facilitate an appropriate assessment of a Sales Agent.</li> <li>Ensuring that it has appropriate systems, procedures &amp; documentations in place that meet requirements under the Code and Procedures Guideline.</li> <li>Maintaining accurate and verifiable Sales Agent assessment and achievement central records as required by the Code and Procedures Guideline for all Off-Job, On-Job and Formal Competency Assessments.</li> <li>Approving changes in Accreditation Status' of Sales Agents and responsibility for ensuring Authorised Users update the Energy Assured Register as required.</li> </ul>
Assessor	Member	<ul style="list-style-type: none"> <li>Administers Formal Competency Assessment on Sales Agents.</li> <li>Depending on outcome of assessment, makes recommendations of training needs of Sales Agent and/or a change in Accreditation Status in the Energy Assured Register as required by the Member's Operation Manager.</li> <li>Assesses evidence of Sales Agent competence against the Energy Assured Standards.</li> <li>Is independent to the Sales Agent and their team leader.</li> <li>Conducts random assessments in accordance with the Code.</li> </ul>
Experienced Sales Agent	Member	<ul style="list-style-type: none"> <li>Delivery of On-job Assessment on new Sales Agents, prior to new Sales Agent being allowed to visit consumers unaccompanied.</li> <li>Providing accurate and verifiable On-job Assessment and achievement records to the Operations Manager.</li> </ul>
Authorised User	Member	<ul style="list-style-type: none"> <li>Dependent on level of access can:               <ul style="list-style-type: none"> <li>Search Agents;</li> <li>Amend Agents;</li> <li>Create Agents; and/or</li> <li>Run Reports.</li> </ul> </li> <li>Sole individual allowed to search and change the Accreditation Status of a Sales Agent in the Energy Assured Register</li> </ul>

## Annexure D

### On-job and Formal Competency Assessment

<b>On-job Assessment</b>	
Visit by Sales Agent to consumer accompanied by Experienced Sales Agent. The Sales Agent must clearly understand the standards he/she is to be assessed against and the way in which he/she is going to be informally assessed.	<p>Sample of what may be used:</p> <ul style="list-style-type: none"> <li>Experienced Sales Agent to ensure new Sales Agent understands the requirements under the On-job Competency Assessment;</li> <li>Experienced Sales Agent ensures that the new Sales Agent understands how the Energy Assured Accreditation Status works and under what circumstances it may be changed;</li> <li>Experienced Sales Agent to ensure that the new Sales Agent is aware of the Energy Assured Standards and how they are going to be assessed in the future; and/or</li> <li>Experienced Sales Agent to conduct an On-job Assessment on the new Sales Agent.</li> </ul>
<b>Formal Competency Assessment</b>	
<p><b>Stage 1</b> Prepare for the Assessment (Sales Agent and Assessor). The Sales Agent must clearly understand the standards he/she is to be assessed against and the way in which he/she is going to be formally assessed.</p>	<p>Sample Questions that may be asked:</p> <ul style="list-style-type: none"> <li>Are you aware of the purpose of this Assessment?</li> <li>Can you explain the various levels of Accreditation Status and under what circumstances can the Accreditation Status be Deregistration?</li> <li>Have you read the Code and do you understand it?</li> <li>Can you describe some of the Energy Assured Standards and how you can be in breach of them?</li> <li>When you were last accompanied on a visit to a consumer, by whom and what was the feedback you received?</li> <li>Have you received any other feedback about your performance, e.g. from Sales complaints, quality assurance checks etc...</li> <li>What have you learnt from previous feedback and what have you changed?</li> <li>Have you been informed about the disciplinary procedures that apply to you if you breach the Energy Assured Standards and do you understand your rights of appeal, if there is a change in Accreditation Status to Deregistered?</li> </ul>
<p><b>Stage 2</b> Collecting the Evidence (Sales Agent &amp; Assessor)</p>	<p>Responsibilities:</p> <ul style="list-style-type: none"> <li>Assessor to ensure he/she understands the Competency Assessment.</li> <li>Assessor to gather any supplementary documentary evidence before the assessment (this will vary dependent on tenure of the Sales Agent).</li> <li>Assessor to gather information as a result of the Formal Competency Assessment.</li> <li>Assessor to gather results of Off-job Assessment and On-job Assessment of Sales Agent.</li> <li>Sales Agent to introduce the Assessor to consumers, but assure that the Assessor is simply there as an observer.</li> <li>Assessor to record activities on the Member's Formal Competency Assessment form.</li> </ul>
<p><b>Stage 3</b></p>	<p>Responsibilities:</p> <ul style="list-style-type: none"> <li>Assessor to take into account achievements noted during observation.</li> </ul>

	<ul style="list-style-type: none"> <li>• Assessor to identify evidence that does not meet the requirements of the Energy Assured Standards and to discuss the identified evidence with the Sales Agent and give feedback.</li> <li>• Assessor to agree an action plan if necessary, to undertake further training and record the agreed actions in writing</li> <li>• Assessor to provide a written recommendation as to the Sales Agent's competence. Members are to ensure that they provide Sales Agents with a guide as to how this is to be determined. The Code Manager will review these to ensure consistency across all Members.</li> <li>• Assessor to inform the Sales Agent of the recommendation, inclusive a change in status if warranted, that all assessments are subject to verification by the Operations Manager, and that if he/she disagrees with the assessment decision, he/she has a right to appeal under the Members Dispute Resolution Process.</li> <li>• Sales Agent to enter his/her comments in the appropriate section inclusive of how they felt with the process or the decision.</li> </ul>
<b>Stage 4</b> Agent Verification Process (Energy Assured Responsible Person)	Responsibilities: <ul style="list-style-type: none"> <li>• The Member's Operations Manager to ensure assessments have been appropriately and consistently carried out by the Assessor.</li> <li>• Subject to the disciplinary procedures that apply to the Sales Agent under the Code, the Member's Operations Manager to authorise any change in Accreditation Status in the Energy Assured Register as an outcome of the assessment.</li> </ul>

## **Schedule 3**

## ~~Schedule 2~~

# ENERGY ASSURED LIMITED CODE OF PRACTICE

As amended November ~~2012~~[2013](#)

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**Annexure A - Sales Complaint Handling ~~and Sanctions~~ Process (Flow Chart)**

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**Annexure C ~~=~~ Security for Appeal - effective 16 January 2014. Fees increase 5% each year.**

**Annexure D ~~=~~ Form A ~~=~~ Deregistration Application**

**Annexure E - Form B - Deregistration Notice**

**Annexure F ~~=~~ Form C ~~=~~ Member Complaint**

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**Annexure H ~~=~~ Form E ~~=~~ Notice of Appeal (Sales Agent)**

**Annexure I ~~=~~ Form F ~~=~~ Notice of Appeal (Member)**

## PART 1: PRELIMINARY

### 1 Objectives and Scope of the Code

1.1 This Code creates a self-regulated industry scheme to enhance compliance with the existing Federal and State-based regulatory framework applying to the ~~doorface~~ to ~~doorface~~ marketing of energy to both residential and small business consumers. Not only does the Code seek to improve the compliance of Energy Retailers that subscribe to the Code, but also the ~~energy marketing companies~~ Energy Marketers that often perform ~~doorface~~ to ~~doorface~~ sales on their behalf. These Energy Marketers may represent just one retailer or offer a comparator service as a Comparator. EAL Energy Assured's membership comprises both Energy Retailers and Energy Marketers. The Code aims to:

- (1) promote consumer confidence in ~~doorface~~ to ~~doorface~~ sales activities in the energy industry;
- (2) provide consumers with a better overall experience in energy marketing during face to face sales ~~at the door~~;
- (3) improve the standards and effectiveness of ~~doorface~~ to ~~doorface~~ sales in the energy industry;
- (4) reduce the rate of Sales Complaints; and
- (5) discipline and/or remove "rogue" Sales Agents.

1.2 To achieve its Objectives, the Code details a scheme that standardises processes and procedures within the ~~doorface~~ to ~~doorface~~ retail energy industry to meet a set of EAL Energy Assured Standards by:

- (1) establishing a central register of Sales Agents that have been accredited under the scheme;
- (2) providing for a national scheme that ensures Sales Agents are recruited, trained and assessed in a consistent manner across the industry;
- (3) providing for a national scheme for the monitoring of ~~door-to-door~~ Sales Agents, where any proven breach of the EAL Energy Assured Standards may result in disciplinary measures and deregistration from the ~~register~~ Energy Assured Register for 5 years;
- (4) providing for a scheme which ensures that when a consumer complains about the conduct of a Sales Agent with the EAL Energy Assured Standards ~~that~~ these are handled in a consistent manner by Energy Retailers and Comparators;
- (5) strengthening the regime of compliance to the Code, ensuring that Members are consistently monitored independently through ~~monthly~~ quarterly reports and ~~annual audits~~ Compliance Checks under the Code (which are in addition to the regulatory reporting obligations); and
- (6) imposing sanctions on Members that fail to comply with the requirements set out in the Code, noting that sanctions may also be imposed by the relevant energy regulator or authority.

### 2 ~~Commencement and~~ Interpretation

#### ~~2.1~~ Commencement

~~This Code commences six months after the date that authorisation is granted by the Australian Competition and Consumer Commission pursuant to section 88 of the Competition and Consumer Act 2010 (Cth) in respect of this Code.~~



## 2.1 ~~2.2~~ Definitions

Capitalised ~~Words~~words appearing in this Code have the meaning given to them in the Dictionary at the end, or defined in **bold** in the body, of this Code.

## 2.2 ~~2.3~~ Inconsistency with laws

This Code applies to the extent that it is consistent with Applicable Laws. If this Code is inconsistent with any Applicable Law, that law will apply to the extent of the inconsistency.

## 2.3 ~~2.4~~ EAL Energy Assured Procedures Guideline

This Code operates together with the EAL Energy Assured Procedures Guideline. The Procedures Guideline sets out the procedures, principles and processes that underpin the Code for registering and maintaining Sales Agents, Experienced Sales Agents, Assessors and Sub-agent Principals on the EAL Energy Assured Register and recruiting, training and assessing Sales Agents.

## 2.4 ~~2.5~~ Code Supplements Existing Regulatory Regime

This Code sits alongside the Applicable Laws that govern doorface to doorface sales across numerous Australian jurisdictions, including the Australian Consumer Law and ~~in anticipation of the commencement of the national energy customer framework, and~~ does not override a Member's obligations under these laws.

- (1) The roles of EAL Energy Assured, the Code Manager and the Code Panel relate to the administration and enforcement of the Code. These roles are separate from the role of applicable jurisdictional energy regulators in administering and enforcing Applicable Laws. The Sanctions that may be imposed under this Code are in addition to the sanctions that can be imposed by the relevant energy regulator or authority.
- (2) This Code operates separately to the applicable energy ombudsman schemes. ~~The~~Each energy ombudsman is an independent dispute resolution body. Consumers can complain about the behaviour of a Sales Agent to either the relevant Energy Retailer or Comparator in the first instance, or to the applicable energy ombudsman, should they choose to do so.

In its ~~communications to consumers, EAL~~Marketing Material, Energy Assured will ensure that consumers fully understand the various avenues of complaint available to them, and that complaints are handled in a manner that does not prejudice a consumer's recourse to other avenues of complaint, including by operating in the manner set out in clause 9.1.

## PART 2: THE **EAL**ENERGY ASSURED STANDARDS

### 3 Compliance with the **EAL**Energy Assured Standards

- 3.1 Members, their agents/contractors, and all Sales Agents must comply with the **EAL**Energy Assured Standards set out below.
- 3.2 The **EAL**Energy Assured Standards include those embodied standards in the Applicable Laws that govern ~~doorface~~ to ~~doorface~~ sales across numerous Australian jurisdictions, including the Australian Consumer Law ~~and in anticipation of the commencement of the national energy customer framework.~~
- 3.3 The **EAL**Energy Assured Standards apply to the extent that they are consistent with the Applicable Laws. If the **EAL**Energy Assured Standards are inconsistent with any Applicable Law then that Applicable Law will apply to the extent of the inconsistency.

### 4 Consumer Contact

#### 4.1 Sales Agents must:

- (1) only make door to door sales calls during "permitted hours" under the Applicable Laws which, at the time of the publication of this Code do not include:
  - (a) any time on a Sunday or public holiday;
  - (b) any time before 9am on any other day; or
  - (c) any time after 6pm on any other day (or 5pm if the other day is a Saturday),unless it is with the consumer's consent in accordance with Applicable Laws, ~~in relation to of~~ which a record must be kept ~~of such consent provided;~~
- (2) ~~respect~~comply with any signs at a consumer's premises ~~where there is a notice that clearly states that the Sales Activity is not allowed;~~indicating:
  - (a) canvassing is not permitted at the premises; or
  - (b) no advertising or similar material is to be left at the premises or in a receptacle associated with the premises;
- (3) as soon as possible on making contact, identify themselves, the Energy Retailer(s) (and in the case of a Sales Agent representing a Comparator, the Comparator) they represent, and their purpose;
- (4) produce an identity card, which clearly displays the Energy Retailer's name, the Sales Agent's name and photograph, the business address and contact details of the Energy Retailer they represent, (or in the case of a Sales Agent representing a Comparator, the name of the Comparator, and the business address and contact details of the Comparator), an expiry date for validity of the card, and the **EAL**Energy Assured Logo;
- (5) for door to door sales, not misrepresent themselves or the purpose of their visit and state that the purpose of his or her visit is to assist the consumer to enter into an energy retail contract;
- (6) for door to door sales, advise that he or she is not permitted to remain on the premises for more than an hour unless consent is provided in writing;
- (7) for door to door sales, advise that he or she must leave the premises immediately on request and immediately cease contact with a consumer who clearly indicates that

contact is inconvenient, unwelcome or inappropriate before or during the negotiation of a contract;

(8) ensure that during a Post Sale Verification Procedure, the telephone is not used with the loud speaker setting engaged and that a customer is not coached during the call;

(9) ~~(8)~~for door to door sales, if contact is ceased, record that the consumer is not to be contacted by the Energy Retailer (or in the case of a Sales Agent representing a Comparator, the Comparator) for at least 30 days after the request was made;

(10) ~~(9)~~explain that if the consumer is not happy with the way they have been dealt with, they can contact the Energy Retailer, Comparator or energy ombudsman to make a complaint; and

(11) ~~(10)~~provide the consumer with a copy of ~~EAL~~the Marketing Material in accordance with clause 9.5, if requested by the consumer or where a consumer expresses an interest in obtaining more information.

4.2 A Sales Agent who represents a Comparator must:

- (1) explain to the consumer that they represent the Comparator and that the Comparator offers a comparison service;
- (2) show the consumer a list of all Energy Retailers the Comparator represents; and
- (3) if the Comparator does not represent all retailers, it must tell the consumer this.

4.3 Members must maintain records, including the date and the approximate time of contact with the consumer to allow the subsequent identification of the Sales Agent involved in a particular Sales Activity. This will assist in dealing with any Sales Complaint or query. Records are to be ~~maintained for a minimum period of two years;~~retained:

(1) for a period of two years; or

(2) where a consumer has within that period made a complaint or referred a dispute to the energy ombudsman in relation to energy marketing activities – for the period the complaint remains unresolved.

whichever is the longer period.

4.4 Members must ensure that it and its appropriate officers and employees have immediate access, or a right of immediate access, to each such record.

4.5 Members must comply with any requirement that applies in their State or Territory to create and maintain a “no contact list” for use by its Sales Agents.

## 5 Entering into a Contract

5.1 Sales Agents must:

- (1) take appropriate steps to ensure that the consumer has the authority to enter into a contract for the energy supplied at the premises;
- (2) provide in writing before the formation of a contract information about:
  - (a) the consumer's right to terminate the contract during applicable cooling off and other termination periods; and
  - (b) the way in which a consumer may exercise that right.
- (3) provide the following information to a consumer in accordance with all ~~applicable laws~~Applicable Laws, including the Australian Consumer Law, regarding the essential

provisions of the terms of supply, so as to ensure that the consumer understands what they are committing themselves to, including:

- (a) that they are entering into a contract to transfer their energy supply to the Energy Retailer;
  - (b) all applicable prices, charges, early termination payments and any penalties that may apply, information on security deposits, service levels, concessions or rebates, billing and payment arrangements and how any of these matters are calculated and may be changed, ~~inclusive of the~~including a declaration that the price offered is inclusive of all costs, including GST;
  - (c) the commencement date and duration of the contract, the availability of extensions, and the termination of the contract if the consumer moves out during the term of the contract;
  - (d) ~~the consumer's obligations with respect to electronic transactions;~~if any requirement is to be or may be complied with by an electronic transaction – how the transaction is to operate and, as appropriate, an indication that the customer will be bound by the electronic transaction or will be recognised as having received the information contained in the electronic transaction;
  - (e) the consumer's right to complain to the Energy Retailer or Comparator in respect of any energy marketing activity of the Sales Agent and, if the complaint is not satisfactorily resolved by the ~~retailer,~~Energy Retailer, the consumer's right to complain to the energy ombudsman; and
  - (f) that the Sales Agent may receive a fee or commission if the consumer enters into a contract;
- (4) provide the consumer with:
- (a) a copy of the contract and any information and documentation required to be provided to the consumer in accordance with Applicable Laws, which must include but is not limited to:
    - (i) details contained in clause 5.1(3);
    - (ii) a prominent notice on the front page of the contract about the rights of the consumer to terminate the contract in accordance with Applicable Laws;
    - (iii) the notice that may be used by the consumer to terminate the contract;
    - (iv) the full name, ABN or ACN, address, e-mail address, phone number and fax number of the Energy Retailer or Comparator that the Sales Agent represents; and
  - (b) the Sales Agent's name, and Company ID Number, and the full name ~~of the~~and details of the company they work for, if different to the Energy Retailer or Comparator;
  - (c) information about the Energy Retailer or Comparator's Sales ~~Complaint~~Complaints Handling Process, including details of the relevant energy ombudsman; and
  - (d) a copy of ~~EAL~~the Marketing Material in accordance with clause 9.5.

## 5.2 Energy Retailers must:

- (1) ensure that they provide Sales Agents with documents and information that are required to be provided to consumers under the Applicable Laws;

- (2) design contract forms and supporting documentation so that the consumer clearly understands the terms of the contract that they are entering into; and
- (3) ensure that the Post Sale Verification Procedure is conducted with each consumer that has entered into a contract in accordance with clause 18.2. Mandatory questions for the Post Sale Verification Procedure are included in the Dictionary.

## 6 Ethical and Lawful Conduct

6.1 Sales Agents can only conduct Sales Activities on behalf of the Member(s) with whom they are currently registered on the ~~EAL~~Energy Assured Register.

6.2 Sales Agents must:

- (1) be courteous and professional;
- (2) not provide the consumer with information that is misleading or deceptive, in particular ~~over~~in relation to potential savings or false assumptions about the product (and in the case of a Sales Agent representing a Comparator, about the service the Comparator provides), or misrepresent the consumer's rights and obligations;
- (3) not engage in unconscionable conduct;
- (4) not engage in the use of high-pressure tactics (such as coercion and harassment);
- (5) ensure a consumer's privacy is maintained;
- ~~(6)~~ comply with any sign at a consumer's premises indicating that canvassing is not permitted at the premises;
- ~~(7)~~ not exploit a person's inexperience, vulnerability, credulity or loyalties;
- ~~(8)~~ ensure that safety is maintained for themselves and the consumer;~~and~~
- ~~(9)~~ not commit forgery or fraud; and
- ~~(10)~~ for door to door sales, leave immediately on a customer's request and obtain the customer's written consent to remain on premises for over an hour.

## PART 3: ROLES AND RESPONSIBILITIES

### 7 Rights and Obligations of Members

7.1 Where an Energy Retailer engages an Energy Marketer to conduct Sales Activities on its behalf:

- (1) the Energy Marketer must be a Member;
- (2) both the Energy Retailer and the Energy Marketer must comply with this Code, and all Applicable Laws (and accordingly, all clauses that refer to a "Member" or "Energy Marketer" must be complied with by the Energy Marketer as appropriate); and
- (3) the Energy Retailer must provide to the Code Manager a documented governance framework that details how the roles and responsibilities for compliance with this Code and the Procedures Guidelines have been allocated between the parties. This compliance framework will be used by the Code Manager in identifying and considering issues in accordance with clauses 26, 27 and 28.

7.2 Members must comply with the ~~EAL~~[Energy Assured](#) Standards.

7.3 Members must ensure that Sales Agents engaged by them comply with clause 8.

7.4 Members must comply with the processes for the operation, maintenance and registration of Sales Agents on the ~~EAL~~[Energy Assured](#) Register as determined in the Procedures Guideline and this Code.

7.5 Members must only engage Sales Agents to conduct Sales Activities that:

- (1) are registered under the ~~EAL~~[Energy Assured](#) Register and have attained an appropriate Accreditation Status in accordance with clause 14.2 and the Procedures Guideline;
- (2) have been recruited in accordance with clause ~~15~~[14.3](#); and
- (3) have been trained and assessed in accordance with clause 16 and the Procedures Guideline.

~~7.6~~ Members may not engage Sales Agents that have been Deregistered:

- (1) as an Experienced Sales Agent, Assessor or trainer;
- (2) to manage teams of Sales Agents either directly or indirectly;
- (3) in any position where they may influence or have contact with Sales Agents including the recruitment of Sales Agents; or
- (4) in any campaign activity linked to face to face marketing.

~~7.7~~ ~~7.6~~ Energy Retailers and Comparators must handle Sales Complaints in accordance with clause 17.

~~7.8~~ ~~7.7~~ Members must monitor the compliance of Sales Agents with the ~~EAL~~[Energy Assured](#) Standards in accordance with clause 18.

