

24 January, 2014

Dr Richard Chadwick
General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Dear Dr Chadwick,

Energy Assured Limited application for revocation of authorisations A91258 and A91259 and substitution of new authorisations A91390 and A91391

Thank you for your letter of 19 December 2013 requesting further information in relation to the above application in respect of the Energy Assured Code of Practice (**Application**). It was good to meet with you and your staff on 21 January 2014 to discuss this matter in further detail.

We provide responses to the Commission's questions below, using the numbering from the Commission's letter of 19 December 2013.

Capitalised terms used in this letter have the meaning given to them in the Code.

Energy Assured requests that Annexure E be excluded from the public register. The remaining Annexures and this response can be made available on the public register.

1. A copy of the current Energy Assured Limited Constitution is attached to this letter as **Annexure A**.
2. Energy Assured is funded through a combination of annual Member subscriptions and monthly variable fees paid by Members based on the number of Sales Agents achieving Provisional or Approved status on the Register in the month for each Member. As Energy Assured is a not for profit company, the aim of the fees collected is to meet the costs of running the scheme. The secretariat and the Board monitor Energy Assured's financial position throughout the year.

Details of which Members fall within each class of membership and the fees payable is commercial in confidence and is unable to be provided at this time. However, the membership categories and fees charged are commensurate with the level of participation in the Scheme sought by the Member as well as the size of the organisation seeking to be registered, their activities and accordingly its proportionate share of administration and resourcing costs.

3. Energy Assured determines its required funding when it sets its budget prior to the commencement of each financial year based upon its anticipated costs. Membership fees and variable fees are set at that time. If there is any change in circumstances, the amount of Member subscriptions and variable fees can be changed during the year to ensure the company remains able to continue its operations.
4. The three employees of Energy Assured comprise:
 - Chief Executive Officer / Code Manager (one full time position),
 - Code Operations Manager (full time); and
 - Administration Officer (part time).
5. As discussed in the response to question 3, if a shortfall in revenue was to occur, such as through additional compliance costs or a Member exiting the scheme, Member subscriptions and the variable fees can be adjusted to ensure there is sufficient revenue to cover costs. Energy Assured's secretariat and the Board monitor the Company's financial position throughout the year.
6. An independent Code Panel oversees the strategic operations of the Code. The Code Panel is a group of experienced representatives from a variety of backgrounds and is independent of Members.

The Panel approves Sanctions, hears any appeals on a rotating basis, and reviews and recommends further developments to the Code.

The Code Panel members are:

- Barry Adams – former Energy & Water Ombudsman Queensland;
 - Gavin Duffy – Manager Policy and Research St Vincent de Paul Society;
 - Nick Hakof (Chair) – former Energy Ombudsman South Australia;
 - Terry Miller – former Group General Manager Country Energy; and
 - Vera Visevic – Partner, Mills Oakley and Member Fundraising Institute of Australian Ethics Committee.
7. Copies of the 2012 and 2013 consolidated audit reports (prepared by KPMG) and the Code Review (conducted by Deloitte) are attached as **Annexures B, C and D** respectively.
 8. The following addresses the location of items in the 2012-13 annual report as required under Section 9.6 of the Code of Practice. Energy Assured acknowledges that in the future the annual report could afford to be more fulsome in its coverage of certain matters.
 - Item 9.6(1) – this is addressed on pages 2 and 4 of the Annual Report.
 - Item 9.6(2) – this is set out on page 1 and pages 8 to 11 of the Annual Report.
 - Item 9.6(3) – an overview of Compliance Checks undertaken is set out on page 13 of the Annual Report.
 - Item 9.6(4) – the statistics are set out on page 12 of the Annual Report under the heading 'Deregistration Information 2013'.

- Item 9.6(5) – the statistics are set out on page 12 of the Annual Report under the heading ‘Ratio of Complaints to Customer Contacts’.
- Item 9.6(6) – this is addressed on page 11 of the Annual Report where examples of sales complaints are listed showing the Level of Breach that is assigned to each type of complaint. In addition, the table on page 12 (ratio of complaints and customer contacts by Energy Retailer and by category) shows the ratios of each type of breach by Energy Retailer.
- Item 9.6(7) – the statistics are provided on page 12 under the heading ‘Sanctions 2013’. There was one appeal of a Level 2 sanction against a Marketer during the period and their appeal was successful. It was an oversight that this was not included in the Annual Report. Energy Assured will ensure that any statistics about member Appeals of Sanctions are included in future Annual Reports.
- Item 9.6(8) – this is addressed through the reporting of Member Sanctions issued on page 12. Whilst this section reports the numbers, it does not provide examples or deal with how they were addressed and this is an area for improvement in future reports. For the two sanctions recorded that year:
 - the Level 1 Sanction was issued to an Energy Retailer in May 2013 for failing to provide the Monthly Report to the Code Manager; and
 - the Level 2 Sanction was applied in June 2013 to the same Energy Retailer for failing to comply with the Level 1 Sanction.
- Item 9.6(9) – there were no industry wide Systemic Issues reported during the relevant period, therefore no reference was made to them in the Annual Report.
- Item 9.6(10) – there were no Level 5 or Level 6 Sanctions issued during the relevant period, therefore no reference was made to them in the Annual Report.
- Item 9.6(11) – this is addressed in the Deregistration Information section on page 12 of the Annual Report, which sets out the number of Appeals received and which of these were successful and which were overturned. However, we note that this section does not report on the number of Sanctions heard and appeals considered by each Panel Member. This is an area for improvement in future reports. As at 24 January 2014 and since the scheme commenced:

Code Panel Member	Sales Agent Appeals heard	Sanction requests reviewed	Sanction Appeals heard
Barry Adams	10	1	
Gavin Dufty	10		
Nick Hakof	8	2	1
Terry Miller	10		
Vera Visevic	10	1	

- Item 9.6(12) is addressed on page 14 of the Annual Report.

9. As mentioned in the Submission, Energy Assured plans to replace the annual KPMG audit of Energy Retailers with a program of compliance checks conducted by Energy Assured to monitor compliance by Members with the Code requirements.

The reason for this change is not related to the decrease in complaint levels, but rather due to the high costs of conducting the audit and to its redundancy in the context of other audits undertaken by Members.

- The annual KPMG audit costs around 20% of Energy Assured's annual budget. This is an excessive cost. While funding of the Scheme is adequate and is managed efficiently, it is important to keep the costs of running the Scheme (and thus Member contributions) to a manageable and realistic level to encourage continued participation in the Scheme.
- Energy Retailers undertake many internal and audit activities each year to examine their compliance against energy regulations, the Australian Consumer Law, etc. A sample of the types of audit activities members already undertake was provided in the Submission. As a result, there is little value in this additional audit being undertaken, especially when weighed against the burden of doing so.

While Energy Assured appreciates the benefits of independent auditing, it is of the firm view that the compliance checks to be conducted by Energy Assured at least annually will enable it to monitor and measure Member compliance without the high cost to Members of the annual KPMG audit. There is a robust regime for compliance checking and reporting contained in section 24 of the Code. Further, the KPMG audit was only applicable to Energy Retailer Members. The compliance check regime will apply to all Members.

It is in Energy Assured's interests to ensure that the compliance checks that would replace the audit be conducted rigorously in order to uphold the integrity of the Code. Accordingly, there is no risk of a conflict of interest arising between Energy Assured and Members to jeopardise the independence of the compliance checks.

Energy Assured does not plan to cease the bi-annual Independent Code Review (in accordance with section 13 of the Code). The most recent Independent Code Review was conducted by Deloitte in May 2013 and a copy of this report is provided at **Annexure D**. This review is conducted by an independent firm and Energy Assured believes its continuation can provide the Commission with comfort that there is a regular, independent review of the Code.

10. Energy Assured is unable to provide the information that underlies the ratios previously given as it would reveal the extent of door knocks conducted by each Energy Retailer, which is commercial in confidence. In any case, Energy Assured submits that the percentages provided are far better indications of the extent of Member compliance.

11. There have been a low number of Warning Notices and Sanctions issued as these relate to Member behaviour under the Code whereas the Deregistration numbers reflect the actions against individual Sales Agents. There will not necessarily be a correlation between individual Sales Agents breaching the Energy Assured Standards and a Member breaching the Code. For example, although a Member may achieve the required standards of recruitment, training and assessment of its Sales Agents, an individual Sales Agent may still breach the Energy Assured Standards by disregarding their training.

Based on the character of Sales Agent deregistrations performed to date, the number of deregistered Sales Agents therefore does not translate to a high level of non-compliance by Members, especially in the context of the large number of doors knocked. Nor does it reflect a significant industry-wide issue. For the most part, it is in response to maverick behaviour by some Sales Agents. The Code's purpose is to reduce the level of such conduct, and the evidence to date demonstrates that it is achieving this purpose (please refer to paragraph 30 of Energy Assured's Submission in support of its Application for Authorisation (**Submission**)).

At our meeting on 21 January 2014, the Commission raised a question about whether there may have been any clustering of Sales Agent deregistrations around particular companies. Energy Assured monitors this and has not found any particular trends in this regard. As would be expected, those Energy Retailers with larger sales teams tend to have higher numbers of deregistrations. However, there are no significant results that show any substantial variance between Energy Retailers. Had Energy Assured observed such a phenomenon it would have raised this with the relevant Member and undertaken any necessary investigation. If the investigation uncovered a problem with the Member's processes, the Sanctions process would have been triggered and applied.

As discussed with the Commission on 21 January 2014, where Energy Assured observes that numerous Sales Agents are being deregistered for the same or similar conduct across different Members, it will consider whether or not additional Sales Agent training or other steps may need to be taken to address the issue. Action will then be taken accordingly.

The Code Manager may respond to any emerging issues (whether related to deregistrations or otherwise) through the issuance of Guidelines to Members. These Guidelines are designed to assist Members with their compliance and to provide guidance on certain identified issues. They are effective in managing and solving issues before they become systemic. For example, the Code Manager issued a Guideline to Members about Do Not Knock Stickers on multi site dwellings to provide clarity for Members and Sales Agents. A copy of the Guidelines that have been issued under the Code is attached as **Annexure E**. (*Annexure E is not for display on the Public Register*).

12. Our understanding is that in most cases, the incidents (from which the legal actions recently instigated by the Commission against some Energy Retailers and Energy Marketers) occurred prior to the commencement of the Scheme in January 2012.

In relation to the events which occurred after that date, the Code is only able to deal with complaints that are made or referred to Members or the Code Manager (see section 17 of the Code). It may therefore also be that the Code was not enlivened for all of the incidents that gave rise to the litigation as the breaches may not have been brought to the relevant Members' attention at the time and instead may have been received by the Commission directly.

Energy Assured is confident in the robustness of the Scheme to discover incidents of non-compliance with the Code in circumstances where the Code Manager or a Member is aware of a complaint made against the Member. Not only are the numerous compliance check and investigatory mechanisms in place, but the Member must report comprehensively on a quarterly basis on complaint levels, the nature of complaints and other compliance matters under section 25 of the Code.

As noted above and in its original Submission, Energy Assured has not observed any systemic issues in the compliance of its Members to date. Had it done so, it would have acted without reservation in accordance with its mandate under the Code. Energy Assured has observed a strong commitment to compliance and swift remedial action being taken by Members where the Code Manager has raised an issue of non-compliance with the Code.

13. As outlined in item 8 above, no industry wide systemic issues were reported during the relevant periods.
14. The information provided in the Submission (item 18.1) related to matters during 2012-2013 financial year whereas the audit report for 2012 related to compliance issues for the period January to June 2012.
15. Under the Code, only Sanctions which are Level 3 or above require the Code Manager to advise the nature of the breach and identify the Member to the jurisdictional regulator and Ombudsman. The Code prevents the disclosure of this information for Level 1 or Level 2 Sanctions. As the Sanctions reported in paragraph 19.1 of the Submission were Level 1 and Level 2 sanctions only, Energy Assured is prevented from disclosing details of the Sanctions without the Members' agreement.

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 which has meant that Sanctions have not been required. Where a Member did not comply with a Warning Notice, a Sanction was imposed. The risk of Sanctions provides a key public benefit, as, without the Scheme, there would be no such accountability or informal enforcement such as this.

16. Compliance costs are considered in imposing Sanctions on Members to ensure that the Sanctions are fair, reasonable, proportionate to the issue and properly address the breach. Considering the first example provided in 19.2 of the Submission, Energy Assured asked for a sample of Sales Agents to be re-assessed rather than making the Member re-assess all Sales Agents. If the sample had indicated a wider issue, then all Sales Agents would have been re-assessed. This breach was thus able to be addressed while keeping compliance costs to a reasonable level.

In the second example, although only one Sales Agent was found to be using a non-compliant script, the Code Manager required that all of the Member's Sales Agents be re-trained to ensure that all Sales Agents were using compliant scripts. In this example, the risk that more than one Sales Agent was using a non-compliant script outweighed the higher compliance costs involved for this Sanction.

17. Energy Assured has confirmed with its Members that any non-account holder complaints are managed under the Energy Retailer's complaints management process and included in reporting to Energy Assured. Should a complainant wrongly identify a Sales Agent as representing one Energy Retailer when they instead represent another, the Energy Retailer that received the complaint will refer it to the Code Manager and the Code Manager will refer the complaint to the responsible Energy Retailer.
18. Energy Assured is informed by its Members that its Members follow up further issues that may be found when they check the other sales made by the Sales Agent and will broaden the number of checks whenever required to correct any issues for affected customers. Additionally, under clause 20.5 of the Code, where applicable, the relevant regulator must be notified of the breach.
- 19.– 22. As questions 19-22 all require more detailed information in respect of the way in which Sub-agent Principals interact with the energy retail market and the Code, we have answered them together in the paragraphs below.

Sometimes small groups of Sales Agents are engaged or otherwise contracted by a sole trader or small business to perform services on a sub-contracting basis to Energy Marketers (Energy Assured refers to these as sub-agencies, run by a Sub-agent Principal). This is not a common occurrence in the industry but has been an observed component of the business model of some of Energy Assured's Energy Marketer Members.

Sub-agencies are not typically Members of Energy Assured. It is not practical or necessary for Sub-agencies to become Members of the Scheme due to their small size and the strong level of supervision and direction provided by the Energy Marketers engaging them. This is the reason the Code does not set out Sanctions for Sub-agent Principals or impose obligations directly on them.

However, in order to address this possible gap and improve the status quo, the Code has been amended to hold Members to account for the actions of their Sub-agent Principals. This ensures that those Sub-agent Principals and their Sales Agents are following the same standards as Sales Agents directly engaged by an Energy Marketer or those directly engaged by an Energy Retailer.

The current practice is that Sales Agents involved with Sub-agent Principals must be registered on the Energy Assured Register and will be subject to disciplinary action in the ordinary course.

The primary reason that Sub-agent Principles are also required to be registered under the Code is to ensure that no deregistered Sales Agents are running sub-agency businesses. By requiring their registration on the database, Energy

Assured is able to ensure that the Sub-agent Principal has not previously been deregistered.

To address the example provided in question 20, if one of ten Sales Agents engaged by a Sub-agent Principal is deregistered, the Sub-Agent is not automatically deregistered and the registration of the other nine Sales Agents is not affected. However, the Member who engaged the Sub-agent Principal in question may be found to have breached section 8 of the Code, which requires Members to ensure that their Sub-agent Principals and Sales Agents engaged by the Sub-agent Principals comply with the Code and Applicable Laws.

Although it is assumed that Members already include compliance obligations in their commercial in confidence contracts with Sub-agent Principals, to ensure that this occurs, Energy Assured would be willing to add a requirement to Section 12 of the Procedures Guideline as follows:

“Members that engage Sub-agent Principals must ensure that their contractual arrangements with those Sub-agent Principals:

- a) require compliance with the Energy Assured Standards and directions and training given by the Member; and*
- b) allow the Member to terminate the contract should the Sub-agent Principal fail to meet the required Standards when acting on its behalf”.*

23. As the Commission is aware, Comparators are a unique type of Energy Marketer because they act on behalf of more than one Energy Retailer at the same time. The Minor Variation was sought by Energy Assured to address a perceived gap in the Scheme that would not otherwise permit Comparators to be Members. This was important to promote compliance across all face to face sales channels.

For the most part, the Code applies to Comparators in the same way as it applies to any other Energy Marketer. However, there are some small necessary differences, including in relation to the regime for complaint handling. This does not mean that complaints about the conduct of Sales Agents acting for a Comparator are not still robustly martialled, responded to and escalated within the Energy Assured Scheme. It is not the case that the Code relies solely on the complaint resolution system provided by energy Ombudsmen to resolve complaints about Comparators. Under the variation to the Authorisation which enabled Comparators to become Members of Energy Assured, the following dedicated complaints system was implemented for Comparators:

- a. Where, through an interaction with a Comparator, a consumer selects an Energy Retailer and a sale is made to that consumer, any complaint arising from the sale is managed in accordance with the existing Code processes. This means that the complaint is referred to the Energy Retailer first, and failing satisfactory resolution, can be referred to the appropriate energy ombudsman.
- b. Where a complaint is made but no sale has occurred (that is, an Energy Retailer was not selected), the Comparator must manage the complaint through their internal complaint management system. Failing a satisfactory

resolution, the customer is referred to the relevant State or Territory office of fair trading.

