



28 November 2013

Australian Competition & Consumer Commission
GPO Box 3131
Canberra ACT 2601

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Thank you for the opportunity to comment on Energy Assured Limited's *Application for revocation of authorisations A91258 & A91259 and substitution of new authorisations A91390 & A91391 – interested party consultation*.

The Energy & Water Ombudsman NSW (EWON) investigates and resolves complaints from customers of electricity and gas providers in NSW, and some water providers.

Change to face to face marketing

EWON supports the expansion of Energy Assured Limited's Code of Practice (the Code) to cover face to face marketing. We understand that this will include door to door sales, kiosk marketing and event marketing.

EWON notes that over the last two years retailers have diversified their marketing channels beyond traditional forms of marketing. EWON has received complaints from customers about their experiences of face to face sales at kiosks in public arenas such as shopping centres. Some customers have complained about misleading or pressure marketing, while advocates have also contacted EWON to express concern about marketing to people who are vulnerable.

Kiosk marketing is a relatively new sales channel in the energy industry. We consider that the provision of consistent training, monitoring and assessment to kiosk sales agents will improve sales practices in this type of marketing.

While EWON understands that face to face marketing is not limited to door to door, kiosk and event sales, we query whether this covers third party agents who sell energy contracts face to face as part of bundled products. From our experience we have seen a growth in complaints in this area and we are concerned that these agents have signed up customers to an energy retailer without their consent by using records of personal details kept for the other product.



Customer complaint examples

The customer said that the energy account for his premises was in his name. His partner later signed a mobile phone contract and at the same time she was offered an energy contract, which she declined. The customer later found out that his electricity account had been transferred away from his preferred retailer. He considers that his account was transferred without his or his partner's consent. He received a bill from the new retailer and contacted them to request a transfer back to his preferred retailer, but was not satisfied with their response.

The customer said she was contacted by a telemarketer representing both telecommunications and energy retailers. She said she did not want her account to be transferred to another retailer. She has now received notification from a new retailer that they have taken over the billing of her electricity and gas accounts. When she contacted this retailer to cancel her contract she was advised that this would incur a \$90.00 fee. She was also advised that the request came from a third party and they were unable to provide their contact details for her to dispute the transfer. EWON requested the voice recording and our investigation confirmed that the customer's electricity and gas accounts were transferred without explicit informed consent. The retailer confirmed the breach of the Marketing Code of Conduct and transferred the customer back to her preferred retailer without penalty. The retailer also sent a written apology to the customer and confirmed with EWON that they had improved their processes with the telemarketing company to ensure compliance.

Definition of systemic issue

EWON notes that a systemic issue, as defined in section 28.3(4) of the Code, is a breach that is not isolated and may have affected, or have the potential to affect, a large number of customers. We query whether this definition should exclude isolated incidents which appear to have been non-compliant with the Code (and potentially the marketing provisions in the *National Energy Consumer Framework* and *Australian Consumer Law*). For example, EWON continues to receive a small number of complaints about marketers ignoring Do Not Knock signs. While the small quantity of these complaints may indicate that they are isolated incidents, we are concerned that they may not be treated as a systemic issue within the current definition of the Code.

Another part of the definition that EWON would like to query relates to whether a company is able to demonstrate their compliance with the Code. Under the current definition a systemic breach occurs when there has been a breach of the Energy Assured Standards and the company is unable to demonstrate that the breach is not 'an inherent overall issue' with their compliance to the Code. We suggest clearer wording around what constitutes 'an inherent overall issue' as this appears to be open to interpretation and may therefore encourage varying standards across the EAL membership base.



Reporting on systemic issues to the Code Manager

Customers who contact a retailer to complain about their marketing activity may not be a customer of that retailer. EWON is concerned that these complaints may not be recorded because the customer does not have an account with that retailer. We therefore query how individual customer complaints as well as systemic issues are reported to the Code Manager if no record of the complaint has been kept.