~~7.9~~ ~~7.8~~ Members must categorise and record breaches of the ~~EAL~~[Energy Assured](#) Standards by Sales Agents in accordance with clauses 19 and 20.

~~7.10~~ ~~7.9~~ Members must discipline Sales Agents in accordance with clause 21.



- 7.11 ~~7.10~~ Where applicable, Members must make an application to deregister a Sales Agent in accordance with clause 22.
- 7.12 ~~7.11~~ Members must continually monitor, report on, and submit to ~~audits on~~ Energy Assured Compliance Checks on the extent of their compliance with the Code in accordance with clauses 23, 24 and 25, including reporting on their compliance in accordance with obligations under the relevant Applicable Law.
- 7.13 ~~7.12~~ Members that fail to comply with this Code will be subject to disciplinary procedures for non-compliance in accordance with clauses 27 and 28.
- 7.14 ~~7.13~~ Members must comply with any standards/guidelines set by the Code Manager.
- 7.15 ~~7.14~~ Each Member must promote this Code by:
- (1) ensuring that their representatives are aware of the Code and its contents and that Sales Agents have a copy of the Code with them when performing Sales Activities;
  - (2) displaying the ~~EAL~~ Energy Assured Logo prominently on Sales Agent ID badges;
  - (3) ensuring that Sales Agents provide the ~~EAL~~ Marketing Material about the Code when:
    - (a) ~~they enter~~ the consumer enters into an energy supply contract; or
    - (b) on the consumer's request; ~~and~~
  - (4) ensuring that as part of its Post Sale Verification Procedures ~~that they verify with the consumer that they were~~ the customer was made aware of the Code and its purpose.
- 7.16 ~~7.15~~ Each Energy Retailer and Comparator must also promote this Code by:
- (1) making copies of the Code available to consumers on request via email or post; and
  - (2) displaying information about the Code on its website, including at least the information set out in clause ~~9.5~~ 9.5.
- 7.17 ~~7.16~~ In order to comply fully with the Applicable Laws and the ~~EAL~~ Energy Assured Standards, the Member is likely to have to provide additional information to the consumer. This additional information must not be inconsistent with the information contained in the ~~EAL~~ Marketing Material (~~EAL Marketing Material~~).
- 7.18 ~~7.17~~ Nothing in this section excuses a Member from its obligations to comply with ~~the~~ Applicable ~~Law~~ Laws, including reporting incidents of Sales Agent forgery or fraud to the police.

## **8 Rights and Obligations of Sales Agents and Sub-agent Principals**

### **8.1 Members must ensure that Sales Agents:**

- (1) comply with the ~~EAL~~ Energy Assured Standards and Applicable Laws;
- (2) only conduct Sales Activities on behalf of the Member with which they are currently registered on the ~~EAL~~ Energy Assured Register; and
- (3) only undertake Sales Activities in accordance with their Accreditation Status, in accordance with clause 14.2 and the Procedures Guideline.

### 8.2 Members must ensure that Sub-agent Principals (and their respective Sales Agents) comply with the Code and the Procedures Guideline.

## 9 Role of Energy Assured Limited

9.1 EAL Energy Assured has been established to administer the Code. It was established to achieve the same objects as the Code seeks to achieve. For the purposes of this Code, EAL Energy Assured:

- (1) is not a dispute resolution body;
- (2) does not resolve customer complaints;
- (3) ~~(2)~~ will refer consumers back to their Energy Retailer or Comparator (if applicable) to resolve their dispute directly if they have not contacted the Energy Retailer or Comparator previously.
- (4) ~~(3)~~ will refer consumers to the relevant energy ombudsman if they have attempted to have their complaint resolved by the Energy Retailer or Comparator ~~(if applicable)~~, and are dissatisfied with that response; and
- (5) ~~(4)~~ will investigate allegations of non-compliance with the Code to supplement existing regulatory regimes and promote uniformity and consistency in ~~doorface~~ to ~~doorface~~ marketing in the energy industry in accordance with clause 26.

9.2 The membership, governance structure and procedures of EAL Energy Assured are set out in its Constitution.

9.3 EAL Energy Assured will consult on, and participate in, decision making on matters set out in this Code.

9.4 EAL Energy Assured will promote the Code by:

- (1) displaying information about the Code and its Members on its website and copies of this Code and the Procedures Guideline;
- (2) developing ~~EAL~~ Marketing Material that is to be used by Sales Agents when undertaking Sales Activities and displayed on the EAL Energy Assured website in the six most common languages spoken in Australia;
- (3) promoting and communicating about the progress of the Code with energy ombudsmen, relevant energy regulators, government agencies, Consumer Advocacy Groups and associations through correspondence;
- (4) requiring Members to undertake marketing activities, including those set out in clauses ~~7.14 and~~ 7.15 and 7.16 and providing Members with ~~EAL~~ Marketing Material that promotes the Code to consumers; and
- (5) undertaking any other promotional, marketing or advertising campaign necessary or worthwhile to ensure that the Code becomes visible and understood amongst energy ombudsmen, relevant energy regulators, government agencies, Consumer Advocacy Groups and associations and consumers.

9.5 For the purposes of clause 9.4(2), the ~~EAL~~ Marketing Material that promotes the Code to ~~the consumer~~ consumers must clearly state the following information:

- (1) that the Energy Retailer(s) (and ~~the any~~ Energy Marketer that represents them, if applicable) is a Member of EAL Energy Assured and has adopted, and will comply with, the Code;
- (2) why the Code was established and how it interacts with ~~the~~ Applicable ~~Law~~ Laws, inclusive of the Australian Consumer Law, ~~and, when introduced,~~ the national energy customer framework ~~retail, where applicable,~~ and ~~the any other~~ relevant energy regulations governing ~~doorface~~ to ~~doorface~~ sales;



- (3) a summary of the ~~EAL~~Energy Assured Standards- i.e. what the consumer can expect from Sales Agents;
- (4) how the consumer can make a complaint or provide feedback about a Sales Agent under the ~~EAL~~Energy Assured Code;
- (5) how a Sales Complaint will be treated by the Energy Retailer or Comparator;
- (6) the implications if a Sales Agent is found to have breached the ~~EAL~~Energy Assured Standards;
- (7) that the Sales Agent has been recruited and trained in accordance with the ~~EAL~~Energy Assured Code;
- (8) that the Member is a member of ~~EAL~~Energy Assured;
- (9) the contact details of the Energy Retailer or Comparator;
- (10) the ~~EAL~~Energy Assured website address;
- (11) that the Code operates separately to the energy ombudsman scheme applying in the consumer's State or Territory and that they may separately utilise that scheme if they wish to;
- (12) the role of the Code Manager and Code Panel; and
- (13) how the material located in the ~~EAL~~ Marketing Material can be obtained in six different languages.

9.6 ~~EAL~~Energy Assured will publish an Annual Report on its website. The Annual Report will, at a minimum, address the following matters:

- (1) a report from both the Chairman of ~~EAL~~Energy Assured and the Chairman of the Code Panel;
- (2) an overview of the Code;
- (3) an overview of the Compliance ~~Audits~~Checks undertaken;
- (4) statistics (without naming the Sales Agents involved) of proven breaches and deregistration applications against Sales Agents dealt with under clauses 19 and 22, such as the number of breaches recorded per Level made during the year, the outcomes of any Deregistration Applications and the number of appeals heard under clause 29 (to the extent that they are not confidential);
- (5) statistics (naming the parties involved) of Sales Complaints made to an Energy Retailer or Comparator as a proportion of consumers contacted and divided into categories showing the types of complaints received from data obtained from ~~monthly~~quarterly reports under clause ~~25~~25;
- (6) examples of the type of Sales Complaints received and how these were addressed;
- (7) statistics (without naming the Members involved) of the number of issues identified against Members dealt with under clause ~~27~~27, the outcome of those issues that resulted in the imposition of Sanctions under clause 28 and the number of appeals heard under clause 30 (to the extent that they are not confidential);
- (8) examples of Member issues identified and how these were addressed;
- (9) the nature of industry wide systemic issues and how these have been resolved;

- (10) details of ~~Sanctions~~Sanction 5s and Sanction 6s issued ~~that were imposed~~ and the naming of the Member;
  - (11) statistics of the number of Sanctions and ~~Appeals~~appeals considered and heard by each Panel Member; and
  - (12) outcomes or recommendations of any Code review.
- 9.7 ~~EAL~~Energy Assured will provide the relevant energy regulator with a copy of the Annual Report before publication under clause 9.6.

## 10 Role of Code Manager

- 10.1 ~~A~~The Code Manager ~~will be appointed by EAL to carry out~~is responsible for the administration and day-to-day supervision of the Code. The Code Manager is independent ~~to~~of the Members.
- 10.2 The Code Manager:
- (1) oversees the operation of the ~~EAL~~Energy Assured Register;
  - (2) oversees the promotion of the Code;
  - (3) develops appropriate training material on the Code so Members are fully aware of their obligations, including, in accordance with clause 11.1(8);
  - (4) monitors Members' compliance with the Code and Procedures Guideline including conducting Compliance Checks;
  - (5) ensures that corrective action is taken where Members fail to meet their obligations under the Code;
  - (6) investigates complaints about the conduct of Members in accordance with clause 26;
  - (7) may issue guidelines from time to time to assist Members and Sales Agents to comply with the Code;
  - (8) in combination with the Code Panel, administers Sanctions and appeals in accordance with this Code;
  - (9) provides quarterly updates to the ~~EAL~~Energy Assured board, Members, energy ombudsmen and jurisdictional energy regulators on the number and nature of:
    - (a) Warning Notices and proposed Sanctions on Members and the reasons for those Sanctions being proposed; and
    - (b) the result of Warning Notices being imposed; and
  - (10) will engage with the relevant energy ombudsman to share information on Member issues identified and the Levels of Sales Complaints received.

## 11 Stakeholder Working Group

- 11.1 The Code Manager will establish and engage a working group comprising representatives from the industry, Consumer Advocacy Groups, energy ombudsmen and any other interested party (**Stakeholder Working Group**). The Stakeholder Working Group will meet bi-annually to consider the effectiveness of the Code. The meetings will, at a minimum, deal with the following matters:
- (1) overview and general feedback on the development of the Code;
  - (2) discussions on areas in which the Code can be improved;

- (3) review of the ~~EAL~~ Marketing Material;
  - ~~(4) overview of any Compliance Audits undertaken;~~
  - ~~(4)~~ (5) discussion as to types of breaches made by Sales Agents under the ~~EAL~~ Energy Assured Standards and the appropriateness of the categorisation of Levels under clause 20;
  - ~~(5)~~ (6) overview of Warning Notices issued and the nature of Sanctions imposed similar to that ~~provided~~ required under clause 10.2(9);
  - ~~(6) overview of results of Compliance Checks;~~
  - (7) details of any industry wide ~~systemic breaches of the EAL Standards~~ Systemic Issues and how they have been addressed; and
  - (8) appropriate training packages to address community concerns about ~~door~~ face to ~~door~~ face sales in the energy industry.
- 11.2 Feedback from the Stakeholder Working Group will be referred to ~~EAL~~ Energy Assured and the Code Panel, by the Code Manager. ~~EAL~~ Energy Assured and the Code Panel will consider that feedback and, where appropriate, adopt recommendations made. Where recommendations are made for changes to the Code or the provision of additional training packages, the Code Manager will provide feedback at the next scheduled Stakeholder Working Group as to how these are being addressed.
- ~~11.3 For the purposes of clause 11.1, the Code Manager will issue a notice of invitation for participation to the first meeting of the Stakeholder Working Group within two months after the date that authorisation is granted by the Australian Competition and Consumer Commission pursuant to section 88 of the Competition and Consumer Act 2010 (Cth), in respect of this Code. The notice of invitation will detail proposed dates for the meeting taking into consideration travel costs and commitments of Stakeholder Working Group participants.~~
- ## 12 Role and composition of the Code Panel
- 12.1 The Code Panel is independent to the Members and the Code Manager and must be composed of ~~five~~ individuals with a variety of professional backgrounds, none of whom have been engaged by a Member in the previous two years or have any actual or potential conflict of interest. Panel Members will be appointed by ~~EAL~~ Energy Assured and consist of at least:
- (1) one person with relevant experience, at a senior level, in the energy retailing industry;
  - (2) at least one person with relevant experience, at a senior level, in a regulatory or government body that administers consumer laws or ~~marketing codes~~ Marketing Codes that govern ~~door-to-door~~ face to face sales activities;
  - ~~(3) one person with relevant experience, at a senior level, in a Consumer Advocacy Group;~~
  - ~~(3)~~ (4) one person with relevant experience, at a senior level, in either a regulatory or government body that administers consumer laws or marketing codes that govern ~~door-to-door sales activities or~~ with relevant experience, at a senior level, in a Consumer Advocacy Group; and
  - ~~(4)~~ (5) one person with current legal qualifications, preferably in the energy industry.
- 12.2 Each Panel Member will hold office for a term of three years and will be eligible for re-appointment for one further term of two years.
- 12.3 The Code Panel must elect a Chairman.
- 12.4 The Code Panel will meet ~~on a quarterly basis~~ at least three times each year with the Code Manager to:

- (1) review the strategic operations of the Code and put forward recommendations or improvements;
  - (2) determine an appropriate roster to ensure that to the extent reasonably practicable, the hearing of complaints and appeals against decisions made against Sales Agents and Members are shared evenly between Panel Members (**Roster**);
  - (3) establish procedures for the determination of Sanctions under clause 28.10 and the hearing of appeals under clauses 29 and 30;
  - (4) review recent determinations of Sanctions proposed and imposed on Members and Sales Agent appeals to ensure consistency is maintained;
  - (5) determine the appropriate requirements for the scope of the Code review; and
  - (6) review quarterly progress reports prepared by the Code Manager under clause 13.6.
- 12.5 A single member of the Code Panel will consider a complaint made against a Member at first instance where a Sanction is proposed to be imposed in accordance with clause 28.9 and 28.10.
- 12.6 A member or members of the Code Panel will hear appeals against Sanctions imposed on Sales Agents and Members in accordance with clauses 29 and 30.
- 12.7 If a Panel Member is of the view that they are conflicted or lack the expertise to make a decision under ~~clause 28.10~~, clauses 28.10, 29 or 30, the Panel Member must excuse ~~themselves~~themselves from participating in the determination and the next Panel Member on the Roster will be enlisted in their place.
- 13 Review of the Code**
- 13.1 The Code will be reviewed at least every two years by an independent entity with legal or auditing expertise (or equivalent qualifications) capable of assessing the effectiveness of the Code and familiar with the energy industry (**Independent Firm**).
- 13.2 The scope of the review will be determined by EAL Energy Assured, the Code Manager and the Code Panel. The review will be conducted in consultation with the energy ombudsmen and the relevant energy regulators, government agencies and Consumer Advocacy Groups.
- 13.3 The Independent Firm will have access to matters considered by the Code Panel, the EAL Energy Assured Register, ~~monthly~~quarterly reports, ~~Audit Reports~~Compliance Checks, Annual Reports and any other information necessary for the Independent Firm to assess and make recommendations on the effectiveness of the Code.
- 13.4 The Independent Firm must produce a report with a list of recommendations.
- 13.5 The report, recommendations and criteria used to select adopted recommendations will be provided to all parties consulted under clause 13.2. Where a recommendation is not adopted, EAL Energy Assured will provide details as to why the recommendation was not adopted.
- 13.6 It is an obligation on the Code Manager to provide quarterly progress reports to the EAL Energy Assured Board and the Code Panel on the progress of the adoption of the recommendations.
- 13.7 For the purposes of this clause 13, the review of the Code cannot make recommendations that change the objectives ~~as~~ set out in the EAL Energy Assured Constitution.

## PART 4: ~~EAL~~ENERGY ASSURED REGISTER, RECRUITMENT AND TRAINING

### 14 ~~EAL~~Energy Assured Register

14.1 The ~~EAL~~Energy Assured Register ~~will be created and~~is administered by the Code Manager.

14.2 Members must:

- (1) register all Sales Agents engaged by it on the ~~EAL~~Energy Assured Register;
- (2) manage the Accreditation Status' of all Sales Agents; and
- (3) manage their Sales Agents and operate and access the ~~EAL~~Energy Assured Register, in accordance with the Procedures Guideline (and summarised below).

Accreditation Status	Description	Duration of Status	Privileges
Provisional	Applies to new Sales Agents pending completion of training and passing of Competency Assessment.	<del>Between four and</del> <u>Up to</u> six weeks.	Can undertake Sales Activities under supervision by an Experienced Sales Agent after Off-job Training and Off-job Assessment have been successfully completed. Can display <del>EAL</del> <u>Energy Assured</u> Logo.
Approved	Sales Agent has passed Formal <del>and</del> <u>Competency Assessment or</u> Annual Competency Assessment by an approved Assessor.	1 year.	Can undertake Sales Activities. Can display <del>EAL</del> <u>Energy Assured</u> Logo.
Development	Sales Agent has not passed <u>Formal</u> Competency Assessment or has committed a Level 2 Breach under the Code of Practice and is undergoing further training.	Up to 15 Business Days.	Can undertake Sales Activities under supervision by an Experienced Sales Agent. Can display <del>EAL</del> <u>Energy Assured</u> Logo.
Suspended	Sales Agent suspended from undertaking Sales Activities pending outcome of investigation and determination of Deregistration Application as a result of an alleged Level 3 Breach under the Code of Practice.	Up to 15 Business Days or until the Deregistration Application is finally determined. <u>The Suspension can be extended for a further 15 days where additional consideration is necessary.</u>	Cannot undertake Sales Activities or display <del>EAL</del> <u>Energy Assured</u> Logo.
Deregistered	Agent has been deregistered in accordance with the Sanctions Process.	5 Years.	Cannot undertake Sales Activities or display <del>EAL</del> <u>Energy Assured</u> Logo.

Accreditation Status	Description	Duration of Status	Privileges
Inactive	Sales Agent on authorised leave.	Up to 3 Months.	Cannot undertake Sales Activities or display <a href="#">EAL Energy Assured</a> Logo.
Active	Sales Agent returned from leave but not yet re-taken and passed <a href="#">Formal</a> Competency Assessment.	Generally up to 10 Business Days.	Can undertake Sales Activities under supervision by an Experienced Sales Agent. Can display <a href="#">EAL Energy Assured</a> Logo.
Leaver	Sales Agent is no longer engaged by Member or is "Inactive" for more than 3 months.	Unspecified.	Cannot undertake Sales Activities or display <a href="#">EAL Energy Assured</a> Logo.

[14.3 Members must register all Assessors, Experienced Sales Agents and Sub-agent Principals on the Energy Assured Register.](#)

**15 Recruitment**

15.1 Members must only engage Sales Agents that:

- (1) have sufficient knowledge and skills;
- (2) have sufficient relevant experience and training with supporting references; and
- (3) present themselves in a respectable manner.

to enable them to suitably perform the role of a Sales Agent, noting the important role that Sales Agents play as the 'public face' of the industry.

15.2 Members must only engage Sales Agents that have:

- (1) passed a 100-point identification check;
- (2) provided proof of address; and
- (3) passed a criminal history check, or [have](#) a criminal history check ~~is~~ pending, in accordance with clause 16.1(2).

15.3 If a Sales Agent has been previously registered on the [EAL Energy Assured](#) Register to another Member, the Member proposing to engage the Sales Agent may contact that Member to ascertain the Sales Agent's competency.

**16 Training and Competency Assessment**

16.1 A Member may only permit a Sales Agent to engage in Sales Activities on its behalf:

- (1) where the Sales Agent has successfully completed a Formal Competency Assessment by an approved Assessor; or
- (2) if the Member has deployed the Sales Agent in the field as part of On-job Training, or on a probationary basis pending a satisfactory criminal history check (or other) being obtained, where the Sales Agent is appropriately supervised until the Formal Competency Assessment has occurred.

16.2 For the avoidance of doubt, where the Member permitting a Sales Agent to engage in Sales Activities on its behalf under this clause 16 is a Comparator, only the Comparator is required to comply with this clause 16.



16.3 In order to pass a Formal Competency Assessment, a Member must ensure that a Sales Agent undertakes Off-job Training on at least the following matters:

- (1) the operation of the Code, in particular, the monitoring, Sales Complaint, disciplinary procedures and the Levels of breaches as well as the operation of the ~~EAL~~Energy Assured Register;
- (2) the ~~EAL~~Energy Assured Standards and all ~~relevant laws and regulation~~Applicable Laws;
- (3) the legislative and regulatory obligations applying to the supply of energy in the jurisdiction in which the Sales Agent is to operate, including the Energy Retailer's obligations and consumer rights;
- (4) information about the Member necessary to fulfil the role;
- (5) product knowledge and sales techniques to effectively perform the role;
- (6) changes in the market and to products/services;
- (7) respecting consumer privacy, ethnicity and diversity;
- (8) recognition and treatment of vulnerable consumers;
- (9) safety as it relates to the consumer and the Sales Agent;
- (10) the role of the energy ombudsman;
- (11) examples as to what constitutes misleading, deceptive or unconscionable conduct and false representation (inclusive of coercion and harassment) in the energy industry;
- (12) what the Sales Agent must give to and disclose to the consumer; and
- (13) any matters identified through consultation and addressed under clause ~~11~~11,

and must:

- (14) include defined monitoring procedures to ensure consistency of training delivery; and
- (15) be effective and up to date.

16.4 A Member must ensure that a new Sales Agent also undertakes On-job Training before ~~it~~the Sales Agent can pass a Formal ~~Competence~~Competency Assessment.