Similarly, if a complaint is reported to an energy Ombudsman and the Energy Retailer is known, then the Ombudsman office can escalate the matter with the responsible Energy Retailer. If the complaint relates to Comparator Sales Agent behaviour and the responsible Energy Retailer is not known (i.e. a sale did not occur), the Ombudsman can refer the matter to the relevant State-based office of fair trading or the Commission to investigate the Comparator.

Consumers are apprised of their alternatives for making complaints and resolving disputes including through the following:

- the Energy Assured brochure, which outlines the complaint escalation process for consumers in relation to all Members. A copy of the brochure which is provided to customers by Comparators is enclosed at **Annexure F**.
- the Energy Assured website, which already includes the contact details for Ombudsman offices. Energy Assured will also include contact details for offices of fair trading in relation to Comparators by the end of February.

24. Energy Assured's remit is restricted to the behaviour of Comparator Sales Agents when dealing with customers face to face. It does not have the power to monitor a Comparator's website platform in the same way that it does not monitor marketing through Energy Retailers' websites. The Code specifically covers the behaviour of Sales Agents in face to face contact with customers, not telesales or other forms of marketing by Members.

Meanwhile, the Code does require specific disclosures to be made by Sales Agents representing Comparators to ensure customers understand the role of the Comparator (see section 4.2 of the Code). For example, if a Comparator does not represent all Energy Retailers, the Sales Agent is required to disclose this fact and to advise which Energy Retailers it does represent. These requirements are in addition to the disclosures required by all Sales Agents under the Australian Consumer Law.

In all other respects, a Comparator's Sales Agents must comply with all of the Energy Assured Standards, including the requirement to comply with the Australian Consumer Law and not engage in misleading or deceptive conduct. Accordingly, if they misrepresent the benefits of energy products to a customer (whether verbally or through any iPad or other comparison tool), they will be disciplined under the Code.

As the Commission points out, there is, at present, no requirement in the Code for a Comparator to disclose details of commission arrangements. This is in line with the level of disclosure by Energy Retailers engaging Sales Agents directly or via Energy Marketers.

Meanwhile, Energy Assured is working with the Consumer Utilities Advocacy Centre (**CUAC**) and other stakeholders on CUAC's project to consider voluntary guidelines for comparison services. However, this project is outside the scope of the Code.

25. Energy Assured suggests that the definitions and categories it has developed in this section contain the necessary degree of certainty under the circumstances. The concepts are difficult to define precisely without limiting their application unduly. No improvement that would substantially improve the definitions is apparent, and it is submitted that any amendment would make no material impact on the administration of the Scheme. Energy Assured also notes that the present definitions have not had an adverse effect on the efficient administration of the Scheme over the previous two year authorisation period. Nonetheless, Energy Assured makes the following comments with respect to item 25:

- a. The natural and ordinary meaning of the word 'operational' in section 28.3 is 'pertaining to operations'. The dictionary definition of the word 'operation' is 'the action or process of working or operating'¹. A breach that is operational in nature is therefore a breach relating to the operations or functions of the Member. While the term connotes a broad scope of breaches, the Code definitions of 'minor operational breach' and 'serious operational breach' make it clear that these defined terms relate only to operational breaches that do not have a direct public-facing nature.
- b. The term 'large number of consumers' is intended to have its ordinary and natural meaning, taking into account the context of the energy retail market. A threshold for the number of consumers to constitute a 'large number' is not appropriate.
- c. A material breach may be isolated in that it does not represent an ongoing issue with the Member's processes. An example of a material breach that is both isolated and that would impact a large number of customers is an error in an Energy Retailer's computer system on one particular day which has a direct impact on customers. Another example is if the verification call centre was unable to retrieve voice verification calls recorded over a specific period due to a technical glitch.
- d. The examples in the table set out at section 28.2 of the Code that relate to 'serious operational breaches' are those set out in row 2 above the subheading 'material breach'. Energy Assured submits that this is sufficiently clear.
- e. The figure to be used for the purposes of calculating the percentage referred to in the first example of a systemic breach in row 3 of the table is to be arrived at by adding all Level 1, 2 and 3 Breaches committed by a Member in the relevant time period together.
- f. We do not believe the use of the word 'systemic' to refer to both industry wide issues and issues affecting a single Member is confusing. Where the Code refers to an industry wide systemic issue, the phrase 'industry wide' precedes 'systemic' in order to make this clear. Where the Systemic Issue or Systemic Breach relates to only one Member, the term is used by itself.

¹ From the Concise Oxford Dictionary.

Energy Assured thanks the Commission for considering its application and appreciates its interest in obtaining further information. As such, Energy Assured has endeavoured to answer each question in as much detail as possible, despite querying the relevance of some of the questions to the decision-making task required of the Commission under the applicable case law and its Authorisation Guidelines.

Energy Assured remains confident that the public benefits of the Scheme, as currently before the Commission, are significant and far outweigh any public detriment.

Thank you for giving Energy Assured the opportunity to comment. Please contact me if you would like any further information.

Yours sincerely,

Anne Whitehouse
Chief Executive Officer

Constitution

Energy Assured Limited

Table of Contents

1.	Name of the Company	1
2.	Type of Company	1
3.	Replaceable Rules	1
4.	Definitions and Interpretation	1
5.	Objects and Purposes	5
MEMBERSHIP		7
6.	Admission to Membership	7
7.	Application for Membership	7
8.	Condition of Membership	8
9.	Classes of Membership	8
10.	Representative	10
11.	Membership entitlements not transferable	11
12.	Annual Subscriptions	11
13.	Variation of Membership	12
14.	Cessation of Membership	14
15.	Code of Practice	15
16.	Disciplining of Members	18
17.	Resolution of Disputes Between Members	20
GENERAL MEETINGS		20
18.	Annual General Meetings	20
19.	Business at Annual General Meetings	21
20.	Convening of General Meetings	21
21.	Notice of General Meetings	22
22.	Cancellation or Postponement of General Meeting	23
PROCEEDINGS AT GENERAL MEETINGS		23
23.	Quorum	23
24.	Chair	24
25.	Adjournments	24
26.	Determination of Questions	25
27.	Special Resolutions	25
28.	Polls	26
29.	Voting Rights	26
30.	Voting Disqualification	27
31.	Objection to Qualification to Vote	27
32.	Persons of Unsound Mind and Minors	27
33.	Chair's Casting Vote	27
34.	Right of Non-Members to Attend General Meeting	28
PROXIES		28
35.	Right to Appoint Proxies	28
36.	Appointing a Proxy	28
37.	Lodgement of Proxies	29
38.	Validity of Proxies	29
39.	Rights of Proxies and Attorneys	30
APPOINTMENT AND REMOVAL OF DIRECTORS		30

40.	Number and Appointment of Directors.....	30
41.	Term	31
42.	General Right to Appoint and Remove Directors.....	32
43.	Election of Directors	32
44.	Vacation of Office.....	34
45.	Alternate Directors	35
	POWERS AND DUTIES OF DIRECTORS	36
46.	Powers of Directors.....	36
47.	Negotiable Instruments	36
48.	Conferment of Powers	36
	DIRECTORS' DISCLOSURE OF INTEREST	37
49.	Contracts	37
	PROCEEDINGS OF DIRECTORS	38
50.	Meetings of Directors	38
51.	Quorum	38
52.	Office Bearers	38
53.	Voting	39
54.	Resolutions by Directors	39
55.	Committees of Directors	40
56.	Validation of Acts of Directors	41
	MINUTES.....	41
57.	Minutes.....	41
	SECRETARY	42
58.	Appointment and Tenure	42
	EXECUTION OF DOCUMENTS	42
59.	Execution of Documents	42
	ACCOUNTS AND INSPECTION OF RECORDS.....	43
60.	Accounts and Inspection	43
61.	Custody of Books	43
62.	Inspection of Books	43
63.	Register of Members.....	43
	INTELLECTUAL PROPERTY	43
64.	Use of Intellectual Property.....	43
	NOTICES	44
65.	Service of Notices	44
66.	Notices of General Meeting	45
	WINDING UP	45
67.	Winding Up.....	45
	INDEMNITY	46
68.	Indemnity.....	46
69.	Payment of Indemnity Policy Premium	46
70.	Indemnity to Continue	47
	APPENDIX 1 – FORM OF APPOINTMENT OF PROXY	48

1. NAME OF THE COMPANY

The name of the Company is Energy Assured Limited.

2. TYPE OF COMPANY

2.1 Type of Company

The Company is a not-for-profit public company limited by guarantee.

2.2 Member's Liability

- (a) Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- (b) The amount that each Member or past Member is liable to contribute is limited to one dollar (\$1.00).

3. REPLACEABLE RULES

This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.

4. DEFINITIONS AND INTERPRETATION

4.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

Act means the *Corporations Act* (Cth) 2001.

Alternate Director means any natural person appointed by a Director for the time being to hold the office of alternate director.

Annual General Meeting means the annual general meeting of the Members of the Company.

Annual Subscription means the subscription fees payable by Members pursuant to **clause 12**.

Board means the Board of Directors.

Chair means the person holding that office under this Constitution and includes any assistant or acting chair.

Code Manager has the meaning given to it in the Code of Practice.

Code of Practice means the document, as amended from time to time pursuant to **clause 15.1**, setting out the minimum competence standards in respect of the conduct and activities of Sales Agents and includes the Procedures Guideline.

Code Panel means the panel appointed by the Board in accordance with **clause 15.3**.

Committee means a committee established in accordance with **clause 55**.

Company means Energy Assured Limited.

Comparator means a body corporate which employs or otherwise engages Sales Agents to sell electricity and gas to Consumers by providing Consumers with a comparison between the products offered by multiple Licenced Energy Retailers.

Constitution means this Constitution as amended or supplemented from time to time.

Consumer means a small business customer or residential customer who purchases electricity or gas at a rate below the maximum threshold amount as determined by the relevant State or Territory legislation for the purposes of defining a small business and/or residential customer within that State or Territory.

Deputy Chair means the deputy chair of the Board elected pursuant to **clause 52.2(a)**.

Director means any person holding the position of a director of the Company (including the ERAA Director, Ordinary Directors and Energy Marketer Directors) and **Directors** means the directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company.

Energy Marketer means an entity that employs or otherwise engages Sales Agents to sell electricity and gas to Consumers. An Energy Marketer includes a Comparator.

Energy Marketer Member means a Member of the Company which satisfies the criteria set out in **clause 9.2(d)**.

ERAA means the Energy Retailers Association of Australia ABN 24 103 742 605.

ERAA Director means the person holding office pursuant to **clause 41.1**.

ERAA Member means ERAA in its role as a Member of the Company pursuant to **clause 9.2(a)**.

Financial Year means the period commencing on 1 July in any calendar year to 30 June in the following calendar year (both inclusive).

Individual Member means a Member of the Company who is a natural person.

Intellectual Property means:

- (a) any intellectual, industrial or commercial information or property (whether in material form or not), or rights of a proprietary nature, including without limitation:

- (i) any copyright, patent, petty patent, design, trade mark, service mark, domain name, confidential information, trade secret, know-how, database; or
 - (ii) any rights protected or recognised under any laws related to the above or any similar laws; and
- (b) anything (whether in material form or not) copied or derived from the above property or rights.

Interest means the interest rate charged by the Company's financial institution on overdrafts of at least \$100,000.00 plus 2%.

Joining Fee means the fee payable by an applicant for Membership, which is determined by the Board from time to time.

Large Active Retailer Member means a Member of the Company which satisfies the criteria set out in **clause 9.2(b)**.

Licensed Energy Retailer means an entity that holds a valid retail supplier's licence (**Licence**), or similar authorisation, issued by the relevant government regulator to operate in the electricity and gas retail market in the State or Territory identified and pursuant to the terms and conditions contained in the Licence.

Member means a member of the Company pursuant to **clause 6** (and **Membership** has the corresponding meaning) and includes the:

- (a) ERAA Member;
- (b) Large Active Retailer Members;
- (c) Non-Active Retailer Members;
- (d) Energy Marketer Members;
- (e) Small Active Retailer Members; and
- (f) SME Retailer Members.

Member's Guarantee Amount means the amount referred to in **clause 2.2(b)**.

New Membership Guidelines means the guidelines produced by the Board from time to time setting out the criteria which applicants must satisfy to be eligible for Membership.

Non-Active Retailer Member means a Member of the Company which satisfies the criteria set out in **clause 9.2(c)**.

Objects mean the objects of the Company as set out in **clause 5.1**.

Office means the registered office for the time being of the Company.

Office Bearers has the meaning given to it by **clause 52(a)**.

Officer has the same meaning as given to that term in section 9 of the Act.

Ordinary Director means a Director referred to in **clause 40.1(b)**.

Organisational Member means a Member of the Company which is a body corporate.

Procedures Guideline means a guideline that sets out the procedures underlying the Code of Practice that forms part of the Code of Practice.

Quarter means the three (3) month period ending on 31 March, 30 June, 30 September and 31 December, and **Quarterly** has a corresponding meaning.

Regime means the regime created by the Code of Practice.

Register of Members means the register of Members to be kept pursuant to the Act and **clause 63**.

Registration Fee means the fee which is payable to record Members and Sales Agents on the register of accredited Sales Agents, as determined by the Board from time to time.

Replaceable Rules means the replaceable rules applicable to a public company limited by guarantee set out in the Act.

Representative has the meaning given to it in section 250D of the Act.

Sales Agent means a sales agent conducting face to face sales activities.

Sanction has the meaning given to it in the Code of Practice.

Secretary means the person appointed as the secretary of the Company under **clause 58**, and includes any assistant or acting secretary.

Small Active Retailer Member means a Member of the Company which satisfies the criteria set out in **clause 9.2(e)**.

SME Retailer Member means a Member of the Company which satisfies the criteria set out in **clause 9.2(f)**.

Special Resolution means, in relation to a resolution of Voting Members, a resolution which satisfied the criteria set out in **clause 27**.

Voting Members means:

- (a) the ERAA Member; and
- (b) Large Active Retailer Members.

Voting Members Present means, in connection with a meeting of Members, a Voting Member being present in person or by proxy or attorney or Representative.

4.2 Interpretation

- (a) In this Constitution, unless there is something in the subject or context which is inconsistent:
 - (i) the singular includes the plural and vice versa;

- (ii) each gender includes the other two genders;
 - (iii) the word "person" means a natural person and any partnership, association, body or entity whether incorporated or not;
 - (iv) the words "writing" and "written" include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
 - (v) where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
 - (vi) a reference to any clause or schedule is to a clause or schedule of this Constitution;
 - (vii) a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (b) An expression used in a particular Part or Division of the Act that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division.
 - (c) Headings do not form part of or affect the construction or interpretation of this Constitution.

5. OBJECTS AND PURPOSES

5.1 Objects

- (a) The Company is a not-for-profit company. The Objects of the Company are:
 - (i) to establish, implement and manage an agreed standard for the selling by Members of gas and electricity supply contracts face to face to Consumers;
 - (ii) to develop and facilitate training programs to provide Members with the knowledge and capabilities to maintain the competence standards required by the Regime and to, in turn, deliver their own on-going training of Sales Agents;
 - (iii) to administer a register of accredited Sales Agents;
 - (iv) to develop and implement procedures and processes to monitor and assess the conduct and activities of Sales Agents to ensure compliance with the Code of Practice;
 - (v) to manage a disciplinary process and to implement appropriate sanctions where a Sales Agent is found to have breached the Code of Practice; and

- (vi) anything ancillary to the Objects set out in **clauses 5.1(a)(i) to 5.1(a)(v)**.
- (b) The Company can only exercise the powers in section 124(1) of the Act to:
 - (i) carry out the Objects; and
 - (ii) do all things incidental or convenient in relation to the exercise of power under **clause 5.1(b)(i)**.

5.2 Income and Property

- (a) The income and property of the Company will be applied solely towards the promotion of the Objects and the exercise of the Company's powers as set out in this Constitution.
- (b) No income or property of the Company will be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus or otherwise to any Member of the Company. However, nothing in this Constitution will prevent payment in good faith:
 - (i) to a Member in return for any services rendered or goods supplied or hired by the Company from a Member in the ordinary and usual course of business to the Company;
 - (ii) as remuneration to any employee of the Company;
 - (iii) of interest to a Member at a rate not exceeding current bank overdraft rates of interest for moneys lent to the Company;
 - (iv) of reasonable and proper rent to a Member for premises leased by any Member to the Company; and
 - (v) for moneys representing reimbursement to a Member of out-of-pocket expenses reasonably incurred by the Member and to which the Member would be entitled if they were not a Member.
- (c) No payment shall be made to any Director other than the payment:
 - (i) of out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board;
 - (ii) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service; and
 - (iii) any Directors' fees as determined by the Board from time to time.

MEMBERSHIP

6. ADMISSION TO MEMBERSHIP

6.1 Entitlement to Membership

Subject to satisfying the relevant criteria set out in **clause 9**, an individual or body corporate is entitled to become a Member if that individual or body corporate:

- (a) agrees to assume the liability to pay the Member's Guarantee Amount;
- (b) pays the Joining Fee, Annual Subscription and Registration Fee; and
- (c) satisfies any requirements set out in the New Membership Guidelines.

6.2 Entry in Register of Members

Subject to the Act, a person or body corporate becomes a Member on the registration of that person's or body corporate's name in the Register of Members.