Retailer feedback to the Code Manager is vital to the effectiveness of the Code. EWON considers that clear and established reporting procedures that are consistent across EAL's membership base will encourage retailers to self-report systemic issues to the Code Manager. On this basis we consider that retailers should be encouraged to actively track, monitor and record complaints from any customer at call centre level to pick up systemic issues that can be reported to the Code Manager, Energy Ombudsman schemes and regulators as appropriate.

Reporting on member compliance to the public and to the regulator

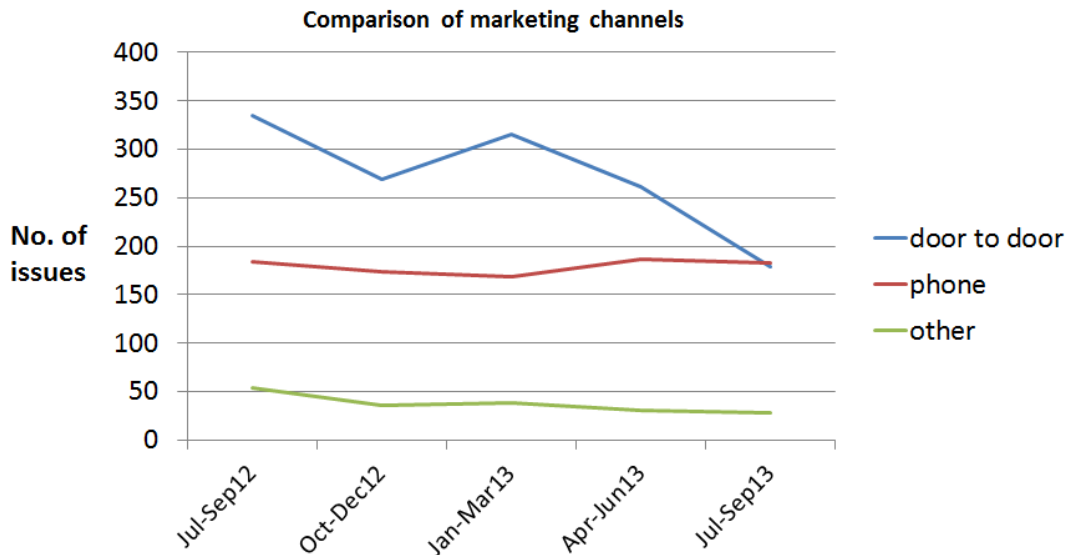
EWON strongly supports EAL reporting on member compliance to the public and to the relevant regulators. We consider that this will assist in developing customer awareness of the Scheme and improve customer sentiment towards energy marketing.

EWON also provides feedback on marketing complaints to energy providers and the appropriate regulators on a regular basis. We expect that full disclosure of member compliance to regulators by EAL will, along with our feedback, provide a fuller picture of marketing practices and issues.

Effectiveness of the Code in a changing marketing context

EWON notes that EAL's application for reauthorisation takes place at a time when the major energy retailers have withdrawn from door to door marketing. One major retailer ceased door to door sales at the end of March 2013 and two others have since followed.

Since April 2013 complaints about door to door marketing to EWON have fallen, as illustrated in the graph below:



The number of complaints concerning door to door marketing decreased 29% from 278 in the April to June quarter of 2013, to 197 in the July to September quarter of 2013.

While we support the Code on the basis that there is clear public benefit in greater accountability being applied to energy marketing, we consider that the withdrawal from door to door sales has reduced recurring complaints to EWON, such as misleading and pressure marketing, marketing to non-account holders and vulnerable customers, and marketers ignoring Do Not Knock signs.

As discussed above EWON is pleased to support the inclusion of other forms of face to face marketing in the Code. We consider that the proposed change of focus to face to face marketing is sensible and responsive to industry changes around marketing.

EWON notes that some smaller retailers are still engaged in door to door sales and we have continued to receive complaints in this area. We have a Memorandum of Understanding with EAL and we will continue to report quarterly to EAL to provide information about customer complaints about door to door (later face to face) marketing issues in NSW.



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If you would like to discuss this matter further, please contact me or Emma Keene, General Manager Policy and Community Engagement, on 02 8218 5250.

Yours sincerely

A handwritten signature in black ink that reads "Clare Petre".

Clare Petre
Energy & Water Ombudsman NSW