## PART 5: SALES COMPLAINTS HANDLING, COMPETENCE MONITORING AND SALES AGENT DISCIPLINE

### 17 Sales Complaints made about conduct of Sales Agents

17.1 Energy Retailers and Comparators must have an internal Sales Complaints Handling Process for receiving, recording and actioning Sales Complaints:

(1) received from consumers, Consumer Advocacy Groups, any energy ombudsmen, energy regulator, government agency or other Member; and

(2) referred by the Code Manager; ~~and~~

~~(3) that complies with the applicable Australian Standard on Complaints Handling, complaints handling and, at a minimum, meets the requirements of this clause 17.~~  
~~that, at a minimum, meets the requirements of this clause 17.~~

17.2 Comparators representing Energy Retailers must forward any Sales Complaint relating to, or applying to an Energy Retailer the Comparator represents that is:

(1) received from consumers, Consumer Advocacy Groups, any energy ~~ombudsmen~~ ombudsman, energy regulator, government agency or other Member; or

(2) referred to it by the Code Manager,

to the relevant Energy Retailer within 3 Business Days of receiving the Sales Complaint.

17.3 Where a Sales Complaint does not relate to, or apply to, any particular Energy Retailer that the Comparator represents, the Comparator must manage that Sales Complaint itself in accordance with this clause 17.

~~17.3 For the purposes of this clause 17 the Code Manager is not a dispute resolution body. Any Sales Complaints made to the Code Manager about conduct of a Sales Agent will be referred:~~

~~(1) back to the responsible Energy Retailer or Comparator to resolve their dispute directly if the consumer, Consumer Advocacy Group, Stakeholder or Member has not already done so; or~~

~~(2) to the relevant energy ombudsman if the consumer is dissatisfied with the Energy Retailer's or Comparator's response to their Sales Complaint.~~

~~17.4~~

17.4 ~~17.5~~ An Energy Retailer ~~that has received a Sales Complaint,~~ or a Comparator that has received a Sales Complaint ~~under clause 17.2,~~ must investigate ~~each Sales Complaint received~~ it within 5 Business Days of receiving the complaint and deal with the Sales Complaint in accordance with relevant legislation and the Energy Retailer's or Comparator's internal practices. The Energy Retailer or Comparator, must provide feedback to the complainant on the outcome of the Sales Complaint within 21 days of receiving the Sales Complaint and, where a Sales Complaint is substantiated, redress the complaint in accordance with the Applicable Laws and the relevant Energy Retailer's or Comparator's internal practices.

17.5 ~~17.6~~ The Energy Retailer or Comparator, must provide consumers with the appropriate contact details for the relevant energy ombudsman should the Sales Complaint not be resolved to the consumer's satisfaction.

17.6 ~~17.7~~ For each Sales Complaint, the Energy Retailer or Comparator, must record at least:

(1) the date, or approximate date, of the incident;



- (2) the date of the Sales Complaint;
- (3) the reason for the Sales Complaint;
- (4) a date and description of how the Sales Complaint was resolved; and
- (5) the corrective action taken, if required, including disciplinary action taken against the Sales Agent and the Sales Agent's details.

17.7 ~~17.8~~ Where it is proven, upon investigation of a Sales Complaint, that a Sales Agent has breached the ~~EAL~~Energy Assured Standards:

- (1) the breach must be attributed a Level 1, Level 2 or Level 3 Breach in accordance with clause 20;
- (2) disciplinary action must be taken against the Sales Agent in accordance with clause 21; and
- (3) the breach must be recorded in the Competence Record Register.

17.8 ~~17.9~~ Annexure A summarises the operation of the Sales Complaints Handling Process.

## **18 Competence Monitoring**

18.1 Energy Retailers and Comparators must have procedures in place to monitor and record, on an ongoing basis, its Sales Agents' compliance with the ~~EAL~~Energy Assured Standards (including Applicable Laws) (**Competence Monitoring**) which must include but is not limited to:

- (1) for door to door sales, an independent Post Sale Verification Procedure that is ~~done~~completed and recorded ~~on all consumers~~for every consumer that ~~enter~~enters into a contract with the Energy Retailer;
- (2) monthly random assessments of 5% of Sales Agents that have obtained an Approved Accreditation Status; and
- (3) an annual Formal ~~Competence~~Competency Assessment in accordance with the Procedures Guideline.

18.2 For the purposes of clause 18.1(1), the Post Sale Verification Procedure must be conducted and recorded by the responsible Energy Retailer independently ~~to~~of the Sales Agent, and must not be undertaken by any individual that performs ~~face door~~to face door marketing on behalf of the Energy Retailer, but may include:

- (1) a call centre that is independent ~~to~~of the Energy Retailer; or
- (2) a separate verification team contained within the Energy Retailer's business.

18.3 For the purposes of clause 18.1(2), the assessment of Sales Agents may include, ~~however~~but is not limited to:

- (1) the "mystery shopping" of a sample of consumers that were contacted by Sales Agents but did not enter into a contract; or
- (2) assessments of Sales Agents undertaken whilst the Sales Agents perform Sales Activities where;
  - (a) the Sales Agent is randomly selected; and
  - (b) the assessment is performed by an Approved Assessor based on the On-Job Assessment Form contained in the Procedures Guideline.

18.4 Where it is proven, upon an investigation of conduct arising from Competence Monitoring, that a Sales Agent has breached the [EAL Energy Assured](#) Standards:

- (1) the breach must be attributed a Level 1, Level 2 or Level 3 Breach in accordance with clause 20;
- (2) disciplinary action must be taken against the Sales Agent in accordance with clause 21; and
- (3) the breach will be recorded in the Competence Record Register.

## 19 Competence Record Register

19.1 Energy Retailers and Comparators must operate a Competence Record Register that records all established breaches of the [EAL Energy Assured](#) Standards (**Competence Record**) arising from Sales Complaints made about Sales Agents under clause 17 and any breaches identified through the Competence Monitoring Process under clause 18.

19.2 Each Competence Record must contain:

- (1) details of the Sales Agent that breached the [EAL Energy Assured](#) Standards;
- (2) the date of the breach and the date, or approximate date, of the incident;
- (3) details of how the breach was detected, be it through a Sales Complaint or the Competence Monitoring Process;
- (4) who raised the Sales Complaint or who performed the Competence Monitoring;
- (5) the date that the Level of breach was attributed;
- (6) the Level of breach attributed under clause 20;
- (7) the section(s) of the [EAL Energy Assured](#) Standard or Applicable Law breached;
- (8) the State or Territory in which the breach occurred; and
- (9) a brief description of the breach.

19.3 Competence Records must be retained for a minimum of two years on the Competence Record Register.

19.4 The Competence Record Register will be reviewed by the Code [Auditor Manager](#) in the course of ~~the annual~~ Compliance [Audit Checks](#).

19.5 Energy Retailers and Comparators must monitor the Competence Record Register on a regular basis to identify, investigate and address ~~systemic issues~~ [Systemic Issues](#). For example, Energy Retailers or relevant Comparators must monitor trends in Sales Complaints:

- (1) to identify whether a particular Sales Agent is recording higher complaints than other Sales Agents; and
- (2) to identify whether a larger number of complaints are being made in relation to a particular matter of compliance.

19.6 Where an Energy Retailer or a Comparator identifies a ~~systemic issue~~ [Systemic Issue](#) under clause 19.5, the Energy Retailer or Comparator must take corrective action to address the deficiency and prevent against re-occurrence. Examples of corrective action that may need to be taken, include, but are not limited to:

- (1) assessment and revision of training packages that are being provided to Sales Agents to address the issue identified; and

- (2) assessing the scope and appropriateness of On-job ~~training~~Training.

19.7 Where an Energy Retailer or Comparator has identified a ~~systemic issue~~Systemic Issue under clause ~~19.5~~19.5, the Energy Retailer or Comparator must report the issue to the Code Manager as part of the ~~Monthly~~Quarterly Reporting under clause 25.3(8).

19.8 Where an Energy Retailer or Comparator identifies a ~~systemic issue~~Systemic Issue which is in breach of a current law or regulation then this must be reported to the relevant energy regulator, or authority, in accordance with its regulatory obligations.

## 20 Levels of Breaches of ~~EAL~~Energy Assured Standards

20.1 For the purposes of clauses ~~17.8~~17.7 and 18.4, if a Sales Agent breaches the ~~EAL~~Energy Assured Standards, the breach must be categorised as a Level 1, Level 2 or Level 3 Breach depending on the severity of the breach.

20.2 In determining the appropriate Level that is to be attributed to a breach by a Sales Agent, an Energy Retailer or Comparator must take into account the following matters:

- (1) the seriousness of the breach;
- (2) whether the breach has been repeated by the Sales Agent;
- (3) whether the breach is part of a persistent course of different breaches recorded against the Sales Agent; and
- (4) any mitigating or aggravating circumstances that warrant considering ~~appropriating~~ a different Level of breach.

20.3 For the purposes of clause 20.1:

- (1) A breach of an ~~EAL~~Energy Assured Standard will be a **Level 1 Breach** where the breach is minor. A minor breach would occur where there is a technical compliance failure or behaviour of a Sales Agent generally arising from poor procedures, where either a warning or some simple coaching or re-training is the most appropriate remedy. Examples of conduct which would constitute a Level 1 Breach include (but are not limited to):

- (a) Sales Agent did not have their ID badge visible when contacting a consumer;
- (b) Sales Agent failed to provide a consumer with complete details of the ~~EAL~~Energy Assured scheme;
- (c) Sales Agent failed to record contact information on walk sheets; or
- (d) Sales Agent was flippant or rude to the consumer.

- (2) A breach of an ~~EAL~~Energy Assured Standard will be a **Level 2 Breach** where it is a serious or persistent breach. A serious breach will occur where the arising breach is more than a technical or superficial breach of the ~~EAL~~Energy Assured Standards and that breach involved was central to the role of a Sales Agent or disclosures by a Sales Agent. Examples of conduct which would constitute a Level 2 Breach include (but are not limited to):

- (a) two Level 1 Breaches in the course of three consecutive months;
- (b) advising a consumer that they could only have the marketing information if they signed a contract; ~~or~~
- (c) advising a consumer, by genuine mistake, that they will not incur early termination fees from their existing retailer, or that these would be waived by their existing retailer if they switch; or

- (d) promising the consumer, by genuine mistake, a discount that does not apply to that particular consumer.
- (3) A breach of an [EAL Energy Assured](#) Standard will be a **Level 3 Breach** where it amounts to wilful or gross misconduct. Wilful or gross breaches are breaches of the [EAL Energy Assured](#) Standards that warrant dismissal and cannot be remedied through re-training. Examples of conduct which would constitute a Level 3 Breach include (but are not limited to):
  - (a) two Level 2 Breaches in the course of six consecutive months;
  - (b) forgery or fraud;
  - (c) taking advantage of an individual, whom a reasonable person could tell was not capable of making an informed decision, for example an elderly person;
  - (d) intentionally engaging in misleading or deceptive conduct; ~~or~~
  - (e) advising a consumer that the Sales Agent had signed other people up in the street and named the consumers; ~~or~~
  - (f) entering a consumer's premises without permission;
  - (g) failing to disclose the true purpose of the visit; or
  - (h) failing to leave the premises when requested including ignoring a Do Not Knock notice.
- 20.4 Where a Level 2 or Level 3 Breach is recorded against a Sales Agent, the responsible Energy Retailer or the responsible Comparator must review, to the extent practicable, the previous five consumer contracts generated by the Sales Agent before the identified breach and the five consumer contracts generated after the identified breach. Should the review identify that any of those contracts were not entered into in accordance with the [EAL Energy Assured](#) Standards or Applicable Laws, the Energy Retailer or Comparator must contact the consumers concerned and rectify the breach.
- 20.5 Upon completion of its review, under clause 20.4, the Energy Retailer or Comparator must notify (where applicable) the relevant energy regulator of the breach, the action that was taken to address the breach, the remedial steps implemented and if appropriate, the proposed consumer redress.
- 21 Disciplining ~~of~~ Sales Agents**
- 21.1 If a Member discovers that a Sales Agent is not meeting the [EAL Energy Assured](#) Standards, the Member must:
  - (1) notify the Sales Agent of the failure; and
  - (2) if appropriate, implement a period of re-training or development.
- 21.2 If a Sales Agent has failed to comply with the [EAL Energy Assured](#) Standards and a Level 2 Breach is attributed to the Sales Agent under clause 20, the Member must:
  - (1) notify the Sales Agent of the failure;
  - (2) implement a period of re-training or development; and
  - (3) change the Sales Agent's status in the [EAL Energy Assured](#) Register from "Approved" to "Development" for the period of re-training.

21.3 If it is alleged that a Sales Agent has failed to comply with the [EAL Energy Assured](#) Standards such that if established, a Level 3 Breach would be attributed to the Sales Agent under clause 20, the Member must:

- (1) notify the Sales Agent of the allegation;
- (2) submit to the Code Manager a Deregistration Application in accordance with clause 22; and
- (3) change the Sales Agent's status in the [EAL Energy Assured](#) Register from "Approved" to "Suspended" for the duration of and, if applicable, pending the outcome of a Deregistration Application.

21.4 Members must establish written procedures that detail the specific disciplinary action to be taken against a Sales Agent for various breaches of the [EAL Energy Assured](#) Standards that reflect ~~clause~~[clauses](#) 20 and 21.

## 22 Deregistration of Sales Agents

22.1 A Member must apply to the Code Manager to deregister a Sales Agent where a Sales Agent has failed to comply with the [EAL Energy Assured](#) Standards and a Level 3 Breach is attributed to the Sales Agent under clause 21 (**Deregistration Application**).

22.2

22.3 Deregistration Applications must be made to the Code Manager by either the Energy Retailer, or the Energy Marketer, in a manner that substantially conforms with the Form A set out in Annexure D.

22.4 The Code Manager must ~~exercise his or her discretion reasonably and~~ determine on the evidence before him or her:

- (1) if there is sufficient evidence to establish that the Sales Agent breached the Code;
- (2) if there is insufficient evidence to ascertain the extent of the breach, to seek additional information from the Energy Retailer, Energy Marketer, Sales Agent or any other source;
- (3) if satisfied that there has been a breach of the Code, whether the breach of the Code or cumulative breaches of the Code warrant the deregistration of the Sales Agent and if so, to deregister the Sales Agent; or
- (4) if not satisfied that the Sales Agent has breached the Code or that deregistration is not warranted, to dismiss the Deregistration Application.

22.5 ~~Where the evidence supplied in a Deregistration Application does not include a statement by the Sales Agent, the Code Manager will contact the Sales Agent and invite the Sales Agent to make a statement. If a statement is received within five Business Days, it will be considered with other evidence provided in the Deregistration Application.~~

22.6 ~~22.4~~ In making a determination under clause 22.3, the Code Manager must have regard to previous decisions made about the deregistration of Sales Agents so as to promote ~~consistency~~ [of consistent](#) treatment of Sales Agents.

22.7 ~~22.5~~ The determination must be made by the Code Manager within 10 Business Days of the receipt of the Deregistration Application.

22.8 ~~22.6~~ The Code Manager will record in writing his or her reasons for the determination, and provide a copy of these reasons, in a form that substantially conforms with Form B contained in Annexure E (**Deregistration Notice**). The Deregistration Notice must be provided to both the Member and the Sales Agent, at the addresses provided for in the Deregistration Application.

- 22.9 ~~22.7~~ If a Sales Agent is deregistered, the deregistration will last for a period of five years from the issue of the Deregistration Notice after which time the Sales Agent may apply for a new registration and again engage in Sales Activities.
- 22.10 ~~22.8~~ If a Sales Agent is not deregistered then the Accreditation Status of the Sales Agent will be returned to the last Accreditation Status that they were issued before their suspension.
- 22.11 ~~22.9~~ Either the Sales Agent or the Member may appeal the determination under clause 22.3 to one member of the Code Panel in accordance with clause 29.



## PART 6: REPORTING, ~~\_audit~~COMPLIANCE CHECKS AND MEMBER DISCIPLINE

### 23 Members' Constant Vigilance

- 23.1 A Member must have a clear governance and control framework to monitor and encourage compliance with the Code on an ongoing basis.
- 23.2 Members must respond ~~within 2 Business Days~~ to questions from the Code Manager relating to their Code compliance within 2 Business Days.
- 23.3 Members must utilise the results of Sales Complaint Handling, Competence Monitoring and Compliance ~~Audit~~Check processes set out in this Code to pro-actively manage Code compliance.
- 23.4 Part 6 of this Code is separate to the rights of any relevant energy regulator to undertake audits, require reporting and take enforcement action in accordance with their powers and functions.

### 24 Compliance ~~Audit~~Checks

- 24.1 Each ~~Energy Retailer~~Member must submit to a Compliance ~~Audit on a yearly basis. The Check~~when required by the Code Manager. Compliance ~~Audit~~Checks will be conducted by the Code ~~Auditor~~Manager periodically and at least annually.
- 24.2 The scope of the Compliance ~~Audit~~Checks and procedures to be tested will be determined by ~~EAL in consultation with the Code Auditor~~Energy Assured. In particular, and at a minimum, the Compliance ~~Audit~~Checks will cover:
- (1) the adequacy of controls for compliance with the Code shared between an Energy Retailer and Energy Marketer, including the governance framework developed under clause 7.1(3);
  - ~~(2) whether or not the Energy Marketer engaged by the Energy Retailer is subject to the Compliance Audit and if so, will cover these same matters in relation to the Energy Marketer;~~
  - ~~(2)~~ ~~(3)~~ issues relating to contacting and contracting with consumers and ethical conduct of Sales Agents;
  - ~~(3)~~ ~~(4)~~ the adequacy of recruitment, training, assessment and monitoring of Sales Agents;
  - ~~(4)~~ ~~(5)~~ the adequacy of Sales Complaint handling processes;
  - ~~(5)~~ ~~(6)~~ the consistency and accuracy of the Member's categorisation of breaches of the ~~EAL~~Energy Assured Standards in accordance with clause 20; and
  - ~~(6)~~ ~~(7)~~ the sufficiency of record keeping and reporting.
- 24.3 The Compliance ~~Audit~~Checks may include random checks ~~(on both the Energy Retailer, and the Energy Marketer they engage)~~on Members and surprise field checks on Sales Agents. Otherwise, the Code ~~Auditor~~Manager will give reasonable notice of ~~a~~ Compliance ~~Audit~~Checks to the ~~Energy Retailer and the Energy Marketer~~Member.
- 24.4 Members must give the Code ~~Auditor~~Manager access to the information necessary for the purposes of the Compliance ~~Audit~~Checks unless to do so would cause the Member to breach any law or the terms of any agreement to which it is a party.
- 24.5 ~~The Code Auditor~~Energy Assured will prepare a detailed report of findings for each ~~Energy Retailer (Audit Report). The Audit Report~~Member. This report will be provided to the ~~Energy Retailer that was the subject of the Audit Report, the relevant Member and any~~ relevant energy regulator ~~and the Code Manager~~. Each ~~Audit Report~~report will:

- (1) ~~detail the procedures and documentation that were~~ outline the areas reviewed;
- (2) set out the results of the review;
- (3) identify areas of non-compliance; and
- (4) prescribe action plans agreed with the ~~Energy Retailer~~ Member to address areas of non-compliance by the ~~Energy Retailer~~ Member.

~~24.6~~ A24.6 Energy Assured will prepare a consolidated report of the results of all Compliance Audits ~~will be prepared by the Code Auditor and provided to the EAL~~ Checks and provide this to the Energy Assured Board, Members, the Code Panel, and at the next scheduled Stakeholder Working Group meeting summarising:

- (1) the extent and type of breaches of the ~~EAL~~ Energy Assured Standards;
- (2) the procedures and documentation that were reviewed;
- (3) ~~(2) the procedures and documentation that were reviewed;~~ an outline of any major or important instances of non-compliance, inclusive of potential industry wide systemic issues identified;
- (4) ~~(3)~~ corrective measures that have been prescribed to address compliance issues; and
- (5) ~~(4)~~ any other relevant observations.

## 25 ~~Monthly~~ Quarterly Reporting

- 25.1 Each Energy Retailer and Comparator must prepare a report each ~~month~~ quarter about its compliance with the Code (~~Monthly~~ Quarterly Report).
- 25.2 Each Energy Retailer or Comparator must provide the ~~Monthly~~ Quarterly Report to the Code Manager within 14 days of the end of each ~~month~~ quarter about its compliance with the Code in that ~~month~~ quarter. The Code Manager may, at the request of an Energy Retailer or relevant Comparator, extend the deadline for the provision of a ~~Monthly~~ Quarterly Report by up to 7 additional days.
- 25.3 The scope of the ~~Monthly~~ Quarterly Reports will be agreed to between the Energy Retailer or Comparator and the Code Manager but must include at least:
  - (1) the number of Sales Agents on the ~~EAL~~ Energy Assured Registry registered to the Energy Retailer or Comparator;
  - (2) the number and details of "Approved" Sales Agents that were randomly audited for ~~the each~~ month of the quarter in accordance with clause 18.1(2);
  - (3) the number of Formal Competency Assessments that were undertaken by the Member in accordance with clause 18.1(3) and the result;
  - (4) relevant indicators of the extent to which the ~~EAL~~ Energy Assured Register is being maintained by the Energy Retailer or Comparator;
  - (5) the number of consumers contacted by, or on behalf of, the Energy Retailer or Comparator in the ~~month~~ quarter by State, based on walk sheet data;
  - (6) details of Sales Complaints received in the ~~month~~ quarter, including but not limited to ~~for each Sales Complaint:~~
    - (a) the date of the incident;
    - (b) the date of the Sales Complaint;



- (c) the nature of the Sales Complaint;
- (d) the State or Territory in which the incident occurred;
- (e) the date the Sales Complaint was resolved;
- (f) whether the Sales Complaint was proven and recorded in the Competence Register and the Level of Breach attributed to the Sales Complaint;
- (7) any new Competence Record for the ~~month~~quarter;
- (8) any issues identified through monitoring the Competence Record Register under clause 19.6 and the corrective action undertaken;
- (9) the outcome of action taken under clause 20.4; and
- (10) progress made to implement action items arising from any Compliance ~~Audit~~Check, Warning Notice issued under clause 27 or Sanction imposed under clause 28.