7. APPLICATION FOR MEMBERSHIP

7.1 Application for Membership

- (a) The Board may prescribe the form of the application for Membership.
- (b) An application for Membership must be:
 - (i) in writing;
 - (ii) signed by the applicant;
 - (iii) lodged with the Secretary; and
 - (iv) accompanied by the Joining Fee.

7.2 Determination by Secretary

- (a) As soon as practicable after receiving an application for Membership, the Secretary must determine whether to approve or reject the application.
- (b) An application under **clause 7.2(a)** may only be rejected if:
 - (i) the applicant does not meet the conditions for Membership set out in **clause 6.1**;
 - (ii) the applicant does not submit an application in accordance with **clause 7.1**; or
 - (iii) the applicant would have ceased to be a Member under **clause 14.1(d), 14.1(e) or 14.1(f)**.
- (c) As soon as practicable after the Secretary makes that determination the Secretary must notify the applicant, in writing, that the Secretary approved or rejected the application (whichever is applicable).

- (d) If the Secretary approved the application, the Secretary must request payment of the Annual Subscription and Registration Fee within twenty-eight (28) days after the notification of the Secretary's determination is sent to the applicant.
- (e) Upon receipt of payment of the Annual Subscription and Registration Fee, the Secretary must enter the applicant's name in the Register of Members and the relevant class of Membership and, on the name being so entered, the applicant becomes a Member of the Company.
- (f) If the Secretary rejected the application, the Secretary must refund the Joining Fee and deliver it to the applicant along with the notice required to be given in accordance with **clause 7.2(c)**.
- (g) The Secretary shall not be required to provide its reasons for refusing an application for Membership under this **clause 7.2**.

8. CONDITION OF MEMBERSHIP

Compliance with Code of Practice and Constitution

- (a) Subject to **clause 8(b)**, it is a condition of every class of Membership that each Member must observe and abide by the Code of Practice and this Constitution.
- (b) The ERAA Member is not bound by the Code of Practice.

9. CLASSES OF MEMBERSHIP

9.1 Classes of Membership

- (a) There are six (6) classes of Membership in the Company, being the following:
 - (i) ERAA Member;
 - (ii) Large Active Retailer Members;
 - (iii) Non-Active Retailer Members;
 - (iv) Energy Marketer Members;
 - (v) Small Active Retailer Members; and
 - (vi) SME Retailer Members.
- (b) In addition to those benefits attached to different classes of Membership as set out in this **clause 9**, the Board will determine from time to time what additional benefits shall attach to each class of Membership.

9.2 Eligibility Criteria

The eligibility criteria and entitlements of the respective classes of Membership are as follows:

- (a) ERAA Member

- (i) ERAA is entitled at all times to be a Member of the Company and will be referred to throughout this Constitution as the ERAA Member.
- (ii) The ERAA Member has one (1) vote.
- (iii) Notwithstanding anything else herein contained or in the Act, no resolution (including Special Resolutions) of Members will be effective or considered to be passed unless the ERAA Member has voted in favour of that resolution (or Special Resolution, as the case may be).

(b) Large Active Retailer Members

- (i) A body corporate will be entitled to be a Large Active Retailer Member if the body corporate:
 - (A) is a Licensed Energy Retailer; and
 - (B) uses forty (40) or more Sales Agents (based on a monthly average calculated Quarterly) to sell electricity and/or gas to Consumers.
- (ii) A Large Active Retailer Member has one (1) vote.

(c) Non-Active Retailer Members

- (i) A body corporate will be entitled to be a Non-Active Retailer Member if the body corporate:
 - (A) is a Licensed Energy Retailer; and
 - (B) does not use Sales Agents to sell electricity and/or gas to Consumers.
- (ii) A Non-Active Retailer Member is not entitled to vote.

(d) Energy Marketer Members

- (i) A body corporate will be entitled to be an Energy Marketer Member if the body corporate employs or otherwise engages Sales Agents to sell electricity and gas to Consumers
- (ii) An Energy Marketer is not entitled to vote.

(e) Small Active Retailer Members

- (i) A body corporate will be entitled to be a Small Active Retailer Member if the body corporate:
 - (A) is a Licensed Energy Retailer; and
 - (B) uses less than forty (40) Sales Agents (based on a monthly average calculated Quarterly) to sell electricity and/or gas to Consumers.
- (ii) A Small Active Retailer Member is not entitled to vote.

(f) SME Retailer Members

- (i) A body corporate will be entitled to be a SME Retailer Member if the body corporate:
 - (A) is a Licensed Energy Retailer; and
 - (B) markets primarily to SME business customers.
- (ii) A SME Retailer Member is not entitled to vote.

10. REPRESENTATIVE

10.1 Organisational Members

- (a) This **clause 10** only applies to Members which are Organisational Members.
- (b) An Organisational Member must appoint as its Representative a natural person.

10.2 Register of Members

The name and address of the Representative will be entered in the Register of Members as the representative of the Organisational Member.

10.3 Correspondence and Notices

All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Organisational Member which is represented by that particular Representative.

10.4 Appointment by reference to a Position

If the appointment of a Representative by the Organisational Member is made by reference to a position held, the appointment must identify the position.

10.5 Change of Representative

Despite **clause 11**, an Organisational Member may remove and replace a Representative where the Organisational Member gives written notice to the Board in a form approved by the Board.

10.6 Signature of Representative

A signature by a Representative of an Organisational Member on behalf of that Organisational Member is taken to be the signature of that Organisational Member for the purposes of this Constitution.

10.7 Powers and Rights of Representatives

- (a) Any power or right of an Organisational Member as granted by this Constitution can be exercised by the Representative of that particular Organisational Member.
- (b) Organisational Members are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to **clause 35**.

- (c) The actions of a Representative bind the Organisational Member which is represented by that particular Representative.

10.8 Obligations of Representative

Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

11. MEMBERSHIP ENTITLEMENTS NOT TRANSFERABLE

11.1 Entitlements not Transferable

A right, privilege or obligation which a person or body corporate has by reason of being a Member of the Company:

- (a) is not capable of being transferred or transmitted to another person or body corporate;
- (b) terminates on cessation of the person's or body corporate's Membership; and
- (c) in respect to a Member's rights, may not be exercised during any period that the Member's Annual Subscription has been due but unpaid for a period in excess of three (3) months.

12. ANNUAL SUBSCRIPTIONS

12.1 Annual Subscription

- (a) There shall be an Annual Subscription payable by each Member to the Company.
- (b) Subject to **clause 12.2**, the amount of any Annual Subscription shall be fixed by the Board and shall be payable by Members at such times and in such manner as determined by the Board from time to time. The Board can set different rates of Annual Subscriptions for:
 - (i) different classes of Membership; and
 - (ii) different Members within the same class of Membership.

12.2 Powers of Board

The Board may in its discretion:

- (a) determine that:
 - (i) no Annual Subscription is payable; or
 - (ii) a discounted Annual Subscription is payable;
 by a Member or Members in a given year; and
- (b) extend the time for payment of Annual Subscriptions by any Member.

12.3 No Refund

No part of any Annual Subscription shall be refunded to a Member who varies their Membership class in accordance with **clause 13** or ceases to be a Member in accordance with **clause 14**.

13. VARIATION OF MEMBERSHIP

13.1 Variation of Membership

A Member may only vary its Membership in accordance with this **clause 13**.

13.2 Large Active Retailer Members

- (a) If a Large Active Retailer Member ceases using Sales Agents to market and sell electricity and gas to Consumers, it must notify the Company within seven (7) days of the date upon which usage ceased.
- (b) Notification by the Large Active Retailer Member pursuant to **clause 13.2(a)** must be either:
 - (i) in writing;
 - (ii) in the form prescribed by the Board, if any;
 - (iii) signed by the Member; and
 - (iv) lodged with the Secretary.
- (c) As soon as practicable after receiving the notification of variation of Membership from the Large Active Retailer Member, the Secretary will notify the Board and update the Register of Members.
- (d) If the Large Active Retailer Member fails to notify the Company of a change to its Membership class as required by **clause 13.2(a)**, the Company may:
 - (i) update the Register of Members to reflect the change in Membership class; and
 - (ii) charge Interest on any unpaid Annual Subscriptions due in respect of the Large Active Retailer Membership class that are unpaid by the Large Active Retailer Member, up until the date on which the Large Active Retailer Member's Membership class is varied.
- (e) No part of the Annual Subscription paid by the Large Active Retailer Member shall be refunded following any variation in Membership class.

13.3 Non-Active Retailer Members

- (a) If a Non-Active Retailer Member commences using Sales Agents to market and sell electricity and gas to Consumers, it must notify the Company within seven (7) days of such commencement.
- (b) Notification by the Non-Active Retailer Member pursuant to **clause 13.3(a)** must be either:
 - (i) in writing;

- (ii) in the form prescribed by the Board, if any;
 - (iii) signed by the Member; and
 - (iv) lodged with the Secretary.
- (c) As soon as practicable after receiving the notification of variation of Membership from the Non-Active Retailer Member, the Secretary will notify the Board and update the Register of Members.
- (d) If the Non-Active Retailer Member fails to notify the Company of a change to its Membership class as required by **clause 13.3(a)**, the Company may:
 - (i) update the Register of Members to reflect the change in Membership class; and
 - (ii) charge Interest on any unpaid Annual Subscriptions due in respect of the Membership class that are unpaid by the Non-Active Retailer Member, from the date that the Non-Active Retailer Member commenced using Sales Agents to market and sell electricity and gas to Consumers.

13.4 Small Active Retailer Members

- (a) Within two (2) weeks after the end of each Quarter, a Small Active Retailer Member must notify the Company of the number of Sales Agents used during each month of the Quarter just ended (**Reconciliation Quarter**).
- (b) Notification by the Small Active Retailer Member pursuant to **clause 13.4(a)** must be:
 - (i) in writing;
 - (ii) in the form prescribed by the Board, if any;
 - (iii) signed by the Member; and
 - (iv) lodged with the Secretary.
- (c) If the average monthly number of Sales Agents used by a Small Active Retailer Member during a Quarter exceeds forty (40), the Secretary will notify the Board and update the Register of Members to record the Small Active Retailer Member as a Large Active Retailer Member.
- (d) Subject to **clause 13.4(a)**, at the commencement of the Quarter following the Reconciliation Quarter, the Small Active Retailer Member must pay the Annual Subscription for the Large Active Retailer Membership class.
- (e) If:
 - (i) the Small Active Retailer Member fails to notify the Company as required by **clause 13.4(a)**; and
 - (ii) **clause 13.4(c)** applies,
 then the Company may:

- (iii) update the Register of Members to reflect the change in Membership class; and
- (iv) charge Interest on any unpaid Annual Subscriptions due in respect of the Large Active Retailer Membership class that are unpaid by the Small Active Retailer Member, from the beginning of the Quarter following the Reconciliation Quarter during which the Small Active Retailer Member used more than a monthly average of forty (40) Sales Agents to market and sell electricity and gas to Consumers.

14. CESSATION OF MEMBERSHIP

14.1 Cessation of Membership

A Member's Membership will cease:

- (a) if, being an Individual Member, the Member dies;
- (b) subject to **clause 14.3**, on the date that the Secretary receives written notice of resignation from that Member;
- (c) subject to **clause 12.2**, if that Member has failed to pay the Member's Annual Subscription for the current Financial Year or any preceding Financial Years;
- (d) if that Member has been found to be in breach of the Code of Practice and the Code Manager or the Code Panel has decided that the Member's Membership should cease as a consequence thereof;
- (e) if the Member is expelled pursuant to **clause 16**;
- (f) if, being an Organisational Member:
 - (i) that Member is dissolved or otherwise ceases to exist;
 - (ii) that Member has:
 - (A) a receiver;
 - (B) a receiver and manager;
 - (C) a liquidator;
 - (D) an administrator;
 - (E) an administrator of a deed of company arrangement; or
 - (F) a trustee of other person administering a compromise or arrangement between the Member and someone else;
 appointed to it;
- (g) if, being an Energy Marketer, the Member ceases to employ or otherwise engage Sales Agents to sell electricity and gas to Consumers;
- (h) if a Member no longer satisfies the criteria of any class of Membership; or

- (i) if the Company in general meeting resolves by a Special Resolution, to terminate the membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member must be given at least twenty one (21) days' notice of the proposed resolution and must be given the opportunity to be heard at the meeting at which the resolution is proposed.

14.2 Unpaid Amounts

If a Member's Membership ceases pursuant to **clause 14.1**, all monies due to the Company and unpaid at the date of cessation of the Member's Membership remain owing by the Member to the Company and shall be recoverable by the Company as against the Member. This **clause 14.2** shall continue to apply following the cessation of the Member's Membership.

14.3 Resignation from Membership

- (a) A Member is not entitled to resign as a Member except in accordance with this **clause 14**.
- (b) All Annual Subscriptions, all arrears due and unpaid and all other monies due to the Company or for which the Member is liable as a Member of the Company under **clause 2.2**, including where applicable the Member's Guarantee Amount, must be paid prior to the date on which a written notice of resignation (**Resignation Notice**) is served by the Member on the Company.
- (c) A Resignation Notice must be delivered to the Secretary giving one (1) month's notice of the Member's intention to resign as a Member, or such period as the Board may determine from time to time in its absolute discretion (**Resignation Period**).
- (d) Upon the expiry of the Resignation Period the Member ceases to be a Member.

14.4 Updating Register of Members

Where a Member ceases to be a Member pursuant to this **clause 14**, and in every other case where a Member ceases to be a Member, the Secretary will make an appropriate entry in the Register of Members recording the date on which the Member ceased to be a Member.

14.5 ERAA Member

This **clause 14** does not apply to the ERAA Member.

15. CODE OF PRACTICE

15.1 Amendment of Code of Practice and Procedures Guideline

The Code of Practice may from time to time be amended by the Board and, as amended, be promulgated by the Board and published to Members.

15.2 Compliance with Code of Practice & Procedures Guideline

- (a) Subject to **clause 15.2(b)**, every Member shall be bound to accept and, in the execution of its face to face sales and marketing activities, abide by the standards of practice and conduct expressed in the Code of Practice and Procedures Guideline, as amended from time to time.

- (b) In the event of any inconsistency between a provision of the Code of Practice, the Procedures Guideline and the law, the law prevails.

15.3 Code Manager & Code Panel

- (a) The Board shall:
 - (i) determine the powers of the Code Manager;
 - (ii) determine the terms of reference of the Code Panel;
 - (iii) create and adopt policies to supplement the Code of Practice; and
 - (iv) appoint a Code Manager and Code Panel to decide on matters related to the Code of Practice and Procedures Guideline.
- (b) Each Member who is the subject of a proposed Sanction brought before the Code Manager or Code Panel:
 - (i) agrees to abide by the decisions of the Code Manager or Code Panel; and
 - (ii) acknowledges that it will not be entitled to bring any action or suit against the Company, the Directors, the members of the Code Panel or the Code Manager as a consequence of or arising out of any decision or action of the Code Panel or Code Manager.
- (c) If a complaint is made in writing (and is supported by evidence and documentation) to the Code Manager or the Code Panel by a:
 - (i) Member or Members; or
 - (ii) person who is not a Member;
 that a Member:
 - (iii) has violated or refused or neglected to observe or otherwise breached the Code of Practice and Procedures Guideline; or
 - (iv) has been guilty of or party to any conduct which may be contrary to this Constitution; or
 - (v) may be likely to injure or discredit or hinder the work or Objects of the Company;

then the Code Manager and the Code Panel will deal with that charge in accordance with the Code of Practice.

15.4 Publishing Details of Matters

Each Member acknowledges that the Code Manager and the Code Panel is, subject to the Code of Practice, at liberty to publicly publish details of any Sanctions determined by the Code Manager or the Code Panel, including the:

- (a) name of the Member who is the subject of the matter being heard;
- (b) the decision of the Code Manager or the Code Panel;

- (c) reasons for any decisions made by the Code Manager or the Code Panel;
and
- (d) any Sanctions or other action taken in respect of the Member.

15.5 Costs of Appeal

The Members acknowledge that the Company has the right to demand that a Member, who is appealing a decision in accordance with the Code of Practice, pay for the costs of the Company conducting the appeal.

15.6 Release

- (a) Each Member acknowledges that no matter or thing done or omitted by the Code Manager or the Code Panel (including the exercise of its powers as referred to in **clause 15.4**) subjects the Code of Practice Panel, the Code Manager, Directors or Company to any liability. Each Member hereby releases the Company, Directors, the Code Manager and members of the Code Panel from any such liability, including liability for negligence.
- (b) No statements or comments, whether written or oral, made or used by the:
 - (i) Code Panel (including the exercise of its powers as referred to in **clause 15.4**);
 - (ii) Code Manager (including the exercise of its powers as referred to in **clause 15.4**);
 - (iii) Directors; or
 - (iv) Company;

or any of their representatives as part of the Code of Practice may be relied upon to found or maintain any action by the Member for defamation, libel, slander or any related complaint, and this Constitution may be pleaded as a bar to any such action.

15.7 Audit and Compliance Check

- (a) All Members acknowledge that the Company has the right to enter, or cause an auditor to enter, a Member's premises for the purposes of:
 - (i) auditing and compliance checking the Member's books, records, and complaints procedure documentation; and
 - (ii) interviewing any of the Member's employees or consultants;

to ensure compliance by that Member with the Code of Practice and the Procedures Guideline.
- (b) The Company further has a right to use any information collected pursuant to **clause 15.7(a)** for the purposes of administering Sanctions.
- (c) **Clause 15.7(a)** does not apply to the ERAA Member.

16. DISCIPLINING OF MEMBERS

16.1 Expulsion by the Board

- (a) The Board may resolve to expel any Member or to suspend any Member from Membership of the Company where the Board holds the opinion that the Member:
 - (i) has persistently refused or neglected to comply with a provision or provisions of this Constitution; or
 - (ii) has persistently or wilfully acted in a manner prejudicial to the interests and Objects of the Company.
- (b) A resolution of the Board pursuant to **clause 16.1(a)** will be of no effect unless the Board confirms the resolution in accordance with this clause at a meeting held not earlier than fourteen (14) days and not later than twenty eight (28) days after the service on the Member of notice under **clause 16.1(c)**.
- (c) If the Board resolves under **clause 16.1(a)** to expel or suspend any Member, the Secretary must serve the Member with a notice in writing:
 - (i) setting out the resolution of the Board and the grounds upon which it is based;
 - (ii) stating that the Member may address the Board at a meeting to be held not earlier than fourteen (14) days and not later than twenty eight (28) days after service of the notice;
 - (iii) stating the date, place and time of that meeting; and
 - (iv) informing the Member that the Member may do either or both of the following:
 - (A) attend and speak at that meeting;
 - (B) submit to the Board at or prior to the date of that meeting written representations relating to the resolution.
- (d) At a meeting of the Board held in accordance with **clause 16.1(c)(ii)**, the Board must:
 - (i) give the Member an opportunity to make oral representations;
 - (ii) give due consideration to any written representations submitted to the Board by the Member at or prior to the meeting; and
 - (iii) resolve whether to confirm or to revoke the decision to expel or suspend the Member.
- (e) The Member must be notified in writing of the decision of the Board within seven (7) days. If the Board resolves to confirm the expulsion or suspension, the Member must also be notified of the right of appeal.

- (f) A resolution confirmed by the Board under **clause 16.1(d)** does not take effect:
 - (i) until the expiration of the period within which the Member is entitled to appeal against the resolution; or
 - (ii) if the Member exercises the right of appeal, until the Company confirms the resolution pursuant to **clause 16.2(d)**.

16.2 Appeal to Company

- (a) A Member may appeal to the Company in general meeting against a resolution of the Board, which is confirmed under **clause 16.2(d)**. Written notice of such an appeal must be lodged with the Secretary within seven (7) days of service of the notice required under **clause 16.1(e)**.
- (b) Upon receipt of a notice of appeal under **clause 16.2(a)**, the Secretary will notify the Board and the notice of appeal must be considered at the next general meeting.
- (c) At a general meeting of the Company which has the notice of appeal on its agenda, pursuant to **clause 16.2(b)**:
 - (i) the Board and the Member must be given the opportunity to state their respective cases orally or in the writing, or both; and
 - (ii) the Voting Members Present must vote by secret ballot on the question of whether the resolution will be confirmed.
- (d) Confirmation of the resolution may be by a simple majority of those Voting Members present.

16.3 Expulsion by Code Panel

The Members acknowledge that the Code Panel has the power to expel a Member pursuant to the Code of Practice.

16.4 Non Merger

In the event that a Member:

- (a) is expelled or suspended from Membership of the Company for any reason; or
- (b) does not renew its Membership at any time;

the Member acknowledges that it will nevertheless remain subject to and bound by the provisions of:

- (c) **clause 15**;
- (d) this Constitution; and
- (e) the Code of Practice and Procedures Guideline;

to the extent that a Sanction against a Member is being considered by the Code Manager or the Code Panel. The Member will remain subject to and bound by the

provisions of this Constitution, the Code of Practice and Procedures Guideline until the:

- (f) Sanction process is resolved or dismissed; or
- (g) Member's involvement in the alleged breach of the Code of Practice is otherwise dismissed by the Code Panel or the Code Manager.

17. RESOLUTION OF DISPUTES BETWEEN MEMBERS

17.1 Referral to Board

Disputes between Members (in their capacity as Members) shall be referred to the Board which must take steps to resolve the dispute.

17.2 Referral to Mediator

If a dispute so referred is not resolved to the satisfaction of any party to the dispute within thirty (30) days of its being referred, then that party may refer the dispute to mediation before a mediator appointed by mutual agreement of the parties.

17.3 Referral to President of NSW Law Society

Failing agreement by the parties to the appointment of a mediator within fourteen (14) days of a party notifying the other party of its intention to refer the dispute to mediation, the appointment of the mediator shall be made by the President of the New South Wales Law Society.

17.4 Costs

The costs of the mediator appointed pursuant to **clause 17.2** or **clause 17.3** (as the case may be) shall be shared equally between the Members party to the dispute.

17.5 Exchange of Statements

At least seven (7) days before a mediation session established by a mediator appointed pursuant to **clause 17.2** or **clause 17.3** (as the case may be) is to commence, the parties to the dispute are to exchange statements of the issues that are in dispute between them and supply copies to the mediator.

GENERAL MEETINGS

18. ANNUAL GENERAL MEETINGS

18.1 Annual General Meetings

- (a) An Annual General Meeting of the Members must be convened at least once in each Financial Year and within a period of five (5) months after the expiration of each Financial Year.
- (b) The Annual General Meeting is, subject to the Act, to be convened on such date and at such place and time as the Board thinks fit.

19. BUSINESS AT ANNUAL GENERAL MEETINGS

19.1 Business at Annual General Meetings

In addition to any other business which may be transacted at an Annual General Meeting, the business of an Annual General Meeting must include the following:

- (a) to confirm the minutes of the last preceding Annual General Meeting and of any general meetings held since that Annual General Meeting;
- (b) to receive from the Board reports on the activities of the Company during the last preceding Financial Year;
- (c) to appoint an auditor;
- (d) to transact such business as may be transacted at an Annual General Meeting pursuant to this Constitution;
- (e) to transact special business of which not less than twenty-one (21) days notice shall have been given to the Secretary; and
- (f) to transact any other business which the meeting may think fit to be transacted as ordinary business.

20. CONVENING OF GENERAL MEETINGS

20.1 Convening by Board

The Board may, whenever it thinks fit, convene a general meeting of the Company.

20.2 Requisition by Members

- (a) The Board must, on the requisition in writing of at least five (5) Voting Members convene a general meeting.
- (b) A requisition of Voting Members for a general meeting under **clause 20.2(a)**:
 - (i) must state the purpose or purposes of the general meeting;
 - (ii) must be signed by the Voting Members making the requisition;
 - (iii) must be lodged with the Secretary; and
 - (iv) may consist of several documents in a similar form, each signed by one or more of the Voting Members making the requisition.

20.3 Use of Technology

A general meeting of the Company may be convened at two (2) or more venues using any technology that gives the Members a reasonable opportunity to participate in the general meeting.

21. NOTICE OF GENERAL MEETINGS

21.1 Notice of General Meetings

- (a) Subject to consent to shorter notice being given in accordance with the Act, at least twenty one (21) days notice of any general meeting must be given to each Member and each Director specifying:
 - (i) the place, day and hour of the meeting;
 - (ii) the general nature of any business to be transacted at the meeting;
 - (iii) if a Special Resolution is to be proposed, the details of and intention to propose it;
 - (iv) if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
 - (v) any other information required by the Act.
- (b) The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

21.2 Matters upon which Voting Members vote

The matters upon which Voting Members can vote are limited to those matters expressly provided for in the Act and this Constitution. Typically, Voting Members have a right to vote on certain decisions relating to the structure and Constitution of the Company, including:

- (a) the adoption of an amendment to the Constitution;
- (b) changes to the name and type of the Company;
- (c) variations to the rights attached to a particular class of Membership;
- (d) the removal of Directors pursuant to section 203D of the Act;
- (e) the appointment and removal of the Company's auditors;
- (f) the initiation of a Member's voluntary winding up of the Company; and
- (g) any Special Resolution to be decided upon by the Members as notified in accordance with **clause 21.1(a)(iii)**.

21.3 Other Matters

- (a) No matter other than that specified in the notice under **clause 21.1** will be transacted at the meeting.
- (b) A Member intending to bring a matter before a meeting must give notice in writing to the Secretary at least one (1) month before the meeting specifying the nature of the matter and the Secretary must include the matter in the next notice given under **clause 21.1**.

22. CANCELLATION OR POSTPONEMENT OF GENERAL MEETING

22.1 Cancellation of General Meeting

Subject to the provisions of the Act and this Constitution, the Board may cancel a general meeting of the Company:

- (a) convened by the Board; or
- (b) which has been convened by a Voting Member or Voting Members pursuant to the Act upon receipt by the Company of a written notice withdrawing the requisition signed by that Voting Member or those Voting Members.

22.2 Postponement of Meeting

The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Members relating to the original meeting.

22.3 Notification of Cancellation or Postponement

Where any general meeting is cancelled or postponed or the venue for the same is changed:

- (a) the Board must endeavour to notify in writing each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
- (b) any failure to notify in writing any person entitled to receive notice of the meeting (except the ERAA Member) or failure of a person to receive a written notice (except the ERAA Member) shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

PROCEEDINGS AT GENERAL MEETINGS

23. QUORUM

23.1 Need for Quorum

No business may be transacted at any general meeting unless a quorum of Voting Members is present at all times during the meeting.

23.2 Definition of Quorum

Fifty-one per cent (51%) of Large Active Members present in person or by proxy or by Representative plus the ERAA Member constitute a quorum for all general meetings.

23.3 Absence of Quorum

- (a) If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
 - (i) the meeting, if convened upon the requisition of Voting Members, shall be dissolved;

- (ii) in any other case:
 - (A) it will stand adjourned to the same day in the next week at the same time and place or to such other day time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, five (5) Voting Members will constitute a quorum.
- (b) If within thirty (30) minutes after the time appointed for holding an adjourned meeting the quorum required pursuant to **clause 23.3(a)(ii)(B)** is not present the meeting shall be dissolved.

24. CHAIR

24.1 Chair of General Meetings

The Chair of the Board or, in the Chair's absence, the Deputy Chair, will preside as Chair at every general meeting.

24.2 No Chair

Where a general meeting is held and:

- (a) there is no Chair and no Deputy Chair; or
- (b) both the Chair and the Deputy Chair are not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, are both unwilling to act as Chair of the meeting,

the other Directors present may choose another Director as Chair of the meeting by two-thirds majority, or if their number is not three or a multiple of three, then the nearest number to one-third. If no Director is so chosen, or if all the Directors present decline to take the chair, the Voting Members Present may choose one of their number to be Chair of the meeting.

24.3 Rulings of Chair

The rulings of the Chair of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

25. ADJOURNMENTS

25.1 When adjournment may occur

The Chair of a general meeting at which a quorum is present:

- (a) may adjourn a meeting with the consent of the majority of the Voting Members Present and the ERAA Member; and
- (b) must adjourn the meeting if the majority of the Voting Members Present and the ERAA Member so direct,

to a time and place as determined.

25.2 Business and Resolutions at Adjourned Meeting

- (a) No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.

25.3 Notice of Adjournment

It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for fourteen (14) days or more, in which case notice of the adjourned meeting must be given as in the case of an original meeting.

26. DETERMINATION OF QUESTIONS

26.1 Determination of Questions

- (a) At any general meeting a resolution to be considered at the meeting shall be decided on a show of hands unless a poll is demanded by:
 - (i) the Chair of the meeting; or
 - (ii) at least three (3) Voting Members Present and entitled to vote on the resolution along with the ERAA Member.
- (b) Before a vote on a resolution is taken, the Chair must inform the meeting whether any proxy votes have been received and how the proxy votes are to be cast.

26.2 Declaration by Chair

A declaration by the Chair of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company, which has been signed by the Chair of the meeting or the next succeeding meeting, shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

27. SPECIAL RESOLUTIONS

27.1 Necessary Notice

- (a) A Special Resolution of Members shall only be carried if at least twenty one (21) days' written notice has been given to Voting Members on the subject of the resolution and that notice:
 - (i) provides reasonable details of the proposed resolution; and
 - (ii) specifies the intention to propose the resolution as a Special Resolution.
- (b) Subject to the Act, the requirements of **clause 27.1(a)** shall not apply to the extent that all the Voting Members agree to waive the requirements of **clause 27.1(a)**.

27.2 Definition of Special Resolution

A Special Resolution is passed if it is passed by a majority which comprises:

- (a) no less than seventy-five per cent (75%) of Voting Members Present; and
- (b) the ERAA Member.

28. POLLS**28.1 When Poll can be demanded**

- (a) A poll may be demanded:
 - (i) before a vote on a resolution is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) If a poll is demanded it must be taken in such manner and at such time before the close of the meeting and at such place as the Chair of the meeting directs, subject to **clause 28.4**.

28.2 Result of Poll

The result of the poll shall be taken to be the resolution of the meeting at which the poll was demanded.

28.3 Continuance of Meeting

The demand for a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.

28.4 Immediate Poll

A poll demanded on the election of a Chair or any question of adjournment of the meeting must be taken immediately.

28.5 Withdrawal of Demand for Poll

The demand for a poll may be withdrawn.

29. VOTING RIGHTS**29.1 Voting Rights**

- (a) On any question arising at a general meeting a Voting Member has one (1) vote only.
- (b) All votes must be given personally or by proxy or by Representative.

30. VOTING DISQUALIFICATION

30.1 Persons who cannot vote

No person or body corporate other than a Voting Member shall be entitled to a vote at a general meeting.

30.2 Unpaid Annual Subscriptions

A Voting Member or proxy holder or Representative whose Annual Subscription for the current Financial Year has been due but not paid for a period in excess of three (3) months is not entitled to vote at any general meeting or Annual General Meeting.

31. OBJECTION TO QUALIFICATION TO VOTE

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and must be determined by the Chair, whose decision shall be final and conclusive and a vote allowed by the Chair shall be valid for all purposes.

32. PERSONS OF UNSOUND MIND AND MINORS

32.1 Voting Members of Unsound Mind and Minors

A Voting Member:

- (a) of unsound mind; or
- (b) whose person or estate is liable to be dealt with in any way under the law relating to mental health; or
- (c) who is a minor;

may vote whether on a show of hands or on a poll by that Voting Member's committee or by such other person as properly has the management or guardianship of that Voting Member's estate or by the public trustee (as the case may be) and the committee or other person or trustee may vote by proxy or representative.

32.2 Evidence of Appointment

Any person having the right of management or guardianship of the person or estate in respect of a Voting Member as referred to in **clause 32.1** must not exercise any of the rights conferred under that clause unless and until the person has provided to the Board satisfactory evidence of the appointment of the person accordingly.

33. CHAIR'S CASTING VOTE

In the case of an equality of votes whether on a show of hands or on a poll, the Chair of the meeting at which the show of hands is taken or at which the poll is demanded is not entitled to a casting vote.

34. RIGHT OF NON-MEMBERS TO ATTEND GENERAL MEETING

34.1 Attendance by Non-Members

The Chair of a general meeting may invite any person who is not a Member to attend and address a meeting.

34.2 Attendance by Auditor

Any auditor of the Company shall be entitled to attend and address a general meeting.

PROXIES

35. RIGHT TO APPOINT PROXIES

35.1 Appointment of Proxies

- (a) A Voting Member, including the Representative of a Voting Member, may appoint another person as the appointing Voting Member's proxy to attend and vote for the appointing Voting Member or the Representative at the meeting and such person need not be a Member.
- (b) If a Voting Member or Representative appoints a proxy, the proxy is entitled to vote on a show of hands and on a poll.

36. APPOINTING A PROXY

36.1 Instrument of Appointment

The instrument appointing a proxy must be in the form set out in **Annexure 1** and signed by the appointer or the appointer's attorney duly authorised in writing.

36.2 Valid Instrument of Proxy

- (a) The instrument of proxy is valid if it contains the information required by the Act which at the date of this Constitution is the following information:
 - (i) the name and address of the Voting Member (and the Representative, if applicable);
 - (ii) the name of the Company;
 - (iii) the proxy's name or the name of the office of the proxy; and
 - (iv) the meetings at which the instrument of proxy may be used.
- (b) An instrument of proxy shall not be treated as invalid merely because it does not specify all of the information required by **clause 36.2(a)**.

36.3 Standing Appointment

An instrument of proxy may be expressed to be a standing appointment. An instrument of proxy for a specified meeting is only valid for that meeting and any postponement or adjournment of that meeting.

36.4 Revocation of Appointment

An instrument of proxy may be revoked at any time by notice in writing to the Company.

37. LODGEMENT OF PROXIES

37.1 Lodgement of Proxies

An instrument appointing:

- (a) a proxy and the power of attorney or other authority (if any) under which it is signed or executed or a certified copy of that power or authority; or
- (b) an attorney to exercise a Voting Member's voting rights at a general meeting or a certified copy of that power of attorney,

must be deposited at whatever location is specified for that purpose in the notice convening the general meeting not less than one (1) hour (or such shorter period as the Board may allow) before the time appointed for the holding of the meeting or adjourned meeting as the case may be at which the person named in the instrument proposes to vote and in default the instrument of proxy or the power of attorney will not be treated as valid.