## **26 Investigation of alleged Code breaches by Members**

26.1 The Code Manager must investigate all potential breaches of the Code by Members raised:

- (1) in ~~Monthly~~Quarterly Reports;
- (2) through ~~the annual~~any Compliance ~~Audit~~Check; or
- (3) following the receipt of a complaint substantially in the form of Form C as set out in Annexure F (**Member Complaint**) from another Member, the energy ombudsman, Consumer Advocacy Groups, any energy regulator or regulatory body or the government (**Complainant**).

26.2 Where a complaint is received by the Code Manager from a consumer about the conduct of a Member, the Code Manager will refer the consumer:

- (1) back to the responsible Member to resolve the complaint directly if the consumer has not already done so; or
- (2) provide the consumer with contact details of the relevant energy ombudsman or regulator if the consumer is dissatisfied with the Member's response to their complaint.

26.3 For the purposes of clause 26.2(2) the relevant energy ombudsman or regulator can investigate the complaint independent to this Code or lodge a ~~Member~~Sales Complaint in accordance with clause 26.1(3).

26.4 The Code Manager must:

- (1) seek additional information from the Member or Complainant or any other source if necessary;
- (2) ascertain whether the issue is attributable to the Energy Retailer or the Energy Marketer or both; ~~and~~
- (3) investigate and assess the issue as soon as reasonably practicable in order to minimise consumer dissatisfaction and to help raise industry standards; and
- (4) notify the Complainant of the outcome of the investigation.

## 27 Warning Notices

27.1 Where an issue of compliance is identified by the Code Manager under clause 26, then the Code Manager must issue the responsible Member(s) with a notice warning them that they are suspected of having breached the Code and recommending that remedial action be undertaken to address the issue (**Warning Notice**).

27.2 The Warning Notice must specify (at a minimum):

- (1) the nature and extent of suspected Code breaches;
- (2) recommended corrective action to be undertaken, based on discussions undertaken with the Member where possible;
- (3) the timeframe in which the issue must be addressed;
- (4) whose responsibility ~~of whom it~~ is to address the issue based on the investigation undertaken in clause 26.2 (be it the Energy Retailer and/or the Energy Marketer); and
- (5) the Sanction that will be likely to be sought under clause 28 if:
  - (a) the issue is not addressed in accordance with the Warning Notice; or
  - (b) the Member does not establish (to the satisfaction of the Code Manager) that there is good reason why the Warning Notice cannot or should not be complied with in whole or in part because, for example:
    - (i) the suspected Code breaches did not occur;
    - (ii) satisfactory remedial action has already been undertaken; or
    - (iii) the corrective action recommended under clause 27.2(2) is inappropriate or cannot be reasonably undertaken in the timeframe specified under clause 27.2(3),

applying the principles set out in the flowchart in Annexure B.

27.3 Where the issue of compliance relates to a systemic or material breach in accordance with this clause 27, which is in contravention of an Energy Retailer's or Comparator's obligation under the law or regulations ~~than~~ then this breach must be reported by the Energy Retailer or Comparator respectively to the relevant regulator or authority.

## 28 Sanction Process

28.1 Subject to clause 27.2, the Code Manager must impose a Sanction on a Member if the Member fails to meet the obligations imposed on it under a Warning Notice and the Code Manager has not waived the requirement to comply with any aspect of that Warning Notice.

28.2 If the Code Manager determines to impose a Sanction under this clause 28, the Code Manager must impose a Sanction 1, 2, 3, 4, 5 or 6 based on the following ~~table~~:

Sanction No.	Description of Sanction	Description of Breach	Examples ( <del>however</del> <u>which do not limited to</u> ) of breaches that may attract the Sanction
1	The Member provides a written undertaking to the Code Manager that the breach will not be repeated.	The breach is considered a <b>minor operational breach</b> .	<b>Minor Operational Breach</b> <ul style="list-style-type: none"> <li>Minor failures in maintaining the <u>EAL Energy Assured</u> Register properly.</li> <li>Not registering a Sales Agent <u>Experienced Sales Agent</u>.</li> </ul>

Sanction No.	Description of Sanction	Description of Breach	Examples ( <del>however</del> <u>which do not limited to limit</u> ) of breaches that may attract the Sanction
	<del>EAL</del> <u>Energy Assured</u> board is notified of the breach; however the Member is not named.		<p><del>Assessor or Sub-agent Principal</del> in accordance with the Registry Process.</p> <ul style="list-style-type: none"> <li>Number of Sales Agents that passed Formal Competency Assessments undertaken for the month does not match with the amount of Sales Agents that obtained an Approved status in the <del>EAL</del><u>Energy Assured</u> Register.</li> <li>Not providing the Code Manager consistently with accurate <del>Monthly</del><u>Quarterly</u> Reports.</li> <li>Failure to consistently meet threshold of <del>Random</del> <u>Assessment</u><del>random assessment</del> of Sales Agents, in accordance with clause 18.1(2), as identified in the <del>Monthly</del><u>Quarterly</u> Report based on the number of Sales Agents recorded with an Approved Accreditation Status on the <del>EAL</del><u>Energy Assured</u> Register.</li> <li>Failing to adhere to action plans that arise out of <del>the Annual</del> Compliance <del>Audit</del><u>Checks</u> on minor compliance issues that are isolated and operational in nature and do not impact the public.</li> <li><del>Team Leaders, Managers or Sub-agency Principals act in a manner that is in conflict with the principles of the Code in their dealings with Sales Agents.</del></li> </ul>
2	<p>Formal letter of admonishment is issued to the Member.</p> <p>Member details to the Code Manager, its strategy to rectify the issue and implements an agreed action plan to prevent the problem(s) <del>reoccurring</del><u>recurring</u>, at its cost.</p> <p><del>EAL</del><u>Energy Assured</u> board is notified of the Member's breach and the Member is named <u>to the Energy Assured Board</u>.</p>	<ol style="list-style-type: none"> <li>The breach is considered to be a <b>serious operational breach</b>.</li> <li>The breach <del>was</del><u>is</u> considered to be an isolated yet <b>material breach</b> of the <del>EAL</del><u>Energy Assured</u> Standards; or</li> <li>The Member has been issued three or more Sanction 1's in the course of three months.</li> </ol>	<p><b>Serious Operational Breach</b></p> <ul style="list-style-type: none"> <li>Substantial failures in maintaining the <del>EAL Register as detected from a reconciliation with data provided from the monthly reporting and the</del> <u>EAL</u><del>Energy Assured</del> Register.</li> <li>Not undertaking the adequate training of Sales Agents in accordance with the Code <del>as identified during an investigation by the Code Manager.</del></li> <li>Recruitment of a deregistered Sales Agent <del>as identified through the reporting of this breach under clause 26.1(3) by another Member.</del></li> <li>Contracting with an Energy Marketer that is not a Member of <del>EAL and identified through the reporting of this breach under clause 26.1(3)</del> <u>Energy Assured</u>.</li> <li>Failure to record and monitor the Level of Breaches of Sales Agents, as identified through <del>monthly</del><u>quarterly</u> reporting.</li> </ul>

Sanction No.	Description of Sanction	Description of Breach	Examples ( <del>however</del> <u>which do not limited to limit</u> ) of breaches that may attract the Sanction
			<ul style="list-style-type: none"> <li>Failure to adhere to action plans that arise out of <del>the Annual</del> Compliance <del>Audit</del><u>Checks</u> on major compliance issues that are isolated and operational in nature and do not impact the public.</li> <li>A trend that depicts a discrepancy in the application of Level 1, Level 2 and Level 3 Breaches in the Competence Record Register as compared to the type of Sales Complaints described under clause <del>2020</del>.</li> <li>Discrepancy detected between the Competence Record and the <del>Monthly</del><u>Quarterly</u> Report that indicates that a Member did not undertake a review of contracts where a Sales Agent recorded a Level 2 or Level 3 Breach, in accordance with clause 20.4.</li> </ul> <p>●</p> <ul style="list-style-type: none"> <li><u>Failure to adequately monitor Sub-agent Principal arrangements to ensure their Sales Agents are trained and disciplined appropriately.</u></li> </ul> <p><b>Material breach</b></p> <ul style="list-style-type: none"> <li>A Sales Agent commits a Level 2 or <u>Level</u> 3 Breach which was not properly detected and addressed by the Member, despite having the appropriate controls in place, and the breach impacted a large number of consumers.</li> <li>A Sales Agent breached the <del>EAL</del><u>Energy Assured</u> Standards and on investigation it was found that the Sales Agent was deregistered.</li> <li>A Sales Complaint is raised to the Code Manager about the conduct of a Sales Agent and on further investigation it was found that the Sales Agent was not registered properly on the <del>EAL</del><u>Energy Assured</u> Register.</li> <li><u>The</u> Member did not ensure appropriate supervision of a Sales Agent whose Accreditation Status required the Sales Agent to be supervised and the Sales Agent breached the <del>EAL</del><u>Energy Assured</u> Standards whilst unsupervised.</li> </ul>
3	Formal letter of admonishment is issued to the <del>EAL</del> <u>Energy Assured</u> Member.	The breach was a <b>systemic breach</b> of either: 1. the <del>EAL</del> <u>Energy Assured</u>	<ul style="list-style-type: none"> <li>The quantity of Level 1, 2 or 3 Breaches for the <del>month</del><u>quarter</u> exceeds 1% of the number of consumers contacted for the</li> </ul>

Sanction No.	Description of Sanction	Description of Breach	Examples (however which do not limited to limit) of breaches that may attract the Sanction
	<p>Member details to the Code Manager, its strategy to rectify the issue and implements an agreed action plan to prevent the problem(s) reoccurring, at its cost.</p> <p><del>EAL-board</del><u>Energy Assured Board</u>, the relevant energy regulator and the energy ombudsman are notified of the Member's breach and the Member is named <u>to the Energy Assured board, the regulator and ombudsman.</u></p>	<p>Standards which impacted, or had the potential to impact a large number of consumers; or</p> <p>2. Operational breaches that are not isolated in nature and directly result in a breach of the <del>EAL</del><u>Energy Assured</u> Standards which impact a large number of consumers.</p>	<p><del>month</del><u>quarter</u>, as identified through the Sales Complaints provided for in the <del>monthly</del><u>quarterly</u> reports to the amount of homes visited taken from walk sheet data.</p> <ul style="list-style-type: none"> <li>Where under clause 26.1(3) the Code Manager receives statements that are intentionally misleading or deceptive in nature being made consistently in relation to a particular matter by one or more Sales Agents and/or the Member, to which the Member Complaint relates, cannot demonstrate that the breach was not an inherent issue with the Member's compliance to the Code or due to a specific, individual or isolated factor.</li> <li>Failure to take action under clause 19.7.</li> <li>Failure to review consumer contracts in accordance with clause 20.4, where the breach is not isolated and resulted in further breaches to the <del>EAL</del><u>Standard</u><u>Energy Assured Standards.</u></li> <li><del>Continual failure of</del> Sales Agents <del>continually failed</del> to complete walk sheets so that consumers <del>that</del> cannot be contacted again <u>by the Member</u> under the Applicable Laws <del>are contacted by the Member.</del></li> <li><u>Failure to adhere to action plans that arise out of Compliance Checks on major compliance issues.</u></li> </ul>
4	<p>Member appoints an independent Code Auditor <u>at the Member's cost</u> to audit the areas of activity where the breach(es) occurred <del>at the Member's cost.</del></p> <p>Following the audit, Member details to the Code Manager its strategy to rectify the issue and implements an agreed action plan <u>at its cost</u> to prevent the problem(s) <del>reoccurring, at its cost</del><u>recurring.</u></p> <p>Formal Letter of admonishment is issued</p>	<p>1. Member has been issued three or more Sanction 2's in the course of six months; or</p> <p>2. Member has been issued two Sanction 2's and one Sanction 3 in the course of six months; or</p> <p>3. Member has been issued two Sanction 3's in the course of six months.</p>	

Sanction No.	Description of Sanction	Description of Breach	Examples ( <del>however</del> <u>which do not limited to limit</u> ) of breaches that may attract the Sanction
	to the <del>EAL</del> <u>Energy Assured</u> Member.  <del>EAL</del> <u>Energy Assured</u> board, the relevant energy regulator and the energy ombudsman are notified of the breach and the Member is named <u>to the Energy Assured Board, Regulator and Ombudsman</u> .		
5	As per <del>sanction</del> <u>Sanction</u> 3.  Additionally, other Stakeholders and the public will also be notified of the breach.	1. Member has failed to comply with agreed action plan arising from audit conducted under Sanction 4; or  2. two Sanction 4's have been imposed on the Member in the course of twelve months.	
6	Member will be <del>deregistered</del> <u>expelled</u> (permanently or temporarily) and the Member's membership of <del>EAL</del> <u>Energy Assured</u> cancelled.  A public statement will be issued that identifies the Member, states the section of the Code that has been breached and the period of Deregistration.	1. One Sanction 5 has been imposed and the Member continues to fail to comply with the agreed action plan arising from the audit conducted under Sanction 4; or  2. <del>Two</del> <u>two</u> Sanction 5's have been imposed on the Member in the course of twelve months.	

28.3 For the purposes of clause 28.2:

- (1) **a *minor operational breach*** is a breach of the Code that is operational and minor in nature, however, does not have a direct public facing impact. A minor operational breach will occur when the ~~arising~~ breach is a small technical or superficial breach of the operations of the Code;
- (2) **a *serious operational breach*** is a breach of the Code that is operational and serious in nature, however, does not have a direct public facing impact. A serious operational breach will occur when the ~~arising~~ breach is more than a technical or superficial breach of the operations of the Code, and is a clear contravention of a Member's obligations under the Code;
- (3) **a *material breach*** is a significant breach of the ~~EAL~~Energy Assured Standards that is isolated in nature yet has impacted, or has the potential to impact, a large number of consumers. A material breach will occur when the ~~arising~~ breach is a breach of the ~~EAL~~Energy Assured Standards, and where a Member can demonstrate that the breach was not an inherent issue with the Members' compliance to the Code, and was rather, due to a specific, individual, or isolated factor; and



- (4) **a systemic breach** is a breach of the EAL Energy Assured Standards, that is not isolated in nature and may have affected, or have the potential to affect, a large number of consumers. A systemic breach will occur when the arising breach is a breach of the EAL Energy Assured Standards and where a Member cannot demonstrate that the breach is not an inherent overall issue with the Members' compliance to the Code. For the purposes of this Code where a minor or serious operational breach occurs that results in a direct breach of the EAL Energy Assured Standards on a large number of consumers, and is not considered an isolated incident, then this would be categorised as a systemic breach.
- 28.4 In making a determination under clauses 27, 28.1 and 28.2, the Code Manager must have regard to:
- (1) any previous Warning Notice or Sanction imposed on the Member in the past two years;
  - (2) previous decisions made under a Warning Notice about the Sanctioning of Members so as to promote consistency of treatment of Members under this clause 28; and
  - (3) costs of compliance for Members by ensuring that any action required is proportionate to the issue that it seeks to remedy. As far as the law allows, the Code Manager will take account of the circumstances of the case and the attitude of the Member when considering action.
- 28.5 Where an Energy Retailer engages an Energy Marketer (including a Comparator), and upon investigation it is found that a breach, or area of non-compliance, is attributable to the Energy Marketer, then the Code Manager or Code Panel (as the case may be) may determine that either:
- (1) both the Energy Retailer(s) and Energy Marketer is subject to the Sanction;
  - (2) a different Sanction is imposed on the Energy Marketer ~~as is to~~ that imposed on the Energy Retailer(s); or
  - (3) only the Energy Marketer receives the Sanction.
- 28.6 Unless immediate remedial action is required before a Sanction is imposed, the Code Manager will provide an opportunity for the Member to discuss the circumstances of the failure to meet its obligations under the Warning Notice and the proposed Sanction and, if possible, resolve points of difference. Following that discussion, or where immediate action is required, the Code Manager must issue a notice that substantially conforms with Form D as set out in Annexure G (**Notice of Breach**). The Notice of Breach must record, in writing, the Code Manager or Panel Member's reasons for the determination and include a copy of all documents and information supplied to or obtained by him or her in reaching that determination.
- 28.7 The Code Manager must serve the Notice of Breach on the Member by forwarding the Notice of Breach by ordinary pre-paid post to the registered office of the Member and/or to any other postal address, electronic address or fax number provided by the Member.
- 28.8 The Sanction proposed will be deemed to be accepted by the Member, unless a notice of appeal is lodged in accordance with clause 30 within 10 Business Days of the Date of Service of the Notice of Breach.
- 28.9 Where the proposed Sanction is more significant than a Sanction 1, one member of the Code Panel must approve the Sanction in accordance with clause 28.10 before it can be imposed.
- 28.10 The Code Manager must provide the Panel Member with a draft Notice of Breach prepared as though it was to be provided to the Member under clause 28.6. The Panel Member must consider the Member's conduct and proposed Sanction as though it were the Code Manager under clauses 28.1 to 28.5 and in doing so:

- (1) must consider the proposed Sanction in accordance with the preliminary determination made by the Code Manager and the evidence before ~~them~~him or her;
- (2) may seek additional information or evidence in relation to the alleged breach from the Member or any other source;
- (3) must either uphold the determination of the Code Manager, or substitute his, or her ~~or their~~ determination for that of the Code Panel Member;
- (4) inform the Code Manager of the determination within 10 Business Days of his or her receipt of the draft Notice of Breach; and
- (5) record in writing his or her reasons for the decision.



## PART 7: APPEALS

### 29 Sales Agent Appeal Process

- 29.1 Appeals about a determination of the Code Manager under clause 22 can be made by either the Sales Agent or Member (**Appellant**) by delivering to the Code Manager a Notice of Appeal (within 10 Business Days of the Date of Service of the Deregistration Notice) that substantially conforms with Form E as set out in Annexure H .
- 29.2 The Notice of Appeal shall not be deemed to have been delivered unless and until the prescribed sum has been paid, as provided for in Annexure C.
- 29.3 The Code Manager must refer the appeal to a single Panel Member for determination; ~~within 5 Business Days of receiving the Notice of Appeal~~, and the Panel Member must determine the appeal within 10 Business Days of his or her receipt of the Notice of Appeal from the Code Manager.
- 29.4 The Code Manager and Panel Member may, at ~~his or her~~their absolute discretion, grant an extension of time to the Appellants to provide further information.
- 29.5 The appeal shall be on one or more of the following grounds, but no other:
- (1) the Code Manager's discretion exercised pursuant to clause 22.3 was not exercised reasonably;
  - (2) the Appellant was denied natural justice; or
  - (3) new and material evidence has come into the possession of the Appellant at a time such that it was not possible for the new and material evidence to be provided to the Code Manager for his or her consideration prior to the Code Manager's determination ~~of the Complaint~~.
- 29.6 Appeals are conducted and determined on the parties' written submissions, and information and documents provided by the parties, the Code Manager or from any other source.
- 29.7 The Panel Member shall:
- (1) follow any policy formulated by ~~EAL~~Energy Assured for the purposes of conducting appeals, and any policies established under clause 12.4;
  - (2) consider the allegation(s) *de novo* insofar as it is relevant to the ground of appeal;
  - (3) uphold the determination of the Code Manager or substitute his or her determination for that of the Code Manager;
  - (4) advise the Code Manager of the determination within 10 Business Days of determining the ~~Appeal~~appeal and any required action ~~required~~ including ~~however~~but not limited to the removal of the ~~Suspension~~'Deregistered' Accreditation Status of the Sales Agent on the ~~EAL~~Energy Assured Register should the deregistration be revoked; and
  - (5) record in writing his or her reasons for the determination.
- 29.8 For the sake of clarity:
- (1) the Panel Member's determination with respect to the grounds raised in the appeal is final and there is no further appeal; and

- (2) the determination of the Code Manager to Deregister a Sales Agent remains in force until the Panel Member determines otherwise on appeal.