37.2 Lodgement by Facsimile

For the purposes of this clause it will be sufficient that any document required to be lodged by a Voting Member be received in legible form by facsimile at the place at which the document is required to be delivered by the Voting Member and the document shall be regarded as received at the time the facsimile was received at that place.

37.3 Lodgement by Electronic Transmission

For the purposes of this clause it will be sufficient that any document required to be lodged by a Voting Member be received in legible form by email if the notice of meeting so permits at the address and in the form specified in the notice and the proxy shall be regarded as received at the time of the receipt of the email transmission by the Company.

38. VALIDITY OF PROXIES

38.1 Effective Votes

A vote exercised pursuant to an instrument of proxy, a power of attorney or other instrument of appointment is valid notwithstanding:

- (a) the death or unsoundness of mind of the Voting Member;
- (b) the bankruptcy or liquidation of the Voting Member;
- (c) the revocation of the instrument of proxy or the power of attorney or any instrument under which the instrument or the power was granted,

if the Company has not received at the location referred to in **clause 37.1** written notice of the death, unsoundness of mind, bankruptcy, liquidation or revocation at least one (1) hour (or such shorter period as the Board may allow) prior to the time

appointed for the holding of the general meeting or adjourned meeting, as the case may be, at which the instrument of proxy or the power of attorney is exercised.

38.2 Proxy voting for another Voting Member

A proxy who is not entitled to vote on a resolution as a Voting Member may vote as a proxy for another Voting Member who can vote if the appointment specifies the way the proxy is to vote on the resolution and the proxy votes that way.

39. RIGHTS OF PROXIES AND ATTORNEYS

39.1 Rights of Proxies and Attorneys

- (a) The instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (b) Unless a Voting Member by the instrument of proxy directs the proxy to vote in a certain manner, the proxy may vote as the proxy thinks fit on any motion or resolution. Otherwise the proxy shall follow the voting instructions contained in the instrument of proxy.

39.2 No Revocation

A proxy will not be revoked by the appointer attending and taking part in any general meeting, but if the appointer votes on a resolution either on a show of hands or on a poll, the person acting as proxy for the appointer shall not be entitled to vote in that capacity in respect of the resolution.

39.3 Evidence of Identity

The Chair of a general meeting may require any person acting as a proxy to establish to the satisfaction of the Chair that he is the person nominated as proxy in the form of proxy lodged under this Constitution. If the person is unable to establish his identity, he may be excluded from voting either upon a show of hands or upon a poll.

APPOINTMENT AND REMOVAL OF DIRECTORS

40. NUMBER AND APPOINTMENT OF DIRECTORS

40.1 Composition of Board

The Board shall at all times consist of the following:

- (a) the chief executive officer (or similar position if there is no chief executive officer) of ERAA (hereinafter referred to as the **ERAA Director**);
- (b) one (1) Director appointed by each Large Active Retailer Member (hereinafter referred to as **Ordinary Directors**) in accordance with **clause 43.1**; and
- (c) five (5) Directors elected by the Board from amongst nominees put forward by the Energy Marketer Members in accordance with **clause 43.2** (hereinafter referred to as **Energy Marketer Directors**).

40.2 Eligibility for Ordinary Director or Energy Marketer Director

To be eligible for appointment to the Board as an Ordinary Director or an Energy Marketer Director:

- (a) the Large Active Retailer Member or Energy Marketer Member, as the case may be, must be a Member; and
- (b) the person appointed or nominated for election must:
 - (i) hold a position of seniority within the Member organisation; and
 - (ii) either:
 - (A) have experience in sales and marketing; or
 - (B) have one of the following three areas of experience:
 - (1) regulatory experience;
 - (2) finance experience; or
 - (3) public affairs experience.

41. TERM

41.1 Term of ERAA Director

The ERAA Director shall hold office as the ERAA Director for so long as that person is the chief executive officer (or similar position if there is no chief executive officer) of ERAA.

41.2 Term of Ordinary Director and Energy Marketer Director

- (a) From 1 January 2011 (or earlier date if an Ordinary Director or Energy Marketer Director was appointed or elected prior to then):
 - (i) each Ordinary Director shall hold office for a term of three (3) years; and
 - (ii) each Energy Marketer Director shall hold office for a term of two (2) years,

and will be eligible for re-appointment or re-election, as the case may be, for one (1) further term of two (2) years.
- (b) Subject to **clause 41.2(a)**, each Ordinary Director and Energy Marketer Director appointed or elected to the Board shall hold office for a term of two (2) years and will be eligible for re-appointment or re-election, as the case may be, for one (1) further term of two (2) years.
- (c) Subject to **clause 41.2(a)(i)**, a person shall not hold office as an Ordinary Director or Energy Marketer Director for more than four (4) consecutive years.
- (d) Upon the expiry of the maximum of four (4) consecutive years of office by an Ordinary Director, the Large Active Retailer Member who appointed that particular Ordinary Director must appoint a new Ordinary Director who satisfies the criteria set out in **clause 40.2(b)**.

42. GENERAL RIGHT TO APPOINT AND REMOVE DIRECTORS

42.1 Vacancy of Director appointed by Large Active Retailer Member

A Large Active Retailer Member may appoint a new Director to fill a casual vacancy created by that Large Active Retailer Member's originally appointed Ordinary Director vacating or being removed from office. Any Ordinary Director so appointed shall hold office for a full term.

42.2 Other Vacancies

The Board may act despite any vacancy in their body, but if the number falls below the minimum required by the Act, the Board may act:

- (a) for the purpose of increasing the number of Directors to the minimum; or
- (b) for the purpose of convening a general meeting; or
- (c) in emergencies;

but for no other purpose.

43. ELECTION OF DIRECTORS

43.1 Ordinary Directors

- (a) Subject to **clause 40.2**, each Large Active Retailer Member shall be entitled to appoint an employee of its organisation to be an Ordinary Director for the purposes of **clause 40.1(b)**. Each appointee shall take office upon the retirement of the previous Ordinary Director who was appointed by that Large Active Retailer Member (if any) and shall hold office in accordance with **clause 41**.
- (b) If a Non-Active Retailer Member becomes a Large Active Retailer Member (**New Large Active Member**), the New Large Active Member shall be entitled to appoint an employee (subject to **clause 40.2(b)**) of that New Large Active Member's organisation to be an Ordinary Director pursuant to **clause 40.1(b)**.
- (c) Despite anything else contained in this Constitution, if a Large Active Retailer Member which has appointed an Ordinary Director to the Board ceases to be a Large Active Retailer Member (but is still a Member), the Ordinary Director appointed by that Large Active Retailer Member is entitled to remain as an Ordinary Director until the expiry of the period of time for which the Large Active Retailer Member had already paid fees (at the time the Large Active Retailer ceased to be a Large Active Retailer).

43.2 Energy Marketer Directors

- (a) Subject to **clause 40.2**:
 - (i) prior to the Annual General Meeting at which the term of an Energy Marketer Director elected pursuant to **clause 40.1(c)** shall expire; and
 - (ii) pursuant to **clause 44.4(a)**, as soon as practicable following a casual vacancy occurring in the position of an Energy Marketer Director;

the Secretary shall write to all of the Energy Marketer Members inviting them to nominate a candidate for Energy Marketer Director to fill the position referred to in **clause 40.1(c)**. Each Energy Marketer Member shall only be entitled to nominate one (1) person.

- (b) For the purposes of **clause 43.2(a)**, the Secretary shall send each Energy Marketer Member a form to complete whereby the Energy Marketer Members write in:
 - (i) the name of the person they wish to nominate;
 - (ii) a brief resume of the candidate; and
 - (iii) a brief explanation as to why they hold the opinion that the candidate they have nominated is suitable for the office of the Energy Marketer Director and satisfies the criteria set out in **clause 40.2**.
- (c) For the purposes of **clause 43.2(b)**, the form must:
 - (i) be signed by two (2) directors of the Energy Marketer Member and accompanied by the written consent of the candidate (which may be endorsed on the form of the nomination); and
 - (ii) must be delivered to the Secretary at least forty-nine (49) days before the date fixed for the holding of the relevant Annual General Meeting or general meeting (as the case may be).
- (d) The nominations of the Energy Marketer Members shall be collated by the Secretary and presented to the Board at least seven (7) days immediately preceding the Board meeting at which the election is to occur. The Board will elect the Energy Marketer Director from the list of nominees as prepared by the Secretary in accordance with the process set out in **clause 43.2(e)**.
- (e) Election shall proceed by ballot, conducted in the following manner:
 - (i) each Director voting shall mark his or her ballot paper by marking a cross opposite the name of each candidate for whom he or she wishes to vote and deliver the same to the Secretary. Each Director voting shall vote for one (1) candidate for each vacancy and no more and no less;
 - (ii) the result of the ballot shall be determined by the Secretary; and
 - (iii) after the closing of the ballot the Secretary shall proceed to the examination of the voting papers and shall report the result of the ballot to the Chair. Those candidates receiving the greatest number of votes shall be deemed elected and a declaration as to such election shall be made at the Board meeting by the Chair.
- (f) In the case of an equality of votes in favour of two (2) or more nominees for the one (1) position, the successful candidate shall be chosen by draw to be conducted by the Secretary in the presence of a Director.

- (g) The Board may direct the Secretary to destroy the ballot papers at any time after the expiration of one (1) month after the date of the declaration of the election.

44. VACATION OF OFFICE

44.1 Retirement by Director

- (a) Any Director may retire from office on giving written notice to the Company at the Office of his intention to retire and the resignation shall take effect at the time expressed in the notice (provided the time is not earlier than the date of delivery of the written notice to the Company).
- (b) If, pursuant to **clause 44.1(a)**, the ERAA Director resigns for any reason, ERAA shall appoint another person to hold the office of the ERAA Director in accordance with **clause 41.1**.

44.2 Casual Vacancy

The office of a Director shall become a casual vacancy if the Director:

- (a) dies;
- (b) becomes bankrupt or makes any arrangement or composition with creditors generally;
- (c) becomes prohibited from being a director of a company by reason of any order made under the Act;
- (d) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (e) resigns by notice in writing to the Company;
- (f) is an Ordinary Director and the Large Active Retailer Member who appointed that Ordinary Director has any Annual Subscription or fees or any other monies due to the Company which have been due but are unpaid for a period in excess of three (3) months;
- (g) except where such Director has appointed an Alternate Director, is absent without the permission of the Board from two (2) consecutive meetings of the Board;
- (h) subject to **clause 43.1(c)**, is an Ordinary Director or an Energy Marketer Director and the Large Active Retailer Member or Energy Marketer Member which appointed or employs that Director is no longer a Member for any reason; or
- (i) no longer satisfies any of the other eligibility criteria set out in **clause 40.2**; or
- (j) being an Ordinary Director, is removed from office by the Large Active Retailer Member which nominated the Ordinary Director by notice in writing, which may be given without any reason being ascribed to it.

44.3 Change in Ordinary Director by Large Active Retailer Member

A Large Active Retailer Member which nominated an Ordinary Director may change its Ordinary Director at any time.

44.4 Casual Vacancy in office of Energy Marketer Director

In the event of a casual vacancy occurring in the office of an Energy Marketer Director:

- (a) in the circumstances referred to in **clause 44.2(h)**:
 - (i) the process in **clause 43.2** will be implemented to elect a replacement Energy Marketer Director; and
 - (ii) such replacement Energy Marketer Director shall hold office for the balance of the term of the vacating Energy Marketer Director.
- (b) for any other reason:
 - (i) the Energy Marketer Member which employs the vacating Energy Marketer Director shall appoint a replacement Energy Marketer Director who satisfies the requirements contained in **clause 40.2**; and
 - (ii) such replacement Energy Marketer Director shall hold office for the balance of the term of the vacating Energy Marketer Director.

45. ALTERNATE DIRECTORS

45.1 Appointment of Alternate Director

Each Director, with the prior approval of the Board, may appoint an Alternate Director to exercise some or all of the Director's powers for a specified period.

45.2 Rights of Alternate Director

- (a) The Alternate Director is entitled to receive notices of all Board meetings and may also attend and vote at those meetings if the Director who appointed the Alternate Director is not present at any such meeting.
- (b) The Alternate Director may exercise any powers that the Director making the appointment may exercise, and if the Alternate Director does so exercise a power, it will be taken to be an exercise of power by the Director who appointed the Alternate Director.

45.3 Termination of Alternate Director

- (a) The Alternate Director may be terminated from the office of Director at any time, even if the period of initial appointment has not yet expired by either:
 - (i) the Director who initially appointed that Alternate Director; or
 - (ii) the Board having passed a resolution terminating the appointment.
- (b) If the Director who appointed the Alternate Director vacates his or her office for any reason, the office of the Alternate Director is automatically terminated.

45.4 Effective Appointment and Termination

Any appointment or termination of an Alternate Director must:

- (a) be effected by a notice signed by the Director making the appointment or termination (or by the Secretary on behalf of the Board where the Board has terminated the appointment); and
- (b) be served on the Company; and
- (c) set out the terms (if any) of the appointment or termination.

POWERS AND DUTIES OF DIRECTORS

46. POWERS OF DIRECTORS

46.1 Powers of Directors

- (a) The control, ultimate management and conduct of the Company shall be vested in the Board who shall exercise all such powers of the Company as are not by the Act or by this Constitution required to be exercised in any other manner.
- (b) The Board will specifically:
 - (i) control and manage the affairs of the Company;
 - (ii) exercise all functions as may be exercised by the Company other than those functions that are required by this Constitution to be exercised by a general meeting of Members; and
 - (iii) perform all acts and do all things as appear to the Board to be necessary or desirable for the proper management of the affairs of the Company.

47. NEGOTIABLE INSTRUMENTS

47.1 Negotiable Instruments

All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments and all receipts for money paid to the Company must be signed, drawn, accepted, endorsed or otherwise executed as the case may be by:

- (a) any two (2) Directors; or
- (b) the chief executive officer of the Company and one (1) other employee who has received the appropriate delegated authority to do so by the Board.

48. CONFERMENT OF POWERS

48.1 Conferment of Powers by Board

- (a) The Board may from time to time confer upon any Director for the time being, or any other person as they may select, such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be

exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.

- (b) Powers conferred under this **clause 48.1** may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

DIRECTORS' DISCLOSURE OF INTEREST

49. CONTRACTS

49.1 Power to enter into Contracts with Interested Director

The Company may enter into contracts or arrangements with other companies or bodies in which a Director has an interest, provided it does so according to the usual commercial terms and conditions that applies to such contracts or arrangements.

49.2 Disclosure of Interest

A Director must disclose an interest in accordance with the Act and the Secretary must record all declarations in the minutes of the relevant meeting.

49.3 Rights of Interested Director

- (a) A Director who has an interest in a contract or arrangement made by the Company and has disclosed this interest to the Board subject to compliance with section 195 and related provisions of the Act still may:

- (i) vote on the matter;
- (ii) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
- (iii) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
- (iv) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.

- (b) A Director's failure to make disclosure under this **clause 49** does not render void or voidable a contract or arrangement in which the Director has a direct or indirect interest.

49.4 Sufficient Disclosure

A general notice given to the Board by a Director that the Director is an officer, a member of or otherwise interested in any specified corporation or firm stating the nature and the extent of the Director's interest in the corporation or firm shall, in relation to any matter involving the Company and that corporation or firm after the giving of the notice, be a sufficient disclosure of the Director's interest, provided that the extent of the interest is no greater at the time of first consideration of the relevant matter by the Board than was stated in the notice.

PROCEEDINGS OF DIRECTORS

50. MEETINGS OF DIRECTORS

50.1 Regularity of Board Meetings

The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit, provided that they shall meet together at regular intervals not less than four (4) times in each twelve (12) month period.

50.2 Convening of Board Meetings

A Director may at any time and the Secretary upon the request of a Director shall convene a meeting of the Board by giving at least forty eight (48) hours (or such other period as may be unanimously agreed upon by the Directors) notice of the meeting to all Directors, except a Director who the person convening the meeting reasonably believes to be outside Australia.

50.3 Notice of Board Meetings

Notice of a meeting of the Board need not be in writing.

50.4 Use of technology

A Board meeting may be convened or held using any technology consented to by all Directors. The consent may be a standing one.

51. QUORUM

51.1 Definition of Quorum

- (a) Fifty-one per cent (51%) of Directors entitled to attend a meeting of the Board who are personally present plus the Chair or Deputy Chair form a quorum and a quorum must be present at all times during the meeting.
- (b) A Director who is disqualified from voting on a matter shall be counted in the quorum despite that disqualification.

51.2 Absence of Quorum

- (a) If within thirty (30) minutes of the time appointed for a meeting of the Board a quorum is not present, the meeting stands adjourned to the same place and at the same time on the same day in the following week.
- (b) If, at the adjourned meeting, a quorum is not present within thirty (30) minutes of the time appointed for the meeting, the meeting will be dissolved.

52. OFFICE BEARERS

- (a) The Office Bearers are:
 - (i) the Chair; and
 - (ii) the Deputy Chair.

- (b) The ERAA Director shall preside as Chair.

52.2 Deputy Chair

- (a) The Board shall elect from amongst the Directors the Deputy Chair.
- (b) In the Chair's absence the Deputy Chair shall preside as Chair.
- (c) The Deputy Chair shall hold office as such for a term of one (1) year, or until such time as he is no longer a Director, whichever occurs first. The Deputy Chair shall be eligible for re-election only for a further term of one (1) year.

52.3 Absence of both Chair and Deputy Chair

- (a) If a meeting of the Board is held and neither the Chair nor the Deputy Chair is present within thirty (30) minutes after the time appointed for the holding of the meeting, then **clause 51.2** shall apply.
- (b) If the Chair or the Deputy Chair is present, but does not wish to chair the meeting, then the other Directors present must elect one of their numbers to be Chair of the meeting.

53. VOTING

53.1 Resolution

A resolution of the Board or at a meeting of a Panel constituted in accordance with **clause 55** must be passed by a majority of votes of the Directors or Panel members present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors will for all purposes be taken to be a determination of the Board.

53.2 Voting

- (a) Each Director or Panel member shall have one (1) vote.
- (b) In case of an equality of votes at a meeting of the Board or of a Panel, the Chair shall have a casting or deliberative vote.

53.3 Defect

Any act or thing done or suffered, or purporting to have been done or suffered, by the Board or the Panel, is valid and effectual notwithstanding any defect that may afterwards be discovered in the appointment or qualification of any member of the Board or Panel.

54. RESOLUTIONS BY DIRECTORS

54.1 Circular Resolutions

- (a) The Board may pass a resolution without a Board meeting being held if all the Directors entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. For this purpose, signatures can be contained in more than one document.
- (b) A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall, for the purposes of this

clause 54.1, be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.

- (c) An email transmission which is received by the Company and which purports to have been sent by a Director shall, for the purposes of this **clause 54.1**, be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.

54.2 Use of Technology

In addition, a Board meeting may be called or held and resolutions may be passed using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw consent within a reasonable period before the meeting or the putting of the resolution.

54.3 Validity of Resolutions

- (a) All resolutions of the Directors passed at a meeting of the Board where a quorum is present but where notice of the meeting has not been given as required to each Director, or any act carried out pursuant to such resolution, shall, provided each Director to whom notice was not given subsequently agrees to waive the same, be as valid as if notice of the meeting had been duly given to all Directors.
- (b) Resolutions passed at a meeting of the Board at which there is no quorum present are not valid.

55. COMMITTEES OF DIRECTORS

55.1 Delegation to Committees

- (a) The Board may form, and by instrument in writing delegate any of its powers to, one or more Committees consisting of such Directors and other persons as are specified in the instrument except for:
 - (i) this power of delegation; and
 - (ii) a function which is a duty imposed on the Board by the Act or by any other law,

and may from time to time revoke such delegation by instrument in writing.

- (b) The Board may continue to exercise any function delegated.

55.2 Obligations of Committee

A Committee must, in exercise of the powers delegated to it, conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.

55.3 Committees Meetings

- (a) The meetings and proceedings of any Committee consisting of more than one person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.

- (b) A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Act and this Constitution to be made entered and signed. A copy of these minutes shall be tabled at the next Board Meeting.

56. VALIDATION OF ACTS OF DIRECTORS

56.1 Validity of Actions of Directors

All acts done:

- (a) at any meeting of the Board; or
- (b) by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

MINUTES

57. MINUTES

57.1 Requirement to keep Minutes

The Board must cause minutes to be kept in accordance with the Act for the purposes of recording:

- (a) the names of the Directors present at each Board meeting and of Directors present at each meeting of any Committee;
- (b) all orders, resolutions and proceedings of general meetings and Board meetings and meetings of Committees;
- (c) such matters as are required by the Act to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.

57.2 Accuracy of Minutes

Such minutes shall be signed by the Chair of the meeting, or the Chair of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

SECRETARY

58. APPOINTMENT AND TENURE

58.1 Appointment of Secretary

- (a) There must be at least one Secretary (who is the Company Secretary for the purposes of the Act) appointed by the Board for a term and on conditions determined by the Board.
- (b) The Board will appoint the chief executive officer of the Company as the Secretary.
- (c) The Board may remove any Secretary so appointed and appoint a person who is not the chief executive officer to be the Secretary in their stead.

58.2 Notice of Secretary's Details

The Secretary must, as soon as practicable after being appointed as Secretary, lodge a notice of his or her address details with the Company.

58.3 Keeping of Minutes

The Secretary must keep minutes of:

- (a) all appointments of Directors;
- (b) the names of the Directors present at a Board meeting or a general meeting; and
- (c) all proceedings at Board meetings and general meetings.

EXECUTION OF DOCUMENTS

59. EXECUTION OF DOCUMENTS

59.1 Execution of Documents

Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Act or as otherwise delegated by the Board, the Company may execute any agreement, deed or other document by:

- (a) two Directors signing the same; or
- (b) one Director and one Secretary signing the same.

59.2 Common Seal

Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

ACCOUNTS AND INSPECTION OF RECORDS

60. ACCOUNTS AND INSPECTION

60.1 Financial Records

The Board shall cause proper financial records to be kept and must distribute copies of the financial reports of the Company and a Director's report in accordance with the requirements of the Act.

60.2 Access of Records by Members

The Board must also from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of Members.

61. CUSTODY OF BOOKS

Except as otherwise provided by this Constitution, the Secretary must keep in his or her custody or under his or her control all records, books and other documents relating to the Company.

62. INSPECTION OF BOOKS

The records, books and other documents of the Company must be open to inspection, free of charge, by a Member at any reasonable hour.

63. REGISTER OF MEMBERS

63.1 Register of Members

- (a) The Secretary must establish and maintain a Register of Members specifying the name and address of each person or body corporate who is a Member together with the date on which the person became a Member and the class of Membership.
- (b) The Register of Members will be kept at the principal place of administration of the Company and will be open for inspection, free of charge, by any Member at any reasonable hour.

INTELLECTUAL PROPERTY

64. USE OF INTELLECTUAL PROPERTY

64.1 Obligation of Members

- (b) All right, title and interest in any Intellectual Property (of whatever nature) developed, produced or created by the Company is and becomes vested in the sole, exclusive, absolute and entire beneficial ownership of the Company.
- (a) Nothing in this Constitution or any other agreement, appointment or arrangement between the Company and a Member (or any other party) confers on the Member any right, interest or title to the Intellectual Property.

64.2 Restrictions on use of Intellectual Property

A Member must not use any Intellectual Property owned by, or licensed to, the Company other than for a purpose to which the prior written consent of the Board has been obtained and in accordance with the Board's written directions from time to time.

64.3 Infringement Claims and Litigation

- (a) Members must inform the Company of any act of unfair competition or of any infringement of the Intellectual Property owned by, or licensed to, the Company of which they become aware.
- (b) The Company will have the right, but not the obligation, to prosecute and defend, as the case may be, all claims of infringement against or by an Energy Marketer arising from or in connection with a Member's use of the Intellectual Property owned by, or licensed to, the Company.
- (c) Members must provide all reasonable assistance that the Board requests for the purpose of protecting the Company's Intellectual Property and prosecuting any infringement of the Company's Intellectual Property.

NOTICES

65. SERVICE OF NOTICES

65.1 Service of notice to Member

- (a) A notice may be given by the Company to any Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register of Members or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- (b) Any Member who has not left at or sent to the Office his place of address for inclusion in the Register as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- (c) Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.
- (d) Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.

65.2 Notice to Dead, Lunatic or Bankrupt Member

A notice may be given by the Company to the persons entitled to a share in consequence of the death, lunacy or bankruptcy of a Member by:

- (a) service on the Member personally;
- (b) sending it by post addressed to the person by name or by the title of the representative of the deceased or lunatic or the assignee of the bankrupt or by any like description at the address, if any, within Australia supplied for the purpose by the person claiming to be entitled;
- (c) by giving the notice in any manner in which the same might have been given if the death, lunacy or bankruptcy had not occurred.

65.3 Evidence of Service of Notice

Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

66. NOTICES OF GENERAL MEETING

66.1 Notice of General Meeting

Subject to **clause 65.1(b)**, notice of every general meeting must be given in any manner authorised by this Constitution to:

- (a) every Member;
- (b) every Director; and
- (c) the auditor for the time being of the Company.

WINDING UP

67. WINDING UP

67.1 Surplus to ERAA

If any surplus remains following the winding up of the Company, the surplus will not be paid to or distributed amongst Members, but will be given or transferred to ERAA so long as ERAA has:

- (a) a constitution which requires its income and property to be applied in promoting its objects; and
- (b) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.

67.2 Surplus to Other Organisations

- (a) If at the time of the winding up of the Company:
 - (i) ERAA does not satisfy the criteria in **clauses 67.1(a)** and **67.1(b)**; or

- (ii) it is not legally permissible for the surplus to be transferred to ERAA;
- then the surplus of the Company shall be given or transferred to an organisation or institution that has:
- (iii) objects which are similar to the Objects;
 - (iv) a constitution which requires its income and property to be applied in promoting its objects; and
 - (v) a constitution which prohibits it from paying or distributing its income and property amongst its Members to an extent at least as great as imposed on the Company by **clause 5.2(b)**.
- (b) The identity of the corporation or institution referred to in **clause 67.2(a)** is to be determined by the Members in writing at or before the time of dissolution and failing such determination being made, by application to the Supreme Court for determination.

INDEMNITY

68. INDEMNITY

68.1 Indemnity of Officers

To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee). However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this **clause 68** unless:

- (a) it is in respect of a liability to another person (other than the Company or a related body corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
- (b) it is in respect of a liability for costs and expenses incurred:
 - (i) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (ii) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Act.

69. PAYMENT OF INDEMNITY POLICY PREMIUM

69.1 Payment of Insurance Premiums

- (a) To the extent permitted by law the Company must enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:

- (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a contravention of sections 182 or 183 of the Act.
- (b) The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.

69.2 No Indemnity

Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his actions or omissions, then the Company shall not be required to indemnify the Officer under **clause 68** except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

70. INDEMNITY TO CONTINUE

The indemnity granted by the Company contained in **clauses 68** and **69** shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

APPENDIX 1

Energy Assured Limited

Form of Appointment of Proxy

PROXY FORM

(1) Your details

(Please print your name and address)

Name: _____

Address: _____

City: _____

State: _____

Postcode: _____

Telephone: _____

(2) Appoints

Name: _____

(Please print name of proxy)

as my proxy to vote for me on my behalf at the Annual/Special General Meeting of **Energy Assured Limited** be held on [insert date] commencing at [insert time] and at any adjournment thereof.

(3) Directions

I direct and authorise my proxy to vote as follows:

In favour of / against motion 1 *(strike out as appropriate)*

In favour of / against motion 2 *(strike out as appropriate)*

In favour of / against motion 3 *(strike out as appropriate)*

In favour of / against motion 4 *(strike out as appropriate)*

In favour of / against motion 5 *(strike out as appropriate)*

In favour of / against motion 6 *(strike out as appropriate)*

(4) Signature

(5) Date

This form may be returned by fax to (02) ##### or email to ###@#####.###.au.



cutting through complexity



Energy Assured Limited Code of Practice

Report on Energy Retailer Compliance
Summary Report

For Energy Assured Limited

20 December 2012

Inherent Limitations

This report has been prepared as outlined in the Background and Scope Section of this report. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed, and any reference to the term 'audit' throughout this report has not been used in the context of an audit or assurance engagement in accordance with standards issued by the Australian Auditing and Assurance Standards Board.

The findings in this report are based on a qualitative study and the reported results reflect a perception of Energy Assured Limited's ten (10) Energy Retailer's but only to the extent of the sample surveyed, being Energy Assured Limited's approved representative sample of Energy Assured Limited's ten (10) Energy Retailer's management and personnel.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by Energy Assured Limited's ten (10) Energy Retailer's management and personnel consulted as part of the process. KPMG have indicated within this report the sources of the information provided.

We have not sought to independently verify those sources unless otherwise noted within the report. KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form. The findings in this report have been formed on the above basis.

Third Party Reliance

This report is solely for the purpose set out in the Background and Scope Section of this report and for Energy Assured Limited's information, and is not to be used for any other purpose or distributed to any other party without KPMG's prior written consent.

Responsibility for the security of any electronic distribution of this report remains the responsibility of Energy Assured Limited and KPMG accepts no liability if the report is or has been altered in any way by any person.

This report has been prepared at the request of Energy Assured Limited in accordance with the terms of KPMG's engagement letter dated 30 March 2012. Other than our responsibility to Energy Assured Limited, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party's sole responsibility.

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with this report are:

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Contents

1. Executive Summary
 - Background and Scope
 - Energy Retailer Overview
 - Summary of Findings
2. Gap Testing
 - EAL Standards
 - Roles and Responsibilities
 - EAL Register, Recruitment and Training
 - Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline
 - Reporting, Audit and Member Discipline
3. Appendices
 - A. List of Key Energy Retailer Documents Sighted
 - B. Categorisation of Non Compliance and Compliance Status
 - C. Scope of the Work performed by KPMG

1. Executive Summary

- *Background and Scope*
- *Energy Retailer Overview*
- *Summary of Findings*

Background and Scope

Background

Energy Assured Limited (EAL) seeks to promote consumer confidence in door to door sales, influence better door to door practices, improve customer experience and reduce complaints. EAL manages a Code of Practice (the Code), which has been authorised by the Australian Competition and Consumer Commission (for three years), which outlines the requirements influencing better door to door sales practices and assists to improve compliance by both Energy Retailers and Energy Marketing companies.

In accordance with the Code an annual audit is to be undertaken of each Energy Retailer's compliance with the Code. Particularly, Energy Retailer's are required to:

- provide access to information necessary for the Code Auditor to undertake the audit;
- have adequate controls, processes and systems to ensure compliance with the Code; and
- undertake a self-assessment of compliance prior to the audit commencing.

The objective of this report is:

- through assessing key Energy Retailer documentation, processes and controls as outlined in *Appendix A*, understand the level of Energy Retailer compliance across the Code;
- to perform a compliance audit of the work the Energy Retailer is currently undertaking to ensure day to day compliance with the Code; and
- to outline Energy Retailer's compliant and non compliant findings.

Where non compliance is identified, Findings and Management Actions are outlined for important and major non compliance findings. *Appendix B* outlines the categorisation of non complaint findings and definition of compliant, compliance excellence and improvement opportunities. *Appendix C* outlines the scope of the work performed by KPMG.

Scope

The scope of this audit is limited to compliance with the EAL Code and is not intended to assess compliance to other regulatory requirements.

The Code covers and includes guidance on:

- a national scheme to ensure Sales Agents are recruited, trained and assessed in a consistent door to door manner across the industry in all contestable energy markets;
- a central register of accredited Sales Agents;
- monitoring Sales Agent behaviour with provisions for sanctions such that a proven breach in accordance with EAL's standards may result in disciplinary measures and deregistration of the Sales Agent for five (5) years; and
- imposing sanctions on Energy Retailers or Energy Marketers who fail to comply with the Code.

It is possible that non compliance with the Code may occur and not be detected by the annual audit performed by KPMG as the procedures performed were not performed continuously throughout the period and the tests performed are on sample basis.

Any projection of the evaluation of an Energy Retailer's compliance in future periods is subject to the risk that the procedures may become inadequate because of changes in conditions, or that the degree of compliance with them may deteriorate.

Overview

The Code audit period was between 16 January 2012 to 30 June 2012 (audit period) and Energy Retailer controls, processes and procedures in place during the audit period were only assessed to identify level of EAL Code of Conduct compliance.

The EAL Code has been active since 16 January 2012 and that during the term of the audit period many of the Energy Retailers were either designing or implementing controls, processes and procedures to manage their responsibilities and accountabilities pursuant to the Code.

It is important to note that many of the non compliant findings outlined within this report are:

- interrelated with each other;
- this interrelation particularly applied to non compliant findings captured within Part 6 - Reporting, Audit and Member Discipline and in regard to the EAL Register and reconciliation to the Register; and
- it was identified that the EAL Register only became operational for Energy Retailers who did not engage Energy Marketers on or around 9 July 2012, therefore any accurate reporting against the Registry, prior to this date was unavailable and were identified as non compliant findings by the Code Auditor if no manual checks were performed.
- to be followed up by the Code Auditor in the 2013 Code audit;
- this will apply to all non compliant findings, particularly findings with agreed management action.

Furthermore, reference to 'Not Applicable' (N/A) findings within this report refers to findings where a part of the Code did not apply to a Energy Retailer's business or delivery of door to door sales.

How to Read this Report

This report identifies the Energy Retailer's compliance and non compliance across the following five (5) key focus areas:

- *EAL Standards (Part 2).*
- *Roles and Responsibilities (Part 3).*
- *EAL Register, Recruitment and Training (Part 4).*
- *Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline (Part 5).*
- *Reporting, Audit and Member Discipline (Part 6).*

This report is delivered in three (3) sections, across all 10 Energy Retailers and 5 Code parts:

- Section 1 (*Executive Summary*) of this report outlines:
 - a summary of compliant and non compliant findings;
 - proportion of compliance;
 - samples tested; and
 - proportion of compliance excellence.
- Section 2 (*Gap Testing*) of this report outlines:
 - total compliant and non compliant findings;
 - management actions for major and important findings; and
 - a sample of major and important findings.
- Section 3 (*Appendices*) of this report outlines:
 - key Energy Retailer Documents Sighted; and
 - the categorisation of Major, Important and Minor Non Compliance.