### 30 Member Appeal Process

- 30.1 To appeal a determination of the Code Manager or single Panel Member, the Member must deliver to the Code Manager a Notice of Appeal (within 10 Business Days of the Date of Service of the Notice of Breach) that substantially conforms with Form F as set out in Annexure I.
- 30.2 The Notice of Appeal shall not be deemed to have been delivered unless, and until the prescribed sum has been paid, as provided for in Annexure C.
- 30.3 The Member may appeal the Sanction as follows:
- (1) an appeal against Sanction 1 is made to a single Panel Member,
  - (2) an appeal against Sanction 2 or 3 is made to a single Panel Member or 3 Panel Members at the election of the Member, and
  - (3) an appeal against Sanctions 4 to 6 is made to 3 Panel Members.
- 30.4 The Code Manager shall refer the Notice of Appeal to the Panel Member(s) for determination within 5 Business Days of the receipt of the Notice of Appeal, and the Panel Member(s) shall determine the appeal within 10 Business Days of his, her or their receipt of the Notice of Appeal.
- 30.5 The single Panel Member who is responsible for the issue of a Notice of Breach or any other determination on appeal shall not be one of the three (3) Panel Members dealing with the appeal.
- 30.6 The Code Manager or Panel Member(s) may, at his, her or their discretion, grant an extension of time to the Member to provide further information.
- 30.7 The appeal shall be on one or more of the following grounds, but no other:
- (1) the Code Manager or Panel Member's discretion was not exercised reasonably;
  - (2) the Member was denied natural justice; or
  - (3) new material evidence has come into the possession of the Member at a time such that it was not possible for the new material evidence to be provided to the Code Manager or Panel Member for their consideration prior to the Code Manager's determination ~~of the Complaint~~.
- 30.8 Appeals are conducted and determined on the parties' submissions, information and documentation provided by the parties and the Code Manager or from any other source.
- 30.9 At his, her or their discretion, the Panel Member(s) and/or Code Manager may determine that the determination of the ~~Appeal~~appeal be conducted by a hearing in person or by teleconference if the Sanction is of sufficient gravity to warrant such a hearing. Legal representation is not permitted at the hearing, but legal assistance is permitted.
- 30.10 The Code Manager and Panel Member(s) shall follow any policy formulated by ~~EAL~~Energy Assured for the purposes of the appeal.
- 30.11 The Panel Member(s):
- (1) must follow any policy formulated by ~~EAL~~Energy Assured for the purposes of conducting appeals, and any policy under clause 12.4.
  - (2) must consider the ~~Complaint~~breach *de novo* insofar as it is relevant to a ground of appeal in the ~~Appeal~~appeal:

- (3) may seek additional information or evidence in relation to the ~~Complaint~~breach from the ~~Responsible~~responsible Energy Retailer, Comparator, Agent or any other source;
  - (4) must either uphold the determination of the Code Manager or Panel Member, or substitute his, her or their determination for that of the Code Manager or Panel Member;
  - (5) inform the Code Manager of the outcome within 10 Business Days of determining the ~~Appeal~~appeal and of any action that must be taken under the determination, including the removal of the Warning Notice and Sanction recorded against records of that Member under clause 28.4 ; and
  - (6) must record in writing his, her or their reasons for the determination.
- 30.12 The determination of the appeal by the Panel Member(s) is final. For the sake of clarity, there is no further appeal.
- 30.13 The Code Manager shall notify the parties of the determination of the appeal at the address provided in the Notice of Appeal or at any other address provided by the parties.

## DICTIONARY

In this Code:

- (1) **Accreditation Status** means one of the levels of accreditation that may be attained by a Sales Agent as set out in the Procedures Guideline;
- (2) **Annual Report** means a report prepared by ~~EAL~~[Energy Assured](#) under clause 9.6;
- (3) **Applicable Law** means all rules, regulations, codes, statutes, guidelines, licences, legislation, orders in council, tariffs, proclamations, directions or standards that relate to the marketing, sale and supply of energy;
- (4) **Assessor** means an individual that has met the qualifications set out in the Procedures Guideline;
- (5) **Australian Consumer Law** means Schedule 2 to the *Competition and Consumer Act 2010* (Cth);
- (6) **Business Day** means a day not being a Saturday, a Sunday or a public holiday in the jurisdiction in which the Sales Agent conducts Sales Activities;
- (7) **Code** means this Code of Practice and any documents incorporated in it, including the Procedures Guideline;
- ~~(8) **Code Auditor** means an independent body (which will be a reputable firm of auditors) engaged by EAL to review Member compliance with the Code;~~
- ~~(8)~~ **Code Manager** means the individual appointed by ~~EAL~~[Energy Assured](#) to carry out the day to day administration and management of the Code whose role is set out in clause 10;
- ~~(9)~~ **Code Panel** means the panel of ~~four~~ people who are independent of ~~EAL~~[Energy Assured](#), the Code Manager, and the Members whose role is set out in clause 12;
- ~~(10)~~ **Comparator** means an Energy Marketer that engages in Sales Activities for more than one Energy Retailer at a customer's ~~premise~~[premises](#);
- ~~(11)~~ **Competence Record Register** means the record that is used to measure Levels of breaches that are recorded against a Sales Agent under clause 19;
- ~~(12)~~ **Compliance Audit Check** means ~~a formalised audit~~[an activity conducted by the Code Auditor on individual Manager to check a Member's compliance with the Code. Activities can include, but are not limited to desktop audit, site visits, Sales Agent interviews and mystery shopping;](#)
- ~~(13)~~ **Consumer Advocacy Group** means any non-government consumer or community organisation that provides a voice for consumers;
- ~~(14)~~ **Date of Service** is deemed to be three (3) Business Days after the Notice of Breach is posted, faxed or emailed to the Member;
- ~~(15)~~ **Deregistration Application** means an application made to the Code Manager requesting that a Sales Agent be deregistered from the ~~EAL~~[Energy Assured](#) Register;
- ~~(16)~~ **~~EAL~~[Energy Assured](#)** means Energy Assured Limited;
- ~~(17)~~ **~~EAL~~[Energy Assured](#) Logo** means the ~~EAL~~[Energy Assured](#) logo that demonstrates that the Sales Agent complies with this Code;

- (18) ~~(19)~~ **EAL Energy Assured Register** means the database register of Sales Agents accredited under the Code which is administered and monitored by ~~EAL~~Energy Assured;
- (19) ~~(20)~~ **EAL Energy Assured Standards** means the ~~standard~~standards for the conduct of Sales Activities as set out in clauses 3 to 6;
- (20) ~~(21)~~ **Energy Marketer** means a company that engages in Sales Activities on behalf of Energy Retailers;
- (21) ~~(22)~~ **Energy Retailer** means an entity that holds a valid licence or similar authorisation, issued by the relevant energy regulator, to retail electricity and/or gas in the State or Territory to which the retail licence relates;
- (22) ~~(23)~~ **Experienced Sales Agent** is a Sales Agent that has met the conditions contained in clause 10.2 of the Procedures Guideline. Experienced Sales Agents must be registered on the Energy Assured Register;
- (23) ~~(24)~~ **Formal Competency Assessment** means an assessment of the competency of ~~the~~a Sales Agent to comply with the ~~EAL~~Energy Assured Standards that must be undertaken by a Sales Agent before they can achieve or maintain an Accreditation Status that enables them to conduct Sales Activities unsupervised;
- (24) Level means the level of a breach of the Energy Assured Standards, as categorised in accordance with clause 20;
- (25) **Level 1, 2 or 3 Breach** means a breach of the ~~EAL~~Energy Assured Standards that has been categorised in accordance with clause 20;
- (26) **Marketing Codes** means the relevant jurisdictional Marketing Codes that govern ~~door~~face to ~~door~~face sales in the retail energy market;
- (27) Marketing Material means the marketing material developed by Energy Assured in accordance with clause 9.4(2), which contains the information set out in clause 9.5;
- (28) ~~(27)~~ **Member** means an Energy Retailer or Energy Marketer that has signed the ~~EAL~~Energy Assured membership form which indicates their agreement to abide by Energy Assured Constitution and in doing so, agreed to adhere to this Code;
- (29) ~~(28)~~ **Off-job Training** means a classroom-based Sales Agent induction program which should be conducted in a formal environment by an individual that is qualified to provide such training;
- (30) ~~(29)~~ **On-job Training** means field training undertaken by a Sales Agent under the supervision of an Experienced Sales Agent;
- (31) ~~(30)~~ **Panel Member** means a member of the Code Panel;
- (32) ~~(31)~~ **Procedures Guideline** means the procedural rules that ~~underlie~~underpin this Code ~~with~~to which Members must adhere to in order to comply with this Code;
- (33) ~~(32)~~ **Post Sale Verification Procedure** means a procedure whereby a consumer is communicated with after they have entered into a new energy supply contract via a door to door sale and before the consumer is transferred to the new Energy Retailer. The Post Sale Verification Procedure is to verify and confirm that the consumer has entered into a new energy supply contract and that the consumer was satisfied with the way that the sale was conducted. As a minimum, the Post Sale Verification Procedure must involve asking the consumer the following verification questions:
- (a) Do you understand that you are changing from your current retailer to "retailer YYY"? Could you please confirm that you accept our offer and agree to proceed with the

switch request from your current retailer to "retailer YYY" for the retail supply of electricity and/or gas to your premises?

- (b) Do you understand that you have a "~~X~~ten business day cooling off period" in which you can cancel this contract without incurring any exit fees?
- (c) Do you understand that you should receive one more final bill from your current retailer and that the next one will be from "retailer YYY"?
- (d) Has the Sales Agent provided you with information on the Energy Assured Code of Practice?

(34) ~~(33)~~ **Sales Activities** means the face- to- face marketing of energy supply to consumers, including through door to door, kiosk, and other marketing mediums, but excluding marketing that occurs at the premises of an Energy Retailer;

~~(34)~~ ~~Sales Agent~~ means any individual authorised by a Member;

(35) ~~Sales Agent~~ means any individual authorised by a Member who solely represents a Member (and/or a Member's associated companies) for the purposes of engaging in Sales Activities, where the principal function of such individual is to market either energy supply alone or energy supply and other domestic utility services to domestic consumers;

(36) ~~(35)~~ **Sales Complaint** means a complaint made by a consumer, energy ombudsman, relevant energy regulator, government agency, Consumer Advocacy Group or other interested party about a Sales Agent's Sales Activities;

(37) ~~(36)~~ **Sales Complaints Handling Process** means the process for handling Sales Complaints established by an Energy Retailer under clause 17.1 or Comparator under clause 17.2;

(38) ~~(37)~~ **Sanction** means disciplinary action or any other sanction imposed on a Member under clause 28;

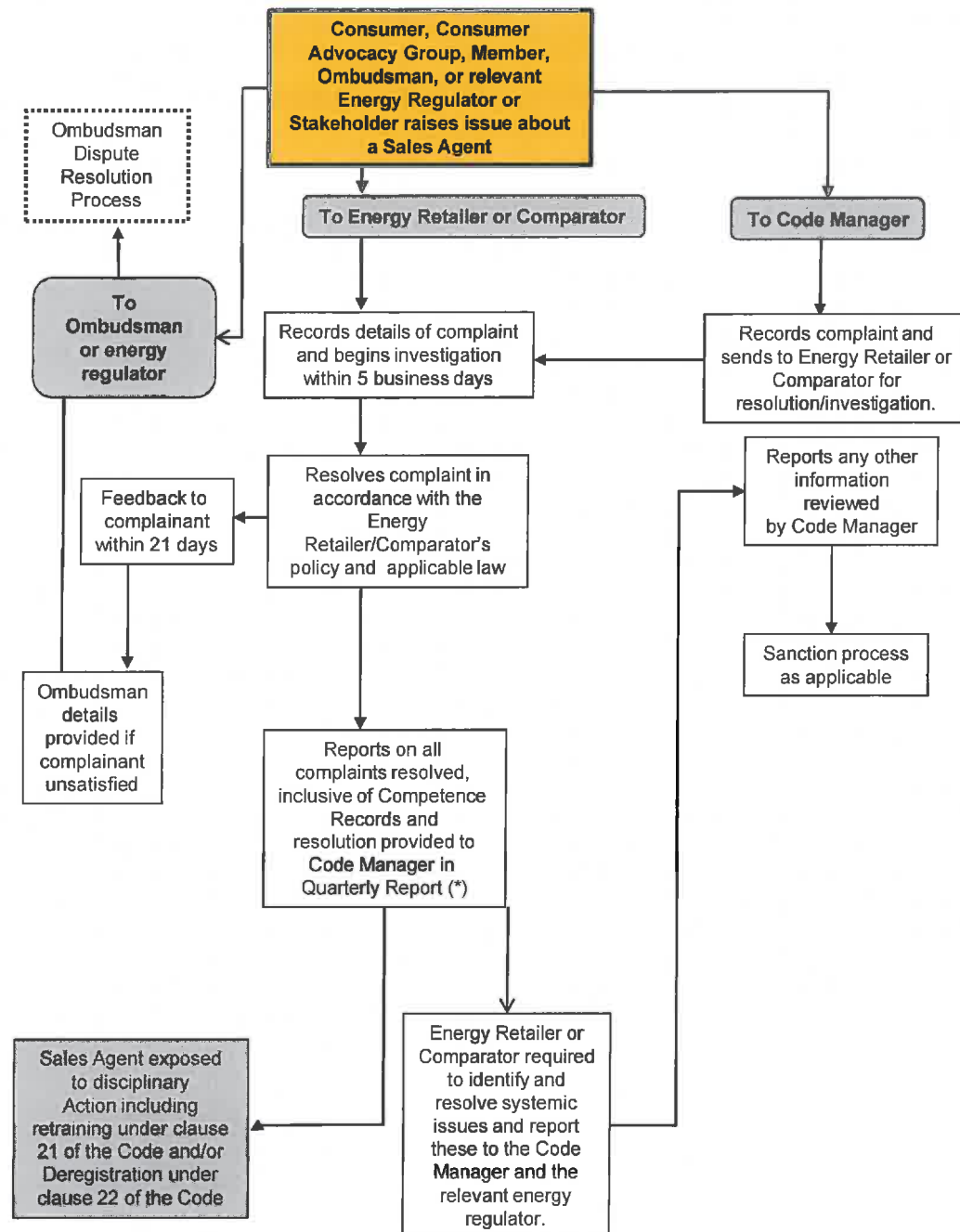
(39) ~~(38)~~ **SIDN** means the ~~Sales Agent Identification Number~~ sales agent identification number allocated to a Sales Agent when they are first registered on the ~~EAL~~ Energy Assured Register;

(40) ~~Sub-agent Principal~~ means an entity engaged by an Energy Marketer to undertake Sales Activities on its behalf;

(41) ~~Systemic Issue~~ means a systemic breach as defined in clause 28.3; and

(42) ~~Warning Notice~~ has the meaning given to it in clause 27.

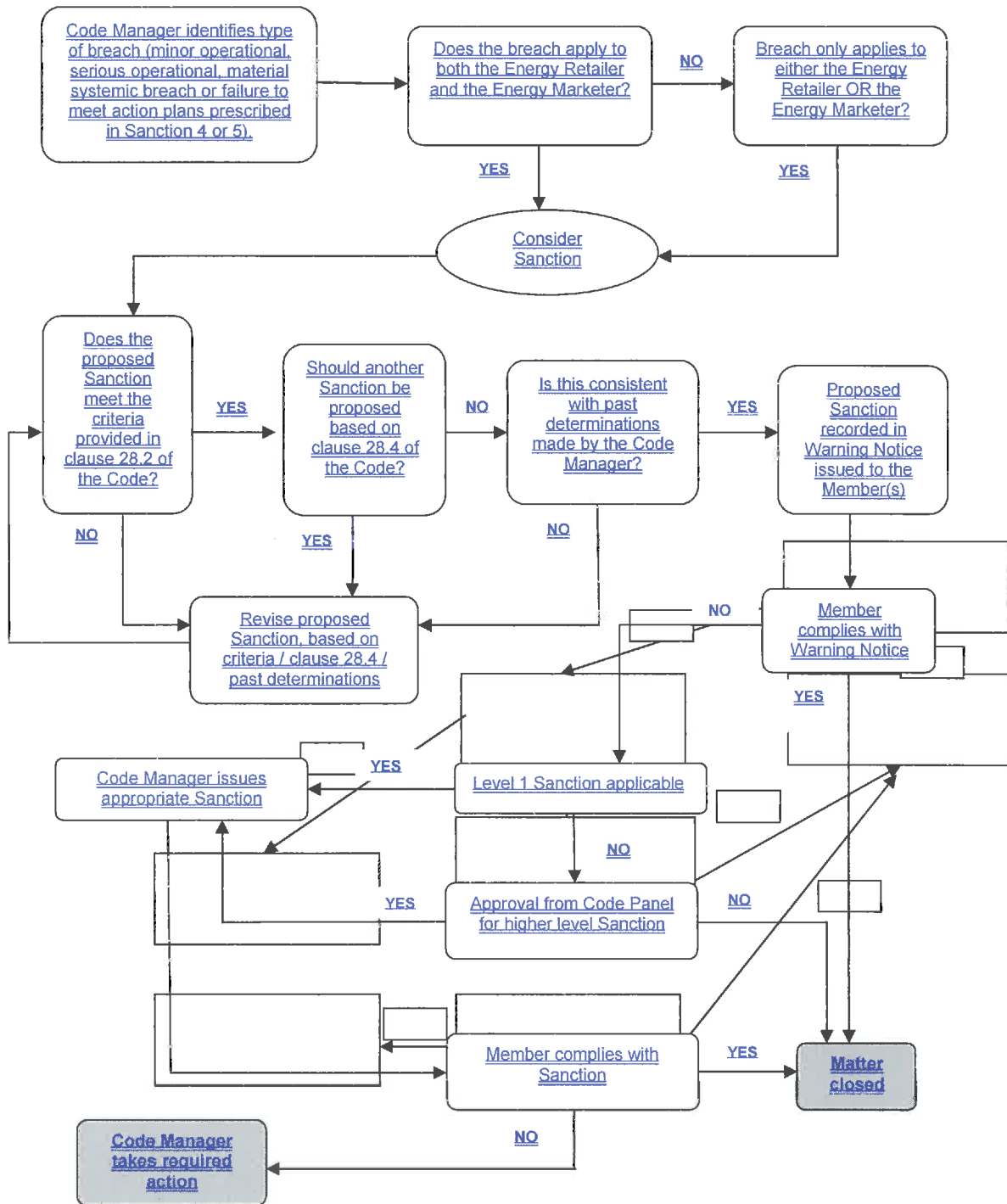
## Annexure A - Sales Complaint Handling ~~and Sanctions~~ Process (Flow Chart)



(\*) Unresolved complaints are reported at the end of the complaint and roll over to subsequent month's reporting until resolved.



## Annexure B - Determining an Appropriate Member Sanction (Flow Chart)





**Annexure C – Security for Appeal** - effective 16 January 2014. Fees increase 5% each year.

Appellant	Matter Appealed	Number of Panel Members Hearing the Appeal	Cost
<u>Sales Agents</u>	Deregistration	1	<del>\$400</del> <u>110.</u> <u>25</u>
Energy Retailers	Sanction 1	1	<del>\$300</del> <u>330.</u> <u>75</u>
	Sanction 2	1	<del>\$300</del> <u>330.</u> <u>75</u>
	Sanction 2	3	<del>\$900</del> <u>992.</u> <u>25</u>
	Sanction 3	1	<del>\$300</del> <u>330.</u> <u>75</u>
	Sanction 3	3	<del>\$900</del> <u>992.</u> <u>25</u>
	Sanction 4	3	<del>\$900</del> <u>992.</u> <u>25</u>
	Sanction 5	3	<del>\$900</del> <u>992.</u> <u>25</u>
	Sanction 6	3	<del>\$900</del> <u>992.</u> <u>25</u>
Energy Marketer	Sanction 1	1	<del>\$300</del> <u>330.</u> <u>75</u>
	Sanction 2	1	<del>\$300</del> <u>330.</u> <u>75</u>
	Sanction 2	3	<del>\$900</del> <u>992.</u> <u>25</u>
	Sanction 3	1	<del>\$300</del> <u>330.</u> <u>75</u>
	Sanction 3	3	<del>\$900</del> <u>992.</u> <u>25</u>
	Sanction 4	3	<del>\$900</del> <u>992.</u> <u>25</u>
	Sanction 5	3	<del>\$900</del> <u>992.</u> <u>25</u>
	Sanction 6	3	<del>\$900</del> <u>992.</u> <u>25</u>

1. Appeals shall be accompanied by cash or a cheque drawn in favour of "Energy Assured Limited" for the prescribed sum set out above or may be electronically transferred to Energy Assured's bank account.
2. The Code Manager may, following a request by an Appellant, agree to waive the sum payable above on hardship grounds.
3. The Panel Member(s) determining the appeal may determine in his, her or their absolute discretion that the Sales Agent or Member is liable for ~~EAL~~Energy Assured's reasonable costs of conducting the appeal and the quantum of those

- costs, taking into account again any request by an Appellant for a waiver or reduction of the costs on hardship grounds.
4. If the ~~Deregistration~~deregistration or Sanction is dismissed on appeal, the Appellant will not be liable for the costs of the appeal, and any monies paid to ~~EAL~~Energy Assured for the costs of the appeal will be returned to the Appellant.
  5. If the ~~Complaint~~complaint is not dismissed on appeal, the Code Manager shall issue a tax invoice for the costs of the appeal as determined by the Panel Member(s).
  6. Members and Sales Agents agree and undertake to pay to ~~EAL~~Energy Assured the costs of conducting the appeal as determined by the Panel Member(s) within twenty eight (28) days of receiving a tax invoice from ~~EAL~~Energy Assured.
  7. The ~~Costs~~costs are effective as of 1 ~~July 2011~~January 2014, and will escalate by 5% per annum thereafter.

## Annexure D – Form A – Deregistration Application

Name of Sales Agent*	
Address of Sales Agent*	
Contact <del>Details</del> <u>details</u> of Sales Agent* (fax, email, home phone, telephone, other contacts of Sales Agent)	
<del>Energy Assured ID Number</del> <u>SIDN</u> *	
Name <u>of</u> Member <del>Complainant</del> <u>complainant</u> *	
Address of Member <del>Complainant</del> <u>complainant</u>	
Section(s) of Code <del>Allegedly Breached</del> <u>allegedly breached</u> *	
Description of <del>Actions, Omissions</del> <u>actions, omissions</u> and <del>Circumstances</del> <u>circumstances</u> which comprise the <del>Breach</del> <u>alleged breach</u> *	
Evidence in <del>Support</del> <u>support</u> of the <del>above</del> <u>alleged breach</u> (Attach any documents you wish to be considered)	
Steps <del>Taken</del> <u>taken</u> to <del>Notify</del> <u>notify</u> Sales Agent of the Sales Complaint and application to deregister the Sales Agent*	
Details of <del>Previous Breaches</del> <u>previous breaches</u> of the Code <u>by the Sales Agent</u>	
Response and any documents received from the Sales Agent*	
Date of <del>Receipt of</del> Deregistration Application	

## IMPORTANT NOTES

- 1 Fields marked with an asterisk (\*) are mandatory. Failure to complete mandatory fields will result in the rejection of the application.
- 2 Failure to provide sufficient information or evidence about the Complaint may result in the dismissal of the Complaint.
- 3 Note that a copy of this Deregistration Application and any other particulars, information and documents provided with it or at any other time during the determination of the application will be made available to the Sales Agent named in the Deregistration Application.
- 4 In making a Deregistration Application the Member warrants that:
  - (1) the information and facts provided in and to be inferred from the Deregistration Application are accurate and true to the best of their knowledge and are not misleading in any material way;
  - (2) information provided to the Code Manager may be communicated, published, recorded and audited or used in any other way provided for by the Code, and an authority to use the information has been obtained from the relevant person~~;~~
  - (3) if the response of the Sales Agent is not in writing, by providing particulars of the response~~;~~ the Member has made all reasonable attempts to contact the Sales Agent to notify him or her of the Sales Complaint and provided the Sales Agent with a reasonable opportunity to respond to the Sales Complaint; and
  - (4) the Member has submitted with Form A the Sales Agent's response to the Sales Complaint, by providing a copy of any written response by the Sales Agent.
- 5 Decisions by the Code Manager are presumed to be reasonable and objective.
- 6 Sales Agents and Members acknowledge that they have:
  - (1) no right of action in any court or jurisdiction; and
  - (2) no right to damages or any form of compensation or indemnity against ~~EAL~~[Energy Assured](#) or any officer or subcontractor of ~~EAL~~[Energy Assured](#) as a consequence of
    - (a) any costs of any nature which the Sales Agent or Member may incur (including, but not limited to, legal costs) in answering the Deregistration Application; or
    - (b) ~~(3)~~ any losses or damages of any nature (including claims based on defamation, negligence and breach of privacy) which the Sales Agent or Member may incur directly or indirectly due to actions or omissions of the Code arising out of or in connection to the Deregistration Application, including but not limited to findings and Deregistration imposed by the Code Manager.
- 7 The Code Manager shall use their best endeavours to meet the time-limits set out in the Code, but may extend the time-limits if they have a reasonable excuse. Failure to meet any time-limits does not invalidate acts or omissions undertaken pursuant to or incidental to the Deregistration Application.
- 8 The Code Manager shall maintain a record of all correspondence and documents relating to the Deregistration Application and the determination (including on appeal) for a period of 2 years.

## Annexure E - Form B - Deregistration Notice

<b>Name of Sales Agent</b>	
<b>Address of Sales Agent</b>	
<b>Contact <del>Details</del><u>details</u> of Sales Agent</b> (fax, email, home phone, telephone, other contacts of Sales Agent)	
<b>Energy Assured ID Number</b>	
<b>Particulars of <del>Breach</del><u>breach</u>(es)</b>	
<b>Evidence <del>in support of Breach</del>(es)</b>	
<b>Deregistration <del>Period</del><u>period</u></b>	
<p>Copies of the Code of Practice and other relevant documents (including policies) are available from the Code Manager on request. You should review these documents carefully and contact the Code Manager if you have any queries.</p>	
<b>Date of <del>Issue</del><u>issue</u></b>	

**Annexure F -- Form C -- Member Complaint**

<b>Name of Member*</b>	
<b>Date of Complaint*</b>	
<b>Section of Code <del>Allegedly Breached</del><u>allegedly breached</u>*</b>	
<b>Description of <del>Actions, Omissions and Circumstances Comprising the Breach</del><u>actions, omissions and circumstances comprising the alleged breach</u>*</b>	
<b>Evidence in <del>Support</del><u>support</u> of the above</b> (attach any documents you wish to be considered)	
<b>Details of <del>Previous Known Breaches</del><u>previous known breaches</u> of the Code</b>	
<b>Date of <del>Receipt</del><u>receipt</u> of Member Complaint</b>	

## IMPORTANT NOTES

- 1 Fields marked with an asterisk (\*) are mandatory. Failure to complete mandatory fields will result in the rejection of the application.
- 2 Failure to provide sufficient information or evidence about the [Member](#) Complaint may result in the dismissal of the [Member](#) Complaint.
- 3 Note that a copy of this [Member](#) Complaint and any other particulars, information and documents provided with it or at any other time during the determination of the application will be made available to the Member named in the [Member](#) Complaint.
- 4 In making a Member Complaint you warrant that:
  - (1) the information and facts provided in and to be inferred from the Member Complaint and during the course of the determination are accurate and true to the best of your knowledge and are not misleading in any material way; and
  - (2) information provided to the Code Manager or the Panel Member may be communicated, published, recorded and audited or used in any other way provided for by the Code, and an authority to use the information has been obtained from the relevant person.
- 5 Decisions by the Code Manager and members of the Panel are presumed to be reasonable and objective.
- 6 Members acknowledge that they have:
  - (1) no right of action in any court or jurisdiction; and
  - (2) no right to damages or any form of compensation or indemnity against [EAL Energy Assured](#) or any officer or subcontractor of [EAL Energy Assured](#) as a consequence of ~~any costs of any nature which the Member may incur (including, but not limited to, legal costs) in answering the Complaint; or~~
    - (a) any costs of any nature which the Member may incur (including, but not limited to, legal costs) in answering the Complaint; or
    - (b) ~~(3)~~ any losses or damages of any nature (including claims based on defamation, negligence and breach of privacy) which the Member may incur directly or indirectly due to actions or omissions of the Code Manager or Panel Member(s) arising out of or in connection to the Member Complaint, including but not limited to findings and Sanctions imposed by the Code Manager or a member of the Panel.
- 7 The Code Manager and Panel Member(s) shall use their best endeavours to meet the time-limits set out in the Code, but may extend the time-limits if they have a reasonable excuse. Failure to meet any time-limits does not invalidate acts or omissions undertaken pursuant to or incidental to the determination.
- 8 The Code Manager shall maintain a record of all correspondence and documents relating to Member Complaint and the determination of complaints (including on appeal) for a period of 2 years.
- 9 The Code Manager and/or Panel Member(s) may refer a Member Complaint to a government agency where appropriate as determined under the Code.
- 10 Any person providing information to the Code Manager and/or Panel Member(s) pursuant to the Sanctions process agrees and understands that the information may be communicated, recorded and audited.
- 11 Members shall ensure that their contact details for Service of a Notice of Breach and the receipt of reasons, determinations and other correspondence are given to the Code Manager and are up to date at all times.

## Annexure G - Form D - Notice of Breach

ISSUED IN ACCORDANCE WITH CLAUSE 28.6 OF THE CODE OF PRACTICE

<b>Name of Member</b>	
<b>Section(s) of Code found to be breached</b>	
<b>Particulars of <del>Breach</del><u>breach</u></b>	
<b>Evidence in <del>Support</del><u>support</u> of the breach(es)</b>	
<b>Sanction and any particulars and terms</b>	
<p>Copies of the <del>EAL</del><u>Energy Assured</u> Constitution, Code of Practice, Procedures Guidelines, and other relevant documents (including policies) are available from the Code Manager on request. You should review these documents carefully and contact the Code Manager if you have any queries.</p>	
<b>Date of issue</b>	



**Annexure H -- Form E -- Notice of Appeal (Sales Agent)**

<b>Name of Appellant*</b>	
<b>Contact <del>Details</del><u>details</u> of Appellant*</b>	
<b>Name of the Complainant*</b>	
<b>Energy Assured ID Number</b>	
<b>Ground(s) of <del>Appeal</del><u>appeal</u>*</b>	
<b>Particulars of <del>Ground</del><u>ground</u>(s) of <del>Appeal</del><u>appeal</u></b>	
<b>Evidence in <del>Support</del><u>support</u> of <del>Appeal</del><u>appeal</u> (Attach any documents you wish to be considered).</b>	
<b>Determination to which the <del>Appellant</del><u>appellant</u> will <del>Consent</del><u>consent</u></b>	
<p>You must enclose a cash or cheque in the sum of \$_____ made payable to "Energy Assured Limited" as security for the costs of the appeal. This sum will be repaid if your appeal is successful.</p>	
<b>Date of <del>Receipt</del><u>receipt</u> of Notice of Appeal</b>	
<b>Panel Member that will be hearing the <del>Appeal</del><u>appeal</u>:</b>	
<b>Date Referred to Panel Member:</b>	

## IMPORTANT NOTES

- 1 Fields marked with an asterisk (\*) are mandatory. Failure to complete mandatory fields will result in rejection of the Notice of Appeal.
- 2 Failure to provide sufficient information or evidence about the complaint may result in dismissal of the appeal.
- 3 In making an appeal, you warrant that:
  - (1) the information and facts provided in and to be inferred from the appeal and during the course of the appeal determination are accurate and true to the best of your knowledge and are not misleading in any material way; and
  - (2) information provided to the Panel Member may be communicated, published, recorded and audited or used in any other way provided for by the Code, and an authority to use the information has been obtained from the relevant person.
- 4 Decisions by the member of the Panel are presumed to be reasonable and objective.
- 5 Sales Agents and Members acknowledge that they have:
  - (1) no right of action in any court or jurisdiction; and
  - (2) no right to damages or any form of compensation or indemnity against [EAL Energy Assured](#) or any officer or subcontractor of [EAL Energy Assured](#) as a consequence of any costs of any nature which the Sales Agent or Member may incur (including, but not limited to, legal costs) in answering the appeal; or
  - (3) any losses or damages of any nature (including claims based on defamation, negligence and breach of privacy) which the Sales Agent or Member may incur directly or indirectly due to actions or omissions of the Code Manager or Panel Member(s) arising out of or in connection to the appeal, including but not limited to findings and final determination imposed by the member of the Panel.
- 6 The Panel Member shall use their best endeavours to meet the time-limits set out in the Code, but may extend the time-limits if they have a reasonable excuse. Failure to meet any time-limits does not invalidate acts or omissions undertaken pursuant to or incidental to the appeal.
- 7 Time is of the essence for delivery of any appeal. However, the Panel Member(s) may, at their absolute discretion, determine the appeal if he, she or they believe there were reasonable grounds for the Appellant failing to comply with the relevant time-limit.
- 8 The Code Manager shall maintain a record of all correspondence and documents relating to appeal and the determination of the appeal for a period of 2 years.
- 9 Any person providing information to the Code Manager and/or Panel Member(s) pursuant to the appeal agrees and understands that the information may be communicated, recorded and audited.

**Annexure I -- Form F -- Notice of Appeal (Member)**

<b>Name of Appellant*</b>	
<b>Contact <del>Details</del><u>details</u> of Appellant for correspondence*</b>	
<b>Name of other party to Complaint*</b>	
<b>Ground(s) of <del>Appeal</del><u>appeal</u>*</b>	
<b>Particulars of <del>Ground</del><u>ground</u>(s) of <del>Appeal</del><u>appeal</u>*</b>	
<b>Evidence in <del>Support</del><u>support</u> of <del>Appeal</del><u>appeal</u></b>	
<b>Sanction to which the Appellant will <del>Consent</del><u>consent</u></b>	
<b>Time requested to provide further information not contained in this Notice of Appeal and Reasons</b>	

You must enclose cash or a cheque in the sum of \$\_\_\_\_\_ made payable to "Energy Assured Limited" as security for the costs of the appeal. This sum **will** be repaid if your appeal is successful.

\_\_\_\_\_  
\*Signature

\_\_\_\_\_  
\*Print Name

<b>Date of <del>Receipt</del><u>receipt</u> of Notice of Appeal</b>	
<b>Panel Member(s) that will be hearing the <del>Appeal</del><u>appeal</u>:</b>	
<b>Date <del>Referred</del><u>referred</u> to Panel Member:</b>	

## IMPORTANT NOTES

- 1 Fields marked with an asterisk (\*) are mandatory. Failure to complete mandatory fields will result in rejection of the Notice of Appeal.
- 2 Failure to provide sufficient information or evidence about the complaint may result in dismissal of the appeal.
- 3 In making an appeal, Appellants warrant that:
  - (1) the information and facts provided in and to be inferred from the Complaint and the Appeal and during the course of the Complaints Process are accurate and true to the best of their knowledge and are not misleading in any material way; and
  - (2) information provided to the Code Manager or Complaints Panel may be communicated, published, recorded and audited or used in any other way provided for by the Complaints Process, and an authority to use the information has been obtained from the relevant person.
- 4 Decisions by the Code Manager and members of the Panel are presumed to be reasonable and objective.
- 5 Members acknowledge that they have:
  - (1) no right of action in any court or jurisdiction; and
  - (2) no right to damages or any form of compensation or indemnity against EAL Energy Assured or any officer or subcontractor of EAL Energy Assured as a consequence of any costs of any nature which the Member may incur (including, but not limited to, legal costs) in answering the Complaint; or
  - (3) any losses or damages of any nature (including claims based on defamation, negligence and breach of privacy) which the Member may incur directly or indirectly due to actions or omissions of the Code Manager or Panel Member(s) arising out of or in connection to the appeal, including but not limited to findings and Sanctions imposed by the Code Manager or a member of the Panel.
- 6 The Code Manager and Panel Member(s) shall use their best endeavours to meet the time-limits set out in the Code but may extend the time-limits if they have a reasonable excuse. Failure to meet any time-limits does not invalidate acts or omissions undertaken pursuant to or incidental to the appeal.
- 7 Time is of the essence for delivery of any appeal. However, the Code Manager and/or Panel Member(s) may, at their absolute discretion, determine the appeal if he, she or they believe there were reasonable grounds for the Appellant failing to comply with the relevant time-limit.
- 8 The Code Manager shall maintain a record of all correspondence and documents relating to appeal and the determination of appeal for a period of 2 years.
- 9 Any person providing information to the Code Manager and/or Panel Member(s) pursuant to the appeal agrees and understands that the information may be communicated, recorded and audited.

Document comparison by Workshare Compare on Monday, 4 November 2013  
4:12:00 PM

Input:	
Document 1 ID	interwovenSite://Documents/APAC/20510088/1
Description	#20510088v1<APAC> - Code as authorised
Document 2 ID	interwovenSite://Documents/APAC/20750401/1
Description	#20750401v1<APAC> - Final Schedule 2A - Code of Practice (clean)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<u>Moved from</u>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	682
Deletions	628
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	1318

# Energy Assured Limited Procedures Guideline

## Introduction

### 1 Aims

1.1 This document is called the Energy Assured Limited Procedures Guideline (**Procedures Guideline**).

1.2 The Code of Practice (**Code**) and this Procedures Guideline, provide Members with a uniform and standardised industry approach for:

(1) training and recruiting Sales Agents;

(2) tracking and registering Sales Agents;

(3) assessing Sales Agents through an accreditation process;

(4) ensuring Member compliance;

(5) dealing with Sub-agent Principals;

(6) ~~1.1 The Code and these Guidelines, provide Members with a uniform and standardised industry approach for the training and recruitment of Sales Agents, the tracking and registering of Sales Agents, the assessment of Sales Agents through an accreditation process; and applying~~ a framework in which Members can apply to the Code Manager to deregister ~~and~~ a Sales Agent from the **EAL Energy Assured** Register for material breaches of the **EAL Energy Assured** Standards; and

(7) the appeal process for Sales Agents and Members.

### 2 Interpretation

2.1 This ~~document is called the Energy Assured Limited Procedures Guideline ("Guideline").~~

2.2 ~~This~~ **Procedures** Guideline sets out the procedures, principles and processes that underpin the Code for the operation of the **EAL Energy Assured** Scheme for:

(1) registering and ~~maintenance of~~ maintaining Sales Agents on the **EAL Energy Assured** Register; ~~and~~

(2) recruiting, training and assessing Sales Agents;

(3) the application of fees; and

(4) dealing with Sub-agent Principals.

2.2 ~~2.3~~ If any part of this **Procedures** Guideline is inconsistent with the Code, the Code will prevail to the extent of the inconsistency.

2.3 ~~2.4~~ Capitalised words appearing in this **Procedures** Guideline have the meaning given to them in the Dictionary ~~at~~ section, are defined in the ~~end~~ Code or defined in **bold** in the body, of this **Procedures** Guideline.

### 3 Operational Personnel

- 3.1 Each Member must ensure that they have an appropriate governance framework and operational personnel to comply with the Code and this [Procedures](#) Guideline including appointing personnel to fulfil the roles set out in Annexure C.

## **EAL**[Energy Assured](#) Register

### 4 Registration of ~~New~~ Sales Agents, [Assessors and Sub-agent Principals](#) =

#### 4.1 Members must:

- (1) obtain the following information about each Sales Agent, [Assessor and Sub-agent Principal \(as applicable\)](#)([Registree](#)) (“Details”) in writing:
  - (a) ~~First Name~~[first name](#);
  - (b) ~~Middle Name~~[middle name](#);
  - (c) ~~Surname~~[surname](#);
  - (d) ~~Date~~[date](#) of birth;
  - (e) ~~Passport Number~~[passport number](#) or Australian ~~Drivers License Number or Proof~~[driver's licence number or proof](#) of ID number;
  - (f) Australian State or Territory [of residence](#);
  - (g) ~~Sales Agent~~ photograph; and
  - (h) any additional information required by the Code Manager from time to time.
- (2) ensure that the ~~Sales Agent~~[Registree](#) understands that the Details will be used on the [EAL Energy Assured](#) Register, how those Details will be used, and who will have access to those Details;
- (3) obtain the written agreement of the ~~Sales Agent~~[Registree](#) to use their Details on the [EAL Energy Assured](#) Register; and
- (4) retain copies of the Details ~~of~~, and the written agreements signed, by each ~~Sales Agent~~[Registree](#).

#### 4.2 Before the Sales Agent undertakes Sales Activities, the Member must create or update a record for each Sales Agent engaged by it by populating the [EAL Energy Assured](#) Register with the Details about each Sales Agent [along](#) with the following information (**Sales Agent Profile**):

- (1) Sales Agent ID ~~Number~~[number](#) given by the Member;
- (2) Energy Retailer;
- (3) Energy Marketer (if applicable);
- (4) ~~Start Date~~[start date](#);
- (5) Accreditation Status;
- (6) ~~Award Date~~[award date](#);
- (7) ~~Extension Award Date~~[extension award date \(if applicable\)](#);
- (8) ~~Expiry Date~~[expiry date](#);

(9) extension expiry date;

(10) Confirmation of criminal history check and 100 point identity check;

(11) ~~(9) Extension Expiry Date; and~~ if the Sales Agent is an Experienced Sales Agent, that fact; and

(12) ~~(10)~~ any additional information required by the Code Manager from time to time.

4.3 Upon the creation of each Sales Agent Profile, the Sales Agent will be allocated a unique Sales Agent Identity Number (SIDN).

4.4 The SIDN will be the primary means by which the Member will store records on the EAL Energy Assured Register. The SIDN can be different to a Sales Agent's ID number issued by the Member.

4.5 Once ~~an~~ SIDN is issued, the Member can affix the EAL Energy Assured Logo to the Member's Identification Badge, highlighting to the consumer that the Sales Agent is being accredited under the EAL Energy Assured Scheme.

4.6 In addition to Sales Agents, Members must register all Experienced Sales Agents, Assessors and Sub-agent Principals that they engage, on the Energy Assured Register.

## **5 Register Maintenance**

5.1 Members must ensure that the data contained in the EAL Energy Assured Register is accurate and up-to-date within the timeframes prescribed in this Procedures Guideline.

5.2 All Members must routinely check the EAL Energy Assured Register for all Sales Agent recruits during both the recruitment process and when creating or updating a Sales Agent Profile.

5.3 Members must keep a record of Sales Agent's details that will reconcile with information contained in the EAL Energy Assured Register.

5.4 Each Member must carry out a monthly reconciliation between the Sales ~~Agent's~~ Agents detailed on the EAL Energy Assured Register for that Member and the Member's own internal database of Sales Agents (**Reconciliation**). The Reconciliation should be prepared in accordance with the guidance notes issued by the Code Manager and should be submitted to the Code Manager at the same time as an Energy Retailer would be required to submit a ~~Monthly~~ Report under the Code.

## **6 Access to EAL Energy Assured Register**

6.1 A Member will only be permitted to access the Sales Agent Profiles of Sales Agents directly or indirectly engaged by it. A Member will not have access to the Sales Agent Profiles of Sales Agents engaged by other Members unless:

(1) the Member is an Energy Retailer and those Sales Agents are engaged indirectly by the Energy Retailer through an Energy Marketer; or

(2) the Sales Agent has been given an Accreditation Status of Leaver or Deregistered.

6.2 The Code Manager may inform any Member of the deregistration of any Sales Agent.

6.3 Any Member may view the following details of any Sales Agent registered on the EAL Energy Assured Register, in accordance with clause 6.1:

(1) ~~First Name;~~ first name;

(2) ~~Middle Name;~~ middle name;

(3) ~~Surname;~~ surname;



- (4) Sales Agent photograph;
- (5) SIDN; and
- (6) history of Accreditation Status.
- 6.4 In order to view the information about a Sales Agent listed in clause 6.2, a Member must have the Sales Agent's date of birth and one of the following:
- (1) SIDN; or
- (2) ~~Passport~~passport number; or
- (3) ~~Driver's Licence Number~~driver's licence number (Class C or Class R); or
- (4) ~~Proof~~proof of ID number.
- 6.5 Each Member may nominate persons who are authorised to access the EAL Energy Assured Register on its behalf (**Authorised Users**). The role of an Authorised User is set out in Annexure C. Members must provide up to date details of Authorised Users and their level of permitted access to the Code Manager on a ~~monthly~~quarterly basis.
- 6.6 The Code Manager may access any Sales Agent Profile recorded on the EAL Energy Assured Register.
- 6.7 EAL Energy Assured and Members must ensure that they have procedures in place to protect the confidentiality of the information contained on the EAL Energy Assured Register and protect the privacy of Sales Agents.