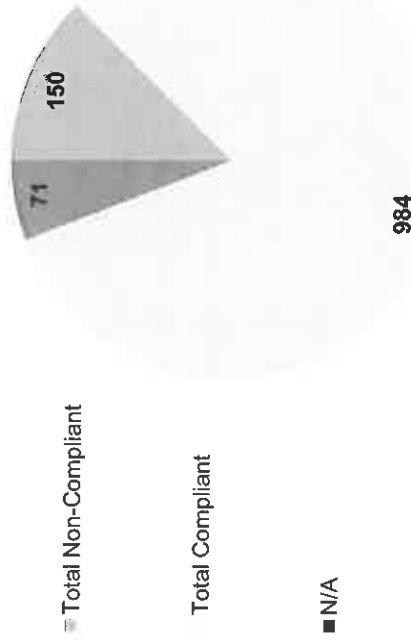
Energy Retailer Overview

Compliance vs. Non Compliance Across all Energy Retailers and Code Parts

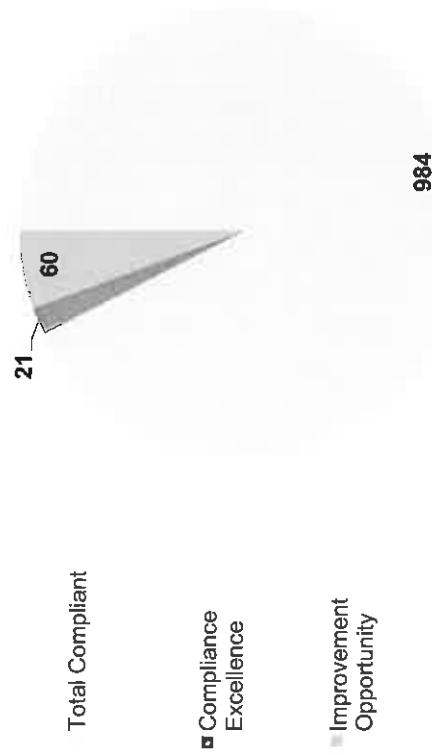
Energy Retailer Overview

- Audit period - 16 January 2012 to 30 June 2012
- Documents and processes submitted - 9 to 31 August 2012
- On site Energy Retailer visits - 31 August to 11 September 2012
- Sample tested across all Code parts - 4,541
- Energy Retailers assessed as part of this report –10
- Energy Marketers assessed as part of this report –11

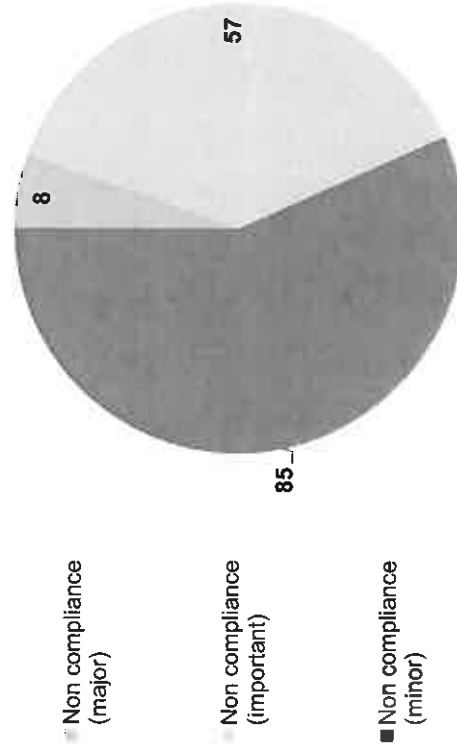
Total Compliance vs. Non Compliance



Compliance Distribution



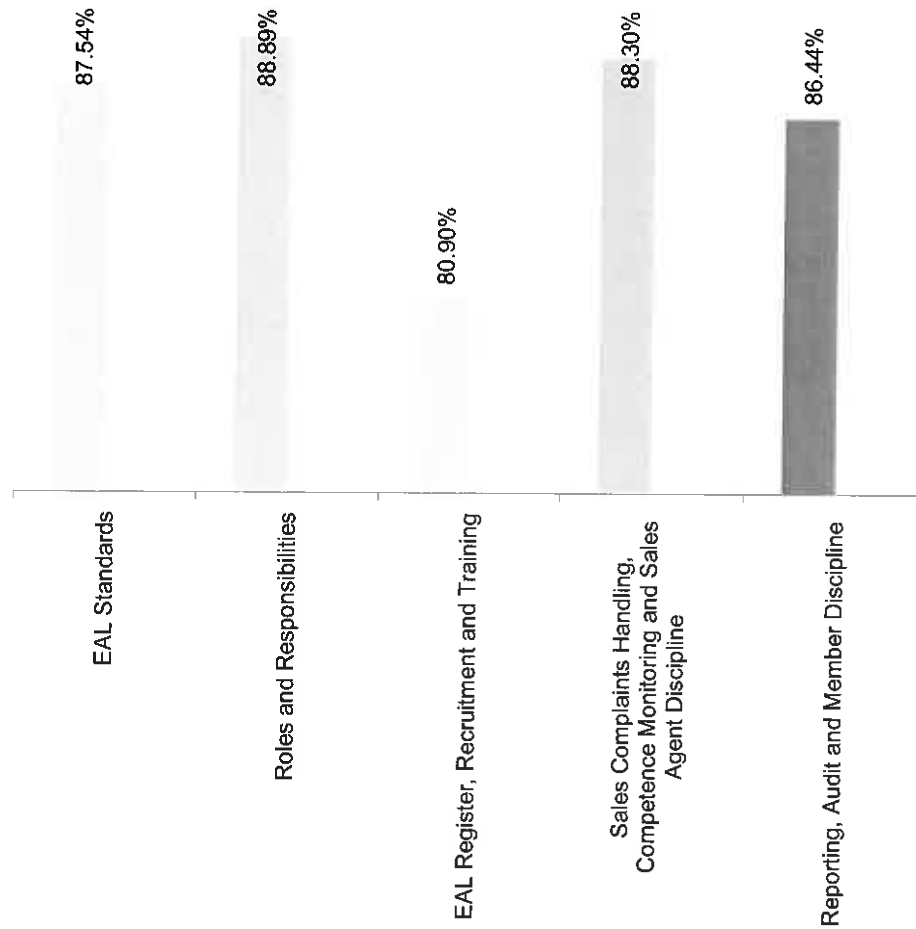
Breakdown of Non Compliance



Energy Retailer Overview

Proportion of Compliance Against Code Parts Across all Energy Retailers and Code Parts

Proportion of Total Compliance Against All Code Parts



Across the five (5) focus areas of the Code, a number of tests were performed to determine the proportion compliant by focus area.

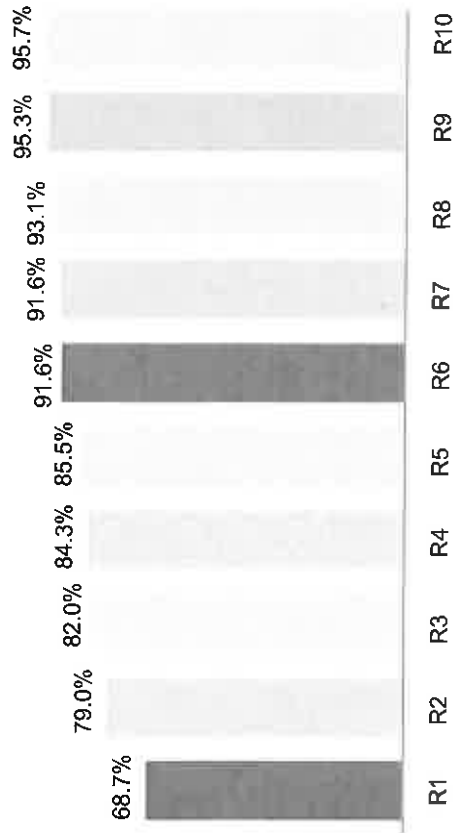
The proportion compliant illustrated is based on the number of compliant outcomes and the total number of tests performed across the 5 focus areas.



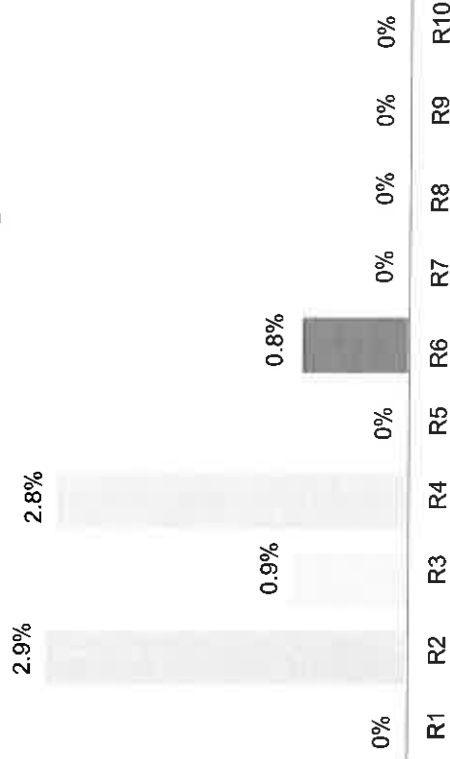
Energy Retailer Overview

Proportion of Compliance and Non Compliance Against all Code Parts by Energy Retailer

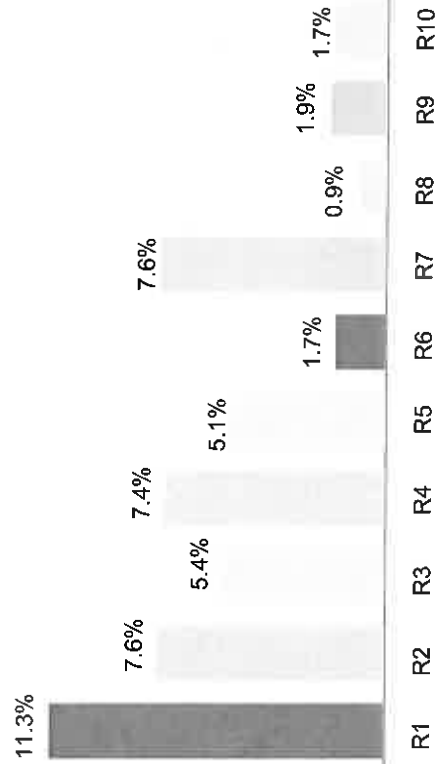
Proportion Compliant



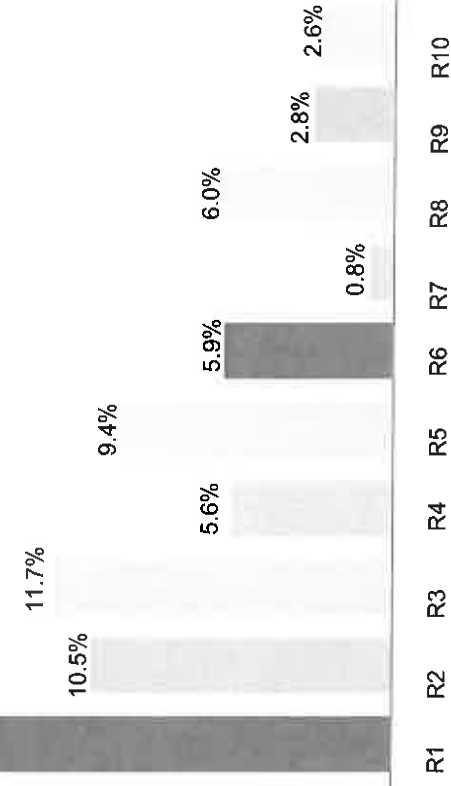
Proportion Major Findings



Proportion Important Findings



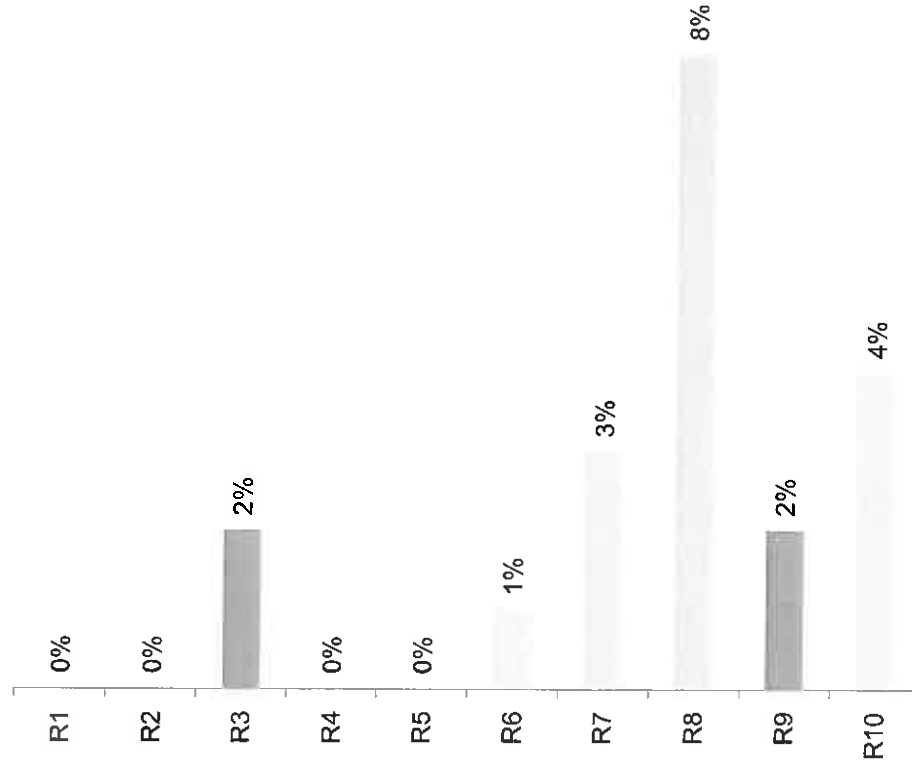
Proportion Minor Findings



Energy Retailer Overview

Proportion of Compliance Excellence Against all Code Parts by Energy Retailer

Proportion Compliance Excellence



Key Compliance Excellence Observations

For example, one:

- Energy Retailer's verification script covered all standard questions as prescribed by the Code. The verification caller ascertains whether the customer understands the contract and their rights, and answers any questions;
- Energy Retailer's Governance Framework contains a well documented line of reporting, defining each role and assigns the personnel responsible. Responsibility of each responsible personnel is also clearly documented;
- Energy Marketer undertakes an excellent reconciliation process. This was evident in the detailed monthly reconciliation reports provided;
- Energy Retailer has a detailed Complaints Handling Process which documents the complaints handling process in flow charts, breach ratings procedures, corrective actions against an agent and recording of complaints on the system;
- Energy Retailer 'Complaints Dashboard' is effective, containing an extensive list of fields which assist with tracking complaints and ensuring the complainant has been contacted for resolution; and
- Energy Retailer and Energy Marketer organise "roadshows" where they go out to the field, make observations, meet stakeholders and the sales teams and perform general compliance audits. As part of the roadshows they also run a workshop with the Sales Agents to deal with any issues or retraining needs.

Summary of Findings

Totals Across all Code Parts

The table below is a high level assessment of ten (10) Energy Retailer's compliance with the Code. Findings were based on discussions with key management responsible for the Code and desktop review of key documents, processes and controls.

Summary of findings								
Priority		Compliance			Non Compliance			N/A
Focus area	Compliant	Compliance Excellence	Improvement Opportunity	Major	Important	Minor		
EAL Standards	295	8	18		16	26		29
Roles and Responsibilities	96	3	8	2	3	7		2
EAL Register, Recruitment and Training	144	1	9	1	14	19		11
Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline	347	5	20	1	19	26		27
Reporting, Audit and Member Discipline	102	4	5	4	5	7		2
Totals	984	21	60	8	57	85		71

2. Gap Testing

- *EAL Standards*
- *Roles and Responsibilities*
- *EAL Register, Recruitment and Training*
- *Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline*
- *Reporting, Audit and Member Discipline*

EAL Standards

Part 2 – Total of all Code Findings and Sample of Management Actions

The information below is based on discussions with the management from the ten (10) Energy Retailers and forms the basis of our findings.

Compliant	Compliance Excellence	Improvement Opportunity	Major	Important	Minor
R1	26	2	-	2	7
R2	26	-	-	4	1
R3	29	3	-	1	5
R4	27	-	-	4	1
R5	29	4	-	2	5
R6	31	1	-	1	3
R7	34	3	-	1	-
R8	32	4	-	-	1
R9	29	-	-	-	2
R10	32	4	-	1	1

No major Non Compliance findings were discovered.

Roles and Responsibilities

Part 3 – Total of all Code Findings and Sample of Management Actions

The information below is based on discussions with the management from the ten (10) Energy Retailers and forms the basis of our findings.

	Compliant	Compliance Excellence	Improvement Opportunity	Major	Important	Minor
R1	8	-	2	-	-	2
R2	10	-	-	1	-	-
R3	9	1	1	-	-	1
R4	10	-	-	1	-	-
R5	7	-	1	-	1	3
R6	10	-	1	-	1	-
R7	10	-	-	-	1	-
R8	11	1	1	-	-	-
R9	11	1	-	-	-	-
R10	10	-	2	-	-	1

EAL Register, Recruitment and Training

Part 4 – Total of all Code Findings and Sample of Management Actions

The information below is based on discussions with the management from the ten (10) Energy Retailers and forms the basis of our findings.