## 7 Accreditation Procedures

- 7.1 In this clause 7, a reference to a Member is a reference to the Member that has engaged the Sales Agent.
- 7.2 The Sales ~~Agents~~Agent's Accreditation Status and corresponding privileges may be one of the following:

Accreditation Status	Description	Duration of Status	Privileges
Provisional	Applies to new Sales Agents pending completion of training and passing Competency Assessment.	Between four and six weeks.	<ul style="list-style-type: none"> <li>Can undertake Sales Activities under supervision by an Experienced Sales Agent after Off-job Training and Off-job Assessment have been successfully completed.</li> <li>Can display <u>EAL Energy Assured</u> Logo.</li> </ul>
Approved	<ul style="list-style-type: none"> <li>Sales Agent has passed a Formal <del>and</del><u>Competency Assessment by an Assessor.</u></li> <li><del>Sales Agent has passed an</del> Annual Competency Assessment by an <del>Approved</del> Assessor.</li> </ul>	1 year.	<ul style="list-style-type: none"> <li>Can undertake Sales Activities.</li> <li>Can display <u>EAL Energy Assured</u> Logo.</li> </ul>
Development	Sales Agent has not passed a <u>Formal</u> Competency	Up to 15 Business Days.	<ul style="list-style-type: none"> <li>Can undertake Sales Activities under</li> </ul>

Accreditation Status	Description	Duration of Status	Privileges
	Assessment or has committed a Level 2 Breach under the Code of Practice and is undergoing further training.		supervision by an Experienced Sales Agent. • Can display <a href="#">EAL Energy Assured</a> Logo.
Suspended	Sales Agent suspended from undertaking Sales Activities pending outcome of investigation and determination of a <a href="#">Deregistration Application</a> as a result of an alleged Level 3 Breach under the Code of Practice.	Up to 15 Business Days or until the Deregistration Application is finally determined. <a href="#">The Suspension can be extended for a further 15 days where additional consideration is necessary.</a>	Cannot undertake Sales Activities or display <a href="#">EAL Energy Assured</a> Logo.
Deregistered	Agent has been deregistered in accordance with the Code.	5 Years.	Cannot undertake Sales Activities or display <a href="#">EAL Energy Assured</a> Logo.
Inactive	Sales Agent on authorised leave.	Up to 3 Months.	Cannot undertake Sales Activities or display <a href="#">EAL Energy Assured</a> Logo.
Active	Sales Agent returned from leave but not yet re-taken and passed <a href="#">Formal Competency Assessment</a> .	Generally up to 10 Business Days.	• Can undertake Sales Activities under supervision by an Experienced Sales Agent. • Can display <a href="#">EAL Energy Assured</a> Logo.
Leaver	Sales Agent is no longer engaged by Member or is "Inactive" for more than 3 months.	Unspecified.	Cannot undertake Sales Activities or display <a href="#">EAL Energy Assured</a> Logo.

### 7.3 Provisional Accreditation Status

A Member may enter a Provisional Accreditation Status for a Sales Agent in the [EAL Energy Assured](#) Register:

- (1) if a Sales Agent has never been registered on the [EAL Energy Assured](#) Register or was deregistered from the [EAL Energy Assured](#) Register more than five years ago, after the process specified in clauses 4.1 and 4.2 has been followed; **and/or**
- (2) if a Sales Agent is already registered on the [EAL Energy Assured](#) Register but had a Leaver Accreditation Status, the Member must log into the [EAL Energy Assured](#) Register, search for the Sales Agent and update all information contained in the [EAL Energy Assured](#) Register with the Sales Agent's Details in accordance with clauses 4.1 and 4.2. If there are any discrepancies between the information existing on the [EAL Energy Assured](#) Register about a Sales Agent and the Details provided, an explanatory note must be placed on record in the Sales Agent's file.

The first day that the Sales Agent engages in Sales Activities in the field will be listed as the start date in the [EAL Energy Assured](#) Register for that Sales Agent (**Start Date**).

#### 7.4 Approved Accreditation Status

A Sales ~~Agents~~Agent's Provisional Accreditation Status will automatically change to Approved four weeks after the Start Date (**Award Date**). The Member must ensure that the Sales Agent has passed the Formal ~~Competence~~Competency Assessment prior to the Award Date.

If a Sales Agent does not pass the Formal ~~Competence~~Competency Assessment by the Award Date, but is considered to have the potential to do so, the Provisional Accreditation Status period can be extended for a further two weeks and a new Award Date must be noted in the ~~EAL~~Energy Assured Register (**Extension Award Date**). The Compliance Manager (whose role is set out in Annexure C) or their authorised delegate, must agree to the Provisional Accreditation Status being extended to the Extension Award Date. The Extension Award Date must be noted on the ~~EAL~~Energy Assured Register, and be kept on record for ~~audit~~Compliance Check purposes.

The Approved Accreditation Status will expire twelve months from the Award Date, or the Extension Award Date (**Expiry Date**).

One month before the Expiry Date, a notice in writing will be sent to the Member through the ~~Energy Assured Registry~~ stating the date on which the Sales Agent's Accreditation Status will expire (~~Renewal Notice~~).

Before the Expiry Date, the Sales Agent must pass a Formal ~~Competence~~Competency Assessment.

Should an Agent not pass the Formal ~~Competence~~Competency Assessment before the Expiry Date, the Member must seek an extension of up to a period not exceeding 4 weeks past the Expiry Date (**Extension Expiry Date**) and reflect a change in status in the ~~EAL~~Energy Assured Register as depicted in clauses 7.5 or 7.6. The Compliance Manager or their authorised delegate must agree to the extension of the Expiry Date to the Extension Expiry Date. The Extension Expiry Date must be noted on the ~~EAL~~Energy Assured Register, and be kept on record for ~~audit~~Compliance Check purposes.

On the Expiry Date, or the Extension Expiry Date, the ~~EAL~~Energy Assured Register will automatically renew the Sales Agent's Approved Accreditation Status for a further 12 months (resetting the Expiry Date for a further 12 months); unless the Member advises that the Sales Agent has not passed the Formal ~~Competence~~Competency Assessment.

#### 7.5 Development Accreditation Status

A Member must enter a Development Accreditation Status for a Sales Agent in the ~~EAL~~Energy Assured Register:

- (1) if a Sales Agent with an Approved Accreditation Status is found not to have been meeting the ~~EAL~~Energy Assured Standards in accordance with the Code of Practice and a period of re-training or development is assessed as being necessary; and
- (2) within five Business Days of determining that the Sales Agent does not meet the ~~EAL~~Energy Assured Standards.

The relevant training and development must be undertaken and a Formal ~~Competence~~Competency Assessment must be performed within ten Business Days of the Development Accreditation Status being entered for the Sales Agent. After that time, the Sales Agent must be given an Approved or Suspended Accreditation Status as the case may be.

#### 7.6 Suspended Accreditation Status

Where a Member is of the reasonable belief that a Sales Agent has breached the ~~EAL~~Energy Assured Standards in a way that may warrant Deregistration, the Member must enter a Suspended Accreditation Status for the Sales Agent in the ~~EAL~~Energy Assured Register and that status will remain on the ~~EAL~~Energy Assured Register for the Sales Agent until the investigation of the Sales Agent's conduct is completed (**Suspension Period**).

The Member must inform the Sales Agent in writing that the Sales Agent's [EAL Energy Assured](#) Accreditation Status will be suspended pending the outcome of a thorough investigation (**Suspension Notice**). The Suspension Notice must contain:

- (1) details of the Sales Agent's right to appeal under clause 29 of the Code should suspension lead to a Deregistration Application; and
- (2) a direction that within ~~4~~[one](#) Business Day, the Sales Agent must cease to undertake Sales Activities on behalf of the Member, cease to use the [EAL Energy Assured](#) Logo when conducting Sales Activities and return any identification that displays the [EAL Energy Assured](#) Logo.

Wherever possible, and subject to a Member's documented disciplinary procedures, the Suspension Period should not be greater than 15 Business Days or until the Deregistration Application is finally determined. An extension of 15 days can be entered in the Register by the Member if additional time is required to conclude the investigation into their conduct.

If, at the end of the Suspension Period, there is found to be no issue regarding a Sales Agent's competence, the Sales Agent's Accreditation Status will be returned to the Accreditation Status which was registered immediately prior to their suspension and the details of the suspension will be removed from the [EAL Energy Assured](#) Register.

If, at the end of the Suspension Period, the Sales Agent is found to have failed to meet the [EAL Energy Assured](#) Standards in a way that warrants Deregistration, the Member must make an application to the Code Manager to Deregister the Sales Agent from the [EAL Energy Assured](#) Register in accordance with the Code.

#### 7.7 Deregistration Accreditation Status

A Member who finds that a Sales Agent no longer meets the [EAL Energy Assured](#) Standards in a manner that cannot be remedied by re-training and development must, in accordance with the Member's internal procedures, make a Deregistration Application.

Deregistration from the [EAL Energy Assured](#) Register will usually occur after a Suspension Period. However, if a serious breach of the [EAL Energy Assured](#) Standards has occurred there is no requirement that there first be a Suspension Period.

Where a Member lodges a Deregistration Application, the Member must send the Sales Agent a notice in writing (by recorded delivery) that the Member has made a Deregistration Application (**Deregistration Notice**). The Deregistration Notice must contain:

- (1) details of the Sales Agent's right to appeal under clause 29 of the Code; and
- (2) a direction that within 1 Business Day, the Sales Agent must cease to undertake Sales Activities on behalf of the Member cease to use the [EAL Energy Assured](#) Logo when conducting Sales Activities and return any identification that displays the [EAL Energy Assured](#) Logo.

The Code Manager will review the Deregistration Application including evidence provided and administer any resulting Deregistration in accordance with the Code. If the evidence does not include a statement by the Sales Agent, the Code Manager will write to the Sales Agent inviting the Sales Agent to submit a statement prior to determining the Deregistration Application. The Sales Agent will have five Business Days to provide that statement.

#### 7.8 Inactive/Active Accreditation Status

A Member must enter an Inactive Accreditation Status for a Sales Agent in the [EAL Energy Assured](#) Register where the Sales Agent has an Approved Accreditation Status but has temporarily ceased Sales Activities on behalf of a Member (but has not left the Member). The Member must update the [EAL Energy Assured](#) Register to reflect the change in the Sales Agent's Accreditation Status within 5 Business Days of the Sales Agent being deemed "Inactive".

If a Sales Agent's Accreditation is Inactive for more than 3 months, the Sales Agent's Accreditation Status will be automatically changed to "Leaver".

During any period that the Sales Agent has an Inactive Accreditation Status, the Member must not allow the Sales Agent's SIDN to be used, and must maintain any of the Sales ~~Agents~~ Agent's collateral displaying the EAL Energy Assured Logo at its premises.

A Member may enter an Active Accreditation Status for a Sales Agent where the Sales Agent has an Inactive Accreditation Status and wishes to re-commence Sales Activities on behalf of the Member. The Member must update the EAL Energy Assured Register to reflect the change in the Sales ~~Agents~~ Agent's Accreditation Status within 15 Business Days of the Sales Agent returning from leave. During the Active Accreditation Status period the Sales Agent must undertake Sales Activities under supervision of an Experienced Sales Agent until deemed competent to resume Sales Activities under an "Approved Status" after completing an On-job Assessment.

~~An Active or Inactive Accreditation Status will expire 12 months from the Award Date, or the Extension Award Date applying to the Sales Agents' Approved Accreditation Status. If a Sales Agent has an Approved Accreditation Status for part of a 12 month period, an Active or Inactive Accreditation Status will form the remainder of the 12 month Accreditation Period.~~

~~On the Expiry Date, the EAL Register will automatically renew the Sales Agents' Active or Inactive Accreditation Status for a further 12 months (resetting the Expiry Date for a further 12 months); unless the Member advises that some other status is appropriate.~~

#### 7.9 Leaver Accreditation Status

A Member must enter a Leaver Accreditation Status for a Sales Agent in the EAL Energy Assured Register where the Sales Agent leaves the employment or engagement of the Member or has had an "Inactive" Accreditation Status for more than 3 months. The Member must update the EAL Energy Assured Register to reflect the change in the Sales ~~Agents~~ Agent's Accreditation Status within 5 Business Days of the Sales Agent no longer being engaged by the Member.

### 8 Registration Fees

- 8.1 A Member must pay a fee (**Registration Fee**) to EAL Energy Assured when the Sales Agent is first registered by the Member on the EAL Energy Assured Register (**Provisional Fee**) and when the Sales Agent attains an Approved Accreditation Status (**Approved Fee**).
- 8.2 A Provisional Fee is payable in relation to a Sales Agent ~~6~~ six days from the Start Date. Should the Sales Agent no longer be employed by the Member on that date, the Member should remove the Sales Agent from the EAL Energy Assured Register, and no Provisional Fee will be incurred.
- 8.3 An Approved Fee is payable in relation to a Sales Agent on the Award Date, or the Extension Award Date (as applicable).
- 8.4 An Approved Fee is also payable every 12 months on the Expiry Date or Extension Expiry Date (as applicable), to maintain a Sales ~~Agents' Approved, Active or Inactive~~ Agent's Accreditation Status.
- 8.5 Registration Fees will be collated and forwarded to the Member in electronic format for payment (**Batch Bill**) on the same date each month (**Batch Date**). A Member must pay a Batch Bill within 14 days of the Batch Date. The Batch Bill will be based on all Provisional and Approved Fees due for the month preceding the Batch Date.
- 8.6 Registration Fees will be determined by the Board of EAL ~~and will be set for a period of six months~~ Energy Assured.



## Recruitment, Training and Competence

### 9 Recruitment

#### 9.1 Members may only engage Sales Agents that have:

- (1) sufficient knowledge and skills;
- (2) sufficient previous relevant experience and training with supporting references; and
- (3) an appropriate demeanour and present themselves in a respectable manner,

to enable them to suitably perform the role of a Sales Agent, noting the important role that Sales Agents play as the 'public face' of the industry.

#### 9.2 Members may only engage Sales Agents that have:

- (1) passed a 100-point identification check in accordance with Annexure A;
- (2) provided relevant Details and consented to the use of those Details for the [EAL Energy Assured](#) Register;
- (3) provided proof of address; and
- (4) passed a criminal history check.

#### 9.3 A record must be kept in the Sales Agent's HR file [by the Member](#) that provides consent for the criminal history check, the date the check was requested, the report, and any subsequent action taken as a result of the report, subject to the Member's Recruitment Policy.

#### 9.4 When a Sales Agent has previously been listed on the [EAL Energy Assured](#) Register and has provided ~~an~~ SIDN, the Member must obtain the consent of the Sales Agent to review the ~~Agents~~ [Sales Agent's](#) Accreditation Status history in the [EAL Energy Assured](#) Register and may contact the [EAL Energy Assured](#) Member ~~that~~ [which](#) previously engaged the Sales ~~Agents~~ [Agent](#) for reference purposes. Where a Sales Agent has not previously been registered on the [EAL Energy Assured](#) Register, the Member must obtain appropriate references in accordance with the ~~Members~~ [Member's](#) internal recruitment policies.

#### 9.5 Members must keep a record of all background checks and eligibility checks on the Sales ~~Agents~~ [Agent's](#) file.

#### 9.6 If a Sales Agent ceases to represent the Member, a copy of his or her record must be retained by the Member for a minimum of 12 months.

### 10 Training

#### 10.1 All new Sales Agents must undergo:

- (1) Off-job Training; and
- (2) On-job Training under the supervision of an Experienced Sales Agent whilst on ~~an~~ [Provisional](#) Accreditation Status ~~of Provisional~~.

#### 10.2 For the purposes of clause 10.1(2), an Experienced Sales Agent ~~(Experienced Sales Agent)~~ must be registered within the [EAL Energy Assured](#) Register as an Experienced Sales Agent and at the time of conducting the supervision ~~has~~ [have](#):

- (1) an Approved Accreditation Status under the [EAL Energy Assured](#) Register;
- (2) not had a breach of the [EAL Energy Assured](#) Standards registered against their performance in last 12 months in the Competence Register Record; and

- (3) been provided with training to effectively supervise new Sales Agents under the ~~EAL~~Energy Assured Standards.
- 10.3 Members must ensure that the outcomes of the Off-job Training and On-job Training are clearly documented to ensure consistency in the training methodologies used.
- 10.4 Off-job Training can be run in conjunction with On-job Training as long as the new Sales Agents do not meet with consumers unsupervised until they have passed an Off-job Assessment.
- 10.5 Whilst it is the responsibility of the Member to ensure that Sales Agents are trained appropriately to standards that meet the requirements of Applicable Laws, there are a number of minimum requirements that must be covered in Off-job Training as set out in the ~~Code of Practice~~.
- 10.6 Each new Sales Agent must complete a written assessment that demonstrates that the Sales Agent has successfully attended and understood the ~~Members~~Member's Off-job Training (**Off-job Assessment**). The Member must keep the Off-job Assessment in the Sales ~~Agents'~~Agent's file, signed and dated by the Sales Agent and the trainer that conducted the Off-job Training.
- 10.7 During On-job Training, the new Sales Agent must demonstrate the ability to perform to the ~~EAL~~Energy Assured Standards as determined by the Member, including demonstrating the ability to promote and sell the product. The Sales Agent must be assessed on their performance (**On-job Assessment**) based on the sample provided in Annexure B and in accordance with Annexure D. The Member must keep the On-job Assessment in the Sales ~~Agents'~~Agent's file, signed and dated by the Sales Agent and the ~~Sales Agent that~~individual who conducted the On-job Training.
- 10.8 Prior to obtaining an Approved Accreditation Status ~~of Approved~~, the new Sales Agent must demonstrate that they are competent in, and can consistently meet, all of the ~~EAL~~Energy Assured Standards by completing a ~~formal competency assessment~~Formal Competency Assessment. The Formal Competency Assessment:
- (1) must be based on the sample provided in Annexure B;
  - (2) must be in accordance with Annexure D;
  - (3) must be administered by an Assessor who must observe the Sales Agent directly and consider other key performance evidence, as determined by the Member; and
  - (4) cannot be completed until the Sales Agent has successfully completed the On-job Assessment and Off-job Assessment.
- 10.9 For the purposes of clause 10.8 (3), an Assessor must be registered ~~as an Approved Assessor~~ within the ~~EAL~~Energy Assured Register at the time of conducting the supervision, be independent of the Sales Agent and the Sales Agent's supervisor/team leader and have:
- (1) worked for ~~the member~~a Member for not less than three months;
  - (2) an Approved Accreditation Status under the ~~EAL~~Energy Assured Register;
  - (3) not had a breach of the ~~EAL~~Energy Assured Standards registered against their performance under the Competence Records Register in last 12 months; and
  - (4) been provided with training to effectively assess new Sales Agents under the ~~EAL~~Energy Assured Standards,
- or have been engaged externally by the Member to perform the role of Assessor and have received appropriate training to perform assessments on Sales Agents under the ~~EAL~~Energy Assured Standards.
- 10.10 Members must ensure that they have policies and procedures in place that detail ~~what is involved~~the requirements in conducting a Formal Competency Assessment on a Sales Agent.

10.11 Stages of Accreditation in the first 4 weeks:

Training/Assessment Outcome	Accreditation Status	Sales Agent Privileges
Completion of Off-job Training	Provisional	If passed "Off-job Assessment" can commence On-job Training.
Commencement of On-job Training	Provisional	Must be accompanied by an Experienced Sales Agent when visiting consumers.  When deemed competent and passed "On-job Assessment" can visit consumers unsupervised, however with ongoing support.
Formal Competency Assessment (within 4 weeks)	Approved	When deemed competent and reviewed by qualified Assessor under a "Formal Competency Assessment", may visit consumers alone with normal supervision.
Assessments demonstrate Sales Agent has not been operating to the <a href="#">EAL Energy Assured</a> Standards	<ul style="list-style-type: none"> <li>Withdrawn for serious or persistent Sales Complaints or misconduct; or</li> <li>Changed back to Development if was at Approved.</li> </ul>	See clause 7.

11 Annual ~~Competence~~[Competency](#) Assessment

- 11.1 In addition to the training and assessment that must be undertaken by a new Sales Agent in accordance with clause 10, Members must ensure that they conduct a Formal Competency Assessment on Sales Agents with an Approved Status each year before the Expiry Date (**Annual ~~Competence~~[Competency](#) Assessment Process**).
- 11.2 The Annual ~~Competence~~[Competency](#) Assessment Process will be reviewed by the Compliance Manager (whose role is set out in [Annexure C](#)) to ensure that it is carried out against the [EAL Energy Assured](#) Standards.
- 11.3 The Code ~~Auditor~~[Manager](#) will review the Annual ~~Competence~~[Competency](#) Assessment Process to ensure consistency across all Members.
- 11.4 The Code Manager retains the right to visit Members in order to verify that appropriate measures are being taken in respect of the Annual ~~Competence~~[Competency](#) Assessment Process.
- 11.5 Roles & responsibilities of individuals involved in the Annual ~~Competence~~[Competency](#) Assessment Process are set out in Annexure C.
- 11.6 Members must ensure that they keep a record of Sales Agent assessments, including results of the Formal Competency Assessment, and the date by which the next Formal Competency Assessment must be administered.
- 11.7 Members must:
- (1) appoint and train their Assessors/Experienced Sales Agent and keep records of those appointments and training;



- (2) ensure that for all assessments conducted on Sales Agents that a record of which Assessor/Experienced Sales Agent conducted the assessment is maintained;
- (3) demonstrate to the Compliance Manager that the Member has adequate internal control processes to monitor the quality and consistency of the work of Assessors/ Experienced Sales Agents including:
  - (a) sampling the assessments of Assessors/Experienced Sales Agents to ensure consistency and quality in assessments conducted;
  - (b) ensuring up to date records of internal verification and sampling activity are maintained and these are available for ~~audit~~[Energy Assured Compliance Check](#) purposes;
  - (c) ensuring that Assessors/Experienced Sales Agents remain competent to assess and are provided with information and guidance to ensure that they understand their responsibilities under the ~~EAL~~[Energy Assured](#) Standards and are provided guidance on the Sales Complaint Handling Process;
  - (d) ensuring that all assessment forms are signed by both the Sales Agent and the Assessor/Experienced Sales ~~Agents~~[Agent](#) performing the assessment; and
  - (e) where a failure in an assessment is identified, have in place procedures to review previous assessments done by the Assessor/Experienced Sales ~~Agents~~[Agent](#) where the failure has been identified, and, if required, conduct reassessments of any suspect historical assessments.
- (4) where an Assessor/Experienced Sales ~~Agents~~[Agent](#) has breached their responsibilities in ensuring Sales Agents are competently assessed under the ~~EAL~~[Energy Assured](#) Standards, have procedures in place to ensure that corrective action is taken, which may include Deregistration.

## 12 Sub-agent Principals

Energy Marketers may engage Sub-agent Principals to conduct Sales Activities on their behalf. Energy Marketers must ensure that Sub-agent Principals and their managers must meet the Energy Assured Standards and Members may be sanctioned for failing to adequately manage Sub-agency principals or their Sales Agents.

## Dictionary

### 13 ~~12~~ Definitions

#### 13.1 ~~12.1~~ In this [Procedures](#) Guideline:

- (1) **Accreditation Status** means one of the levels of accreditation that may be attained by a Sales Agent as set out in clause 7;
- (2) **Applicable Law** means all rules, regulations, codes, statutes, guidelines, licences, legislation, orders in council, tariffs, proclamations, directions or standards that relate to the marketing, sale and supply of energy;
- (3) **Business Day** means a day that is not a Saturday, Sunday or public holiday in jurisdiction in which the Sales Agent conducts Sales Activities;
- ~~(4) **Code Auditor** means an independent body (which will be a reputable firm of auditors) engaged by EAL to review Member compliance with the Code;~~
- ~~(4)~~ **Code Manager** means the individual appointed by ~~EAL~~[Energy Assured](#) to carry out the day to day administration and management of the Code whose role is set out in the Code;

- (5) ~~(6)~~ **Code** means ~~this~~the Code of Practice and any documents incorporated in this Procedures Guideline;
- (6) ~~(7)~~ **Code Panel** means the panel of ~~four~~ people who are independent of the EAL Energy Assured, the Code Manager and the Members whose role is set out in the Code;
- (7) ~~(8)~~ **Competence Assessment Process** means controls, processes and systems that enable the assessment of the competency of Sales Agents to comply with the EAL Energy Assured Standards;
- (8) ~~(9)~~ **Competence Records Register** means the record that is used to measure Levels of breaches that are recorded against a Sales Agent under clause 19 of the Code ~~of Practice~~;
- ~~(10) ~~(10)~~ **Compliance Audit** means a formalised audit conducted by the Code Auditor on individual Member compliance with the Code;~~
- (9) ~~(11)~~ **Deregistration Application** means an application made to the Code Manager requesting that a Sales Agent be deregistered from the EAL Energy Assured Register;
- (10) ~~(12)~~ **EAL Energy Assured** means Energy Assured Limited;
- (11) ~~(13)~~ **EAL Energy Assured Logo** means the EAL Energy Assured logo that demonstrates that the Sales Agent complies with this Code;
- (12) ~~(14)~~ **EAL Energy Assured Register** means the database register of Sales Agents accredited under the EAL Energy Assured Scheme which is administered and monitored by EAL Energy Assured;
- (13) ~~(15)~~ **EAL Energy Assured Scheme** means the training and accreditation scheme for Sales Agents;
- (14) ~~(16)~~ **EAL Energy Assured Standards** means the standards for the conduct of Sales Activities as set out in the Code;
- (15) ~~(17)~~ **Energy Marketer** means a company that engages in Sales Activities on behalf of Energy Retailers;
- (16) ~~(18)~~ **Energy Retailer** means an entity that holds a valid licence or similar authorisation, issued by the relevant government regulator, to retail electricity and/or gas ~~in the State or Territory to which the retail licence relates;~~
- (17) ~~(19)~~ **Formal Competency Assessment** means an assessment of the competency of the Sales Agent to comply with the EAL Energy Assured Standards that must be undertaken by a Sales Agent before they can achieve or maintain an Accreditation Status that enables them to conduct Sales Activities unsupervised;
- (18) ~~(20)~~ **Member** means an Energy Retailer or Energy Marketer that has signed the EAL Energy Assured Constitution and in doing so, agreed to adhere to this Code;
- (19) ~~(21)~~ **Off-job Training** means a classroom-based Sales Agent induction program which should be conducted in a formal environment by an individual that is qualified to provide such training;
- (20) ~~(22)~~ **On-job Training** means field training undertaken by a Sales Agent under the supervision of an experienced Sales Agent;
- (21) ~~(23)~~ **Sales Activities** means the face-to-face marketing of energy supply to consumers;
- (22) ~~(24)~~ **Sales Agent** means any individual authorised by a Member who solely represents a Member (and/or a Member's associated companies) for the purposes of engaging in Sales Activities where the principal function of such individual is to market energy

supply alone or energy supply and other domestic utility services to domestic consumers;

- (23) ~~(25)~~ **Sales Complaint** means a complaint made by a consumer, [Consumer Advocacy Group](#), energy ~~Ombudsman~~[ombudsman](#), relevant regulator, government agency or other interested party about a Sales ~~Agents'~~[Agent's](#) Sales Activities;
- (24) ~~(26)~~ **Sales Complaint Handling Process** means the process for handling Sales Complaints established by an Energy Retailer under the Code;
- (25) ~~(27)~~ **Sanction** means disciplinary action or any other sanction imposed on a Member under the Code; and
- (26) ~~(28)~~ **SIDN** means Sales Agent Identification Number allocated to a Sales Agent when they are first registered on the ~~EAL~~[Energy Assured](#) Register.



## Annexure A

### 100-point identification check

IDENTIFICATION	SCORE	SIGHTED
<b>Primary</b>		
Passport – a current passport or expired passport (can be expired maximum of two years, but not cancelled)	70	
Citizenship certificate – or certified copy	70	
Birth Extract/Birth certificate – or certified copy	70	
<b>Secondary</b>		
Licence issued under an Australian State law (e.g. Drivers licence)	40	
Identification Card issued under an Australian State Law (e.g. Proof of Age)	40	
Employment ID		
• ID card issued by employer (name & address)	35	
• ID card issued by employer (name only)	25	
Letter from employer (within last two years)		
• Confirming name and address	35	
Student ID Card (Tertiary)		
• Must contain a photo and/or signature	40	
Rates Notice	25	
Credit/debit cards/passbooks (only one per institution)	25	
Medicare Card (signature not required)	25	
Membership card (club, union or trade, professional bodies)	25	
Foreign Driver License (name & signature)	25	
Records of a public utility – phone, water, gas or electricity bill (must have name & address)	25	
Rent receipt from a licensed real estate agent	25	
Recent arrival in Australia– Valid Passport	100	
<b>TOTAL</b>		

TICK

## Annexure B

### On-job Assessment Form (Sample)

Sales Agent	Name	<del>Energy Assured ID Number</del> <u>SIDN</u>	
	Date of Assessment	Date of previous Assessment	

Assessor	Name	<del>Energy Assured ID Number</del> <u>SIDN</u>	
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Personal Preparation	Appearance <u>meets Member's standards</u>	YES	NO
	ID card visible, <u>current</u> and in good condition	YES	NO
	Sales presenter up to date and complete	YES	NO
	Walk sheet <u>process</u> understood <del>and current</del>	YES	NO
Out in the field	Uses walk sheet (or equivalent) accurately	YES	NO
	Respects " <del>no sales callers</del> <u>do not knock</u> " <del>signs</del> <u>notices</u>	YES	NO
	Respects property, <u>customer privacy</u> and OH&S obligations	YES	NO
Approach to Consumer	States name	YES	NO
	Presents ID	YES	NO
	<del>States</del> <u>Correctly states</u> purpose of visit	YES	NO
	<u>Advises customer that the Sales Agent must leave if asked to do so</u>	<u>YES</u>	<u>NO</u>
	States name of Company (Member) they represent	YES	NO
	<del>Established</del> <u>Establishes consumer</u> is decision maker <u>or authorised to enter into a contract</u>	YES	NO
Presentation	Uses sales presenter during sales pitch	YES	NO
	Carries out accurate price comparisons	YES	NO

	Correct feature of the product is given (inclusive of eligibility for concessions, rebates or grants)	YES	NO
	Does not use cooling off <u>period</u> as a sales pitch	YES	NO
	Does not provide false, derogatory or misleading statements	YES	NO
	Recognises when to end visit	YES	NO
Sales Agent behaviours	Courteous & Professional	YES	NO
	Does not exaggerate or use high pressure techniques	YES	NO
	Takes into account ethnicity/diversity	YES	NO
	Recognises and respects a vulnerable situation	YES	NO
	<del>Ensure understands that they are switching retailers</del> <u>Obtains explicit informed consent to switch energy retailer</u>	YES	NO
Contract	<del>Leaves</del> <u>Ensures the customer has</u> a copy of the contract & right to cancel notice	YES	NO
	<del>Leaves</del> <u>Ensures the customer has</u> welcome pack inclusive of complaints procedure	YES	NO
	<del>Leaves</del> <u>Ensures the customer has</u> pricing form	YES	NO
	<del>Leaves</del> <u>Ensures the customer has</u> written acknowledgement & price fact sheet where required	YES	NO
	<del>Leaves</del> <u>Ensures the customer has</u> contact details	YES	NO
	<u>Leaves Energy Assured marketing material</u>	<u>YES</u>	<u>NO</u>
	<u>Ensures the sales verification call is conducted appropriately without any coaching by the Sales Agent</u>	<u>YES</u>	<u>NO</u>
Contract administration	All <del>boxes</del> <u>fields</u> filled in correctly	YES	NO
	Signed and dated by <u>completed correctly</u>	YES	NO
	Signed by agent with <del>ID-number</del> <u>SIDN</u> easily displayed	YES	NO
Other	Understands <del>complaints &amp; levels</del> <u>Sales Complaints &amp; Breach Levels that could be raised against them</u>	YES	NO
	Displays behaviours that addresses <del>the-complaints</del> <u>a Sales Complaint (if applicable)</u>	YES	NO
	Sales Agent Cancellation Rate within average benchmark	YES	NO
	Other Key Performance <del>Indicator's</del> <u>Indicators</u>	YES	NO

## Annexure C

### Roles and Responsibilities

Role	Appointed by	Responsibilities within the Assessment & Monitoring Process
<del>Energy Assured Code Auditor</del> <u>Code Manager</u>	<del>EAL Energy Assured Board</del>	<ul style="list-style-type: none"> <li><del>Independent annual Compliance Audit done on Energy Retailers, to ascertain whether the Energy Retailer, and the Energy Marketer they use, meets the EAL Standards</del> <u>Undertakes all responsibilities outlined in CI 10.2 of the Code.</u></li> </ul>
<del>Energy Assured Code Operations Manager</del>	<del>Energy Assured CEO</del>	<ul style="list-style-type: none"> <li><u>Assists the Code Manager in the day to day administration and management of the Code.</u></li> </ul>
<del>EAL Energy Assured Compliance Manager</del>	Energy Retailer	<ul style="list-style-type: none"> <li>Oversees the operation of the <del>EAL</del> <u>Energy Assured</u> Scheme and fully understands the <del>Members'</del> <u>Member's</u> obligations under the Code and <u>Procedures</u> Guideline.</li> <li>Ensures that the Energy Marketer that they may use adheres to the Code and this <u>Procedures</u> Guideline.</li> <li>Ensures that all systems and procedures are open to the scrutiny of the <del>Code Auditor and</del> Code Manager as requested and within the prescribed time frames.</li> <li>Ensures compliance under the Code and <u>Procedures</u> Guidelines by ensuring that:               <ol style="list-style-type: none"> <li>Sales Agents are recruited as determined in accordance with the Code and <u>Procedures</u> Guideline;</li> <li>appropriate measures are adopted to ensure that Sales Agents are competent under the <del>EAL</del> <u>Energy Assured</u> Standards;</li> <li>the registration process is being followed;</li> <li>Sales Agents are properly assessed under the Formal and Annual <del>Competence Assessment</del> <u>Competency Assessments</u>;</li> <li>issues are monitored as determined in the Sales Complaints Handling Process and the Competence Register; <u>and</u></li> <li>that there is appropriate documentation, systems and processes to meet these requirements.</li> </ol> </li> <li>Responsible for applications to Code Manager for deregistration of Sales Agent.</li> <li>Provides Compliance Reports to Code Manager.</li> <li>Liaises with Code Manager.</li> </ul>
Member Operations Manager	Member	<ul style="list-style-type: none"> <li>Providing assistance and support to Assessors.</li> <li>Providing information that supports application for change in Accreditation Status of the Sales Agent.</li> <li>Ensuring Assessors are accurately interpreting the <del>EAL</del> <u>Energy Assured</u> Standards and have the systems in place that identify discrepancy with interpretations.</li> <li>Monitoring that all assessments are fair, valid, qualitative and reliable.</li> </ul>



Role	Appointed by	Responsibilities within the Assessment & Monitoring Process
		<ul style="list-style-type: none"> <li>• Liaising with the Compliance Manager.</li> <li>• Monitoring the <a href="#">EAL Energy Assured</a> Register, the Sales Complaint Handling Process and the Competence Register.</li> <li>• Ensuring that all relevant information is provided to the Assessors to facilitate an appropriate assessment of a Sales Agent.</li> <li>• Ensuring that it has appropriate systems, procedures &amp; documentations in place that meet requirements under the Code and <a href="#">Procedures</a> Guideline.</li> <li>• Maintaining accurate and verifiable Sales Agent assessment and achievement central records as required by the Code and <a href="#">Procedures</a> Guideline for all Off-Job, On-Job and Formal Competency Assessments.</li> <li>• Approving changes in Accreditation Status' of Sales Agents and responsibility for ensuring Authorised Users update the <a href="#">EAL Energy Assured</a> Register as required.</li> </ul>
Assessor	Member	<ul style="list-style-type: none"> <li>• Administers Formal Competency Assessment on Sales Agents.</li> <li>• Depending on outcome of assessment, makes recommendations of training needs of Sales Agent and/or a change in Accreditation Status in the <a href="#">EAL Energy Assured</a> Register as required by the Member's Operation Manager.</li> <li>• <a href="#">Assessing</a> <a href="#">Assesses</a> evidence of Sales Agent competence against the <a href="#">EAL Energy Assured</a> Standards.</li> <li>• Is independent to the Sales Agent and their team leader.</li> <li>• <a href="#">Conduct</a> <a href="#">Conducts</a> random assessments in accordance with the Code.</li> </ul>
Experienced Sales Agent	Member	<ul style="list-style-type: none"> <li>• Delivery of On-job Assessment on new Sales Agents, prior to new Sales Agent being allowed to visit <a href="#">consumers</a> unaccompanied.</li> <li>• Providing accurate and verifiable On-job Assessment and achievement records to the Operations Manager.</li> </ul>
Authorised User	Member	<ul style="list-style-type: none"> <li>• Dependent on level of access can: <ul style="list-style-type: none"> <li>○ Search Agents;</li> <li>○ Amend Agents;</li> <li>○ Create Agents; <a href="#">and/or</a></li> <li>○ Run Reports;</li> </ul> </li> <li>• Sole individual allowed to search and change the Accreditation Status of a Sales Agent in the <a href="#">EAL Energy Assured</a> Register being: <ul style="list-style-type: none"> <li>○ <del>Provisional</del></li> <li>○ <del>Approved</del></li> <li>○ <del>Inactive</del></li> <li>○ <del>Active</del></li> <li>○ <del>Leaver</del></li> </ul> </li> </ul>

Role	Appointed by	Responsibilities within the Assessment & Monitoring Process
		<div><div>⊖Suspended</div><div>⊖Development</div></div>

Annexure D

## Annexure

### On-job and Formal Competency Assessment

<b>On-job Assessment</b>	
Visit by Sales Agent to consumer accompanied by Experienced Sales Agent. The Sales Agent must clearly understand the standards he/she is to be assessed against and the way in which he/she is going to be informally assessed.	<p>Sample of what may be used:</p> <ul style="list-style-type: none"> <li>Experienced Sales Agent to ensure new Sales Agent understands the requirements under the On-job <del>Competence</del><u>Competency</u> Assessment.</li> <li>Experienced Sales Agent ensures that the new Sales Agent understands how the <del>EAL</del><u>Energy Assured</u> Accreditation Status works and under what circumstances it may be changed.</li> <li>Experienced Sales Agent to ensure that the new Sales Agent is aware of the <del>EAL</del><u>Energy Assured</u> Standards and how they are going to be assessed in the future. <del>and/or</del></li> <li>Experienced Sales Agent to conduct an On-job Assessment on the new Sales Agent.</li> </ul>
<b>Formal Competency Assessment</b>	
<b>Stage 1</b> Prepare for the Assessment (Sales Agent and Assessor). The Sales Agent must clearly understand the standards he/she is to be assessed against and the way in which he/she is going to be <del>Formally</del> <u>formally</u> assessed.	<p>Sample Questions that may be asked:</p> <ul style="list-style-type: none"> <li>Are you aware of the purpose of this Assessment?</li> <li>Can you explain the various levels of Accreditation Status and under what circumstances can the Accreditation Status be Deregistration?</li> <li>Have you read the Code and do you understand it?</li> <li>Can you describe some of the <del>EAL</del><u>Energy Assured</u> Standards and how you can be in breach of them?</li> <li>When you were last accompanied <del>by</del> on a visit to a consumer, by whom and what <del>was the</del> feedback <del>did</del> you <del>receive</del><u>received</u>?</li> <li>Have you received any other feedback about your performance, e.g. from Sales complaints, <del>audits</del><u>quality assurance checks</u> etc...</li> <li>What have you learnt from previous feedback and what have you changed?</li> <li>Have you been informed about the disciplinary procedures that apply to you if you breach the <del>EAL</del><u>Energy Assured</u> Standards and do you understand your rights of appeal, if <del>there is</del> a change in Accreditation Status to <del>Development or</del> <u>deregistration is being investigated</u> <u>Deregistered</u>?</li> </ul>
<b>Stage 2</b> Collecting the Evidence (Sales Agent & Assessor)	<p>Responsibilities:</p> <ul style="list-style-type: none"> <li>Assessor to ensure he/she understands the Competency Assessment.</li> <li>Assessor to gather any supplementary documentary evidence before the assessment (this will vary dependent on tenure of the Sales Agent).</li> <li>Assessor to gather information as a result of the <u>Formal</u> Competency Assessment.</li> <li>Assessor to gather results of Off-job Assessment and On-job Assessment of Sales Agent.</li> <li>Sales Agent to introduce the Assessor to consumers, but assure that the Assessor is simply there as an observer.</li> <li>Assessor to record activities on the <del>Members</del><u>Member's</u> Formal Competency Assessment form.</li> </ul>

<b>Stage 3</b>	<p><u>Responsibilities:</u></p> <ul style="list-style-type: none"> <li>• Assessor to take into account achievements noted during observation.</li> <li>• Assessor to identify evidence that does not meet the requirements of the <del>EAL</del><a href="#">Energy Assured</a> Standards and to discuss the identified evidence with the Sales Agent and give <del>feed back</del><a href="#">feedback</a>.</li> <li>• Assessor to agree an action plan if necessary, to undertake further training and record the agreed actions in writing</li> <li>• Assessor to provide a written recommendation as to the Sales <del>Agents</del><a href="#">Agent's</a> competence. Members are to ensure that they provide Sales Agents with a guide as to how this is to be determined. The <del>Code Auditor and</del> Code Manager will review these to ensure consistency across all Members.</li> <li>• Assessor to inform the Sales Agent of the recommendation, inclusive a change in status if warranted, that all assessments are subject to verification by the Operations Manager, and that if he/she disagrees with the assessment decision, he/she has a right to appeal under the Members Dispute Resolution Process.</li> <li>• Sales Agent to enter his/her comments in the appropriate section inclusive of how they felt with the process or the decision.</li> </ul>
<b>Stage 4</b> Agent Verification Process ( <del>EAL</del> <a href="#">Energy Assured</a> Responsible Person)	<p><u>Responsibilities:</u></p> <ul style="list-style-type: none"> <li>• The <del>Members</del><a href="#">Member's</a> Operations Manager to ensure assessments have been appropriately and consistently carried out by the <del>Assessors</del><a href="#">Assessor</a>.</li> <li>• Subject to the disciplinary procedures that apply to <del>you</del><a href="#">the Sales Agent</a> under the Code, the <del>Members</del><a href="#">Member's</a> Operations Manager to authorise any change in Accreditation Status in the <del>EAL</del><a href="#">Energy Assured</a> Register as an outcome of the assessment.</li> </ul>

Document comparison by Workshare Compare on Monday, 4 November 2013  
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Input:	
Document 1 ID	interwovenSite://Documents/APAC/20574035/1
Description	#20574035v1<APAC> - Procedures guideline as authorised
Document 2 ID	interwovenSite://Documents/APAC/20750439/1
Description	#20750439v1<APAC> - Final Schedule 2B - Procedures Guideline (clean)
Rendering set	Standard

Legend:	
<u>Insertion</u>	
<del>Deletion</del>	
<del>Moved from</del>	
<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
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Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	319
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Moved to	4
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Format changed	0
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