Compliant	Compliance Excellence	Improvement Opportunity	Major	Important	Minor
R1	13	1	2	3	
R2	11	1	1	4	
R3	15	2	2	2	
R4	12	1	1	3	
R5	14	1	2	2	
R6	15	1	1	3	
R7	15	2	4	2	
R8	17	4	1	1	
R9	13	2	2	1	
R10	19	1	1	1	

Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline

Part 5 – Total of all Code Findings and Sample of Management Actions

The information below is based on discussions with the management from the ten (10) Energy Retailers and forms the basis of our findings.

	Compliant	Compliance Excellence	Improvement Opportunity	Major	Important	Minor
R1	24	•	1	•	8	9
R2	27	•	2	•	2	6
R3	31	•	4	1	2	2
R4	33	•	2	•	2	2
R5	38	•	4	•	1	1
R6	41	•	•	•	•	1
R7	39	•	•	•	2	1
R8	37	2	4	•	1	4
R9	37	1	•	•	•	•
R10	40	2	3	•	1	•

Reporting, Audit and Member Discipline

Part 6 – Total of all Code Findings and Sample of Management Actions

The information below is based on discussions with the management from the ten (10) Energy Retailers and forms the basis of our findings.

Compliant	Compliance Excellence	Improvement Opportunity	Major	Important	Minor
R1	8	-	-	1	2
R2	9	-	2	1	-
R3	7	-	-	1	3
R4	9	-	2	1	-
R5	12	1	-	-	-
R6	12	1	-	-	-
R7	11	1	-	1	-
R8	11	1	-	-	1
R9	12	-	-	-	-
R10	11	1	-	-	1

3. Appendices

- A. *List of Key Energy Retailer Documents Sighted*
- B. *Categorisation of Non Compliance and Compliance Status*
- C. *Scope of the Work performed by KPMG*

A. List of Energy Retailer Documents Sighted

Illustrated below are documents, processes and controls referenced throughout this report.

Document
Company policies & procedures
Complaints policies & procedures
A list of current Sales Agents details
A list of new Sales Agents
Complete Sales Agent registration evidence
Copy of standard Sales Agent employment contracts
Copy of approved training materials
A list of approved Trainers
A list of approved Experienced Individuals
A list of approved Assessors
Training/Product Information (attendance) records
A copy of a current customer contract sample
Copy of sales support materials used/provided to all Sales Agents
Member's Code of Practice for complaints
Complaints Register

Document
Competence Record Register
Full year monthly reports as provided to the Code Manager
List and categorisation of complaints
Results of internal audits of complaints undertaken
List of all new consumer contracts entered into and time consumers were contacted.
Website map displaying EAL content
Member's Self Assessment return
Results of Warning Notices/Sanction Issued and actions taken
Overview as to how issues and systemic issues are identified and how these are addressed
Monthly EAL Register reconciliation checks
Compliance Manual and Monitoring Program Policy & Procedure
EAL Marketing material
Consumer materials
Sales Agent Records

B. Categorisation of Non Compliance and Compliance Status

Non compliances have been categorised as Major, Important or Minor. Definitions of these categorisations have been provided by EAL.

Where identified Compliant findings have been further categorised as Compliance Excellence and Improvement Opportunities.

Non Compliance Categorisation	Definition
Major	Major defines as serious and/or repeated breach of the Code that may result in reputational risk for Energy Assured or the Energy Retailer and possible financial risk for the Energy Retailer.
Important	Important defines as less serious and/or repeated breach of the Code with some reputational risk for Energy Assured and the Energy Retailer and possible financial risk for the Energy Retailer.
Minor	Minor defines as small or occasional breach of the Code with some reputational risk to Energy Assured and the Energy Retailer.

Compliance Categorisation	Definition
Compliant	Compliant defines as a finding compliant to Code requirement (s).
Compliance Excellence	Compliance Excellence defines as a compliant Code finding, which excels in both form and delivery in comparison to other Energy Retailers and best practice requirements.
Improvement Opportunity	Improvement Opportunity defines as a compliant Code finding, which requires minor improvement opportunity.

The scope of this audit is limited to compliance with the EAL Code and is not intended to assess compliance to other regulatory requirements.

C. Scope of the work performed by KPMG

Overview

In accordance with Energy Assured Limited Code Auditor 2011 Request for Proposal, KPMG's Audit scope included the following:

1. Against a list of agreed Code of Practice parts perform an audit of ten (10) Energy Retailer's and eleven (11) Energy Marketer's compliance with the Code.
2. Highlight any areas of non-compliance and where Energy Retailers have strived to achieve compliance.
3. Categorise non-compliances as Major, Important or Minor and note any trend in frequency of non-compliance. Any systemic issues to be highlighted.
4. Energy Retailers audited for the period 16 January 2012 to 30 June 2012.



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cutting through complexity

Energy Assured Limited Code of Practice

2013 Code Audit Report

For Energy Assured Limited

23 December 2013



Inherent Limitations

This report has been prepared as outlined in the Background and Scope Section of this report. The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board and, consequently no opinions or conclusions intended to convey assurance have been expressed.

The findings in this report are based on a qualitative study and the reported results reflect a perception of Energy Assured Limited's seven (7) Energy Retailers and one (1) Comparator but only to the extent of the sample surveyed, being Energy Assured Limited's approved representative sample of Energy Assured Limited's seven (7) Energy Retailer's and one (1) Comparator's management and personnel.

No warranty of completeness, accuracy or reliability is given in relation to the statements and representations made by, and the information and documentation provided by Energy Assured Limited's seven (7) Energy Retailer's and one (1) Comparators management and personnel consulted as part of the process. KPMG have indicated within this report the sources of the information provided.

We have not sought to independently verify those sources unless otherwise noted within the report. KPMG is under no obligation in any circumstance to update this report, in either oral or written form, for events occurring after the report has been issued in final form. The findings in this report have been formed on the above basis.

Third Party Reliance

This report is solely for the purpose set out in the Background and Scope Section of this report and for Energy Assured Limited's information, and is not to be used for any other purpose or distributed to any other party without KPMG's prior written consent.

Responsibility for the security of any electronic distribution of this report remains the responsibility of Energy Assured Limited and KPMG accepts no liability if the report is or has been altered in any way by any person.

This report has been prepared at the request of Energy Assured Limited in accordance with the terms of KPMG's engagement letter dated 30 March 2012. Other than our responsibility to Energy Assured Limited, neither KPMG nor any member or employee of KPMG undertakes responsibility arising in any way from reliance placed by a third party on this report. Any reliance placed is that party's sole responsibility.

Contents

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1. Executive Summary
 - Background and Scope
 - Summary of Findings
2. Gap Testing
 - Detailed Audit Findings
 - EAL Standards (Part 2)
 - Roles and Responsibilities (Part 3)
 - EAL Register, Recruitment and Training (Part 4)
 - Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline (Part 5)
 - Reporting, Audit and Member Discipline (Part 6)
3. Appendices
 - A. List of Key Energy Retailer and Comparator Documents Sighted
 - B. Categorisation of Non Compliance and Compliance Status

1. Executive Summary

- *Background and Scope*
- *Summary of Findings*

Background and Scope

Energy Assured is an industry initiative to ensure the best practice of door to door sales of energy contracts, monitoring and improving door to door marketing standards.

With a commitment to improving the consumer experience, Energy Retailers and Marketers have established a Code of Practice and Agency Registry to increase service standards in the door to door sale of retail energy products.

The Code covers standards in recruitment, training, accreditation and on-going monitoring of agents to ensure confidence when buying energy at your doorstep.

The Code requires members to only engage sales people that meet the Code's stringent requirements.

Background

Energy Assured Limited (EAL) seeks to promote consumer confidence in door to door sales, influence better door to door practices, improve customer experience and reduce complaints. EAL manages a Code of Practice (the Code), which has been authorised by the Australian Competition and Consumer Commission (for three years), which outlines the requirements influencing better door to door sales practices and assists to improve compliance by both Energy Retailers and Energy Marketing companies.

In accordance with the Code an annual Audit is to be undertaken of each Energy Retailer's compliance with the Code. Particularly, Energy Retailers are required to:

- provide access to information necessary for the Code Assessor to undertake the Audit;
- have adequate controls, processes and systems to ensure compliance with the Code; and
- undertake a self-assessment of compliance prior to the assessment commencing.

The objective of this report is:

- understand the level of Energy Retailer compliance across the Code through assessing key Energy Retailer and Comparator documentation, processes and controls as outlined in *Appendix A*;

- to perform an Audit of the work the Energy Retailers and Comparators are currently undertaking to ensure day to day compliance with the Code; and

- to outline findings both compliant and non compliant findings.

Where non compliance is identified, Recommendations and Management Actions are outlined for Important and Major non compliance findings. *Appendix B* outlines the categorisation of Non Compliant findings and definition of Compliant, Compliance Excellence and Improvement Opportunities.

Scope

The scope of this Code Audit is limited to compliance with the EAL Code and is not intended to assess compliance to other regulatory requirements.

The Code covers and includes guidance on :

- a national scheme to ensure Sales Agents are recruited, trained and assessed in a consistent door to door manner across the industry in all contestable energy markets;
- a central register of accredited Sales Agents;
- monitoring Sales Agent behaviour and provisions for sanctions such that a proven breach in accordance with EAL's standards may result in disciplinary measures and deregistration of the Sales Agent for five (5) years; and
- imposing sanctions on Energy Retailers or Energy Marketers who fail to comply with the Code.

Background and Scope (cont...)

How to read this report

How to Read this Report

Energy Retailer's and Comparator compliance and non compliance is identified across the following five (5) key focus areas, as follows:

- *EAL Standards (Part 2).*
- *Roles and Responsibilities (Part 3).*
- *EAL Register, Recruitment and Training (Part 4).*
- *Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline (Part 5).*
- *Reporting, Audit and Member Discipline (Part 6).*

This report is delivered in three (3) sections, across all seven (7) Energy Retailers and one (1) Comparator, and five (5) Code parts, as follows:

- **Section 1 (Executive Summary)** of this report outlines:
 - background and scope; and
 - a summary of compliant and non compliant findings.
- **Section 2 (Gap Testing)** of this report outlines across all Code parts:
 - proportion of compliance and compliance excellence;
 - total compliant and non compliant findings;
 - management actions for major and important findings; and
 - a sample of major and important findings.
- **Section 3 (Appendices)** of this report outlines:
 - key Energy Retailer and Comparator Documents Sighted;
 - categorisation of Major, Important and Minor Non Compliance; and
 - categorisation of Not Applicable findings.

Summary of Findings

Totals Across All Code Parts

The table below is a high level assessment of seven (7) Energy Retailer's and one (1) Comparator's compliance with the Code. Findings were obtained through discussions with key management responsible for the Code and a desktop review of key documents, processes and controls.

Summary of findings		Compliance				Non Compliance			N/A
Focus area	Compliant	Compliance Excellence	Improvement Opportunity	TOTAL	Major	Important	Minor	TOTAL	TOTAL
EAL Standards	187	1	27	215	0	3	33	36	36
Roles and Responsibilities	65	1	9	75	1	0	9	10	2
EAL Register, Recruitment and Training	85	2	17	104	0	3	30	33	13
Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline	232	11	14	257	3	7	20	30	43
Reporting, Audit and Member Discipline	78	4	2	84	0	3	3	6	3
Totals	647	19	69	735	4	16	95	115	97

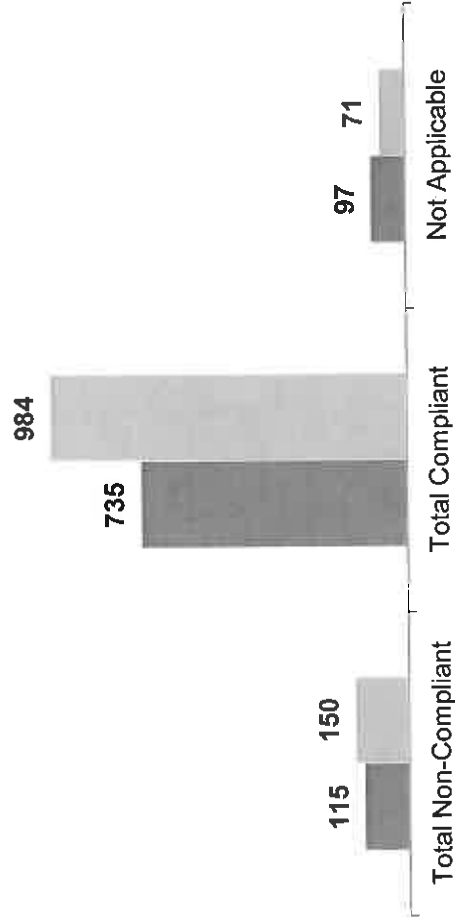
Summary of Findings

Totals Against 2012 Code Audit

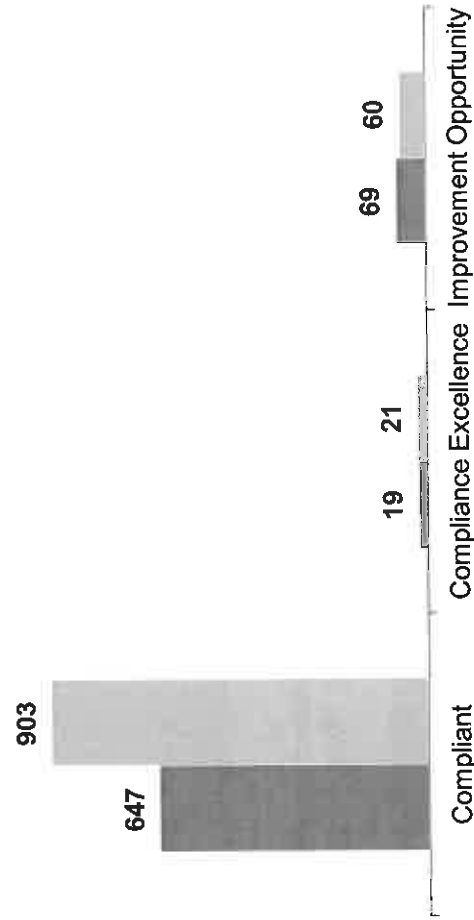
Since the 2012 Code Audit, we identified a decrease in both Major and Important non compliance findings. This decrease was mainly due to many of the Energy Retailers and Marketers having finalised integrating their EAL Code obligations into their day to day compliance processes and building stronger relationships with, and auditing processes on their third party relationship partners.

A small increase in Minor non compliance and Improvement opportunity findings were identified during the 2013 Code Audit. In regards to these findings we identified that initiatives were in place, however not entirely aligned to all the EAL Code requirements. We also identified that with the introduction of new Marketers supporting existing Energy Retailers that they were introducing new and enhanced business processes to assist with EAL Code compliance.

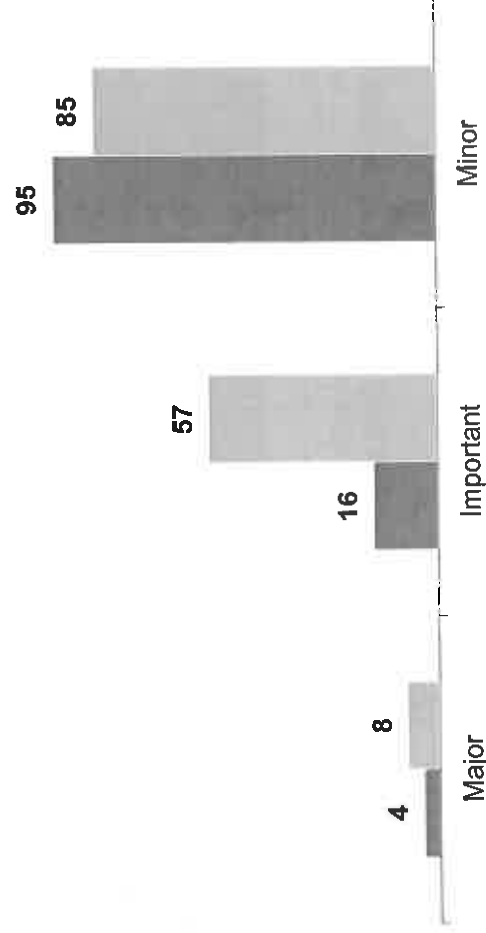
Total Compliance vs. Non Compliance



Compliance Distribution



Breakdown of Non Compliance



2. Gap Testing

- Detailed Audit Findings
- EAL Standards (Part 2)
- Roles and Responsibilities (Part 3)
- EAL Register, Recruitment and Training (Part 4)
- Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline (Part 5)
- Reporting, Audit and Member Discipline (Part 6)

Overview

The period covered by the Code Audit was between 1 July 2012 to 30 June 2013 (Audit period). The EAL Code has been active since 16 January 2012 and during this Audit period we identified stronger implementation and business processes to manage:

- Retailer requirements under the Code; and
- The introduction of new Marketers supporting Energy Retailer's with their door to door activities.

It is important to note that some of the non compliant findings outlined within this report are:

- interrelated with each other;
- to be followed up by the Code Assessor in subsequent Code Audits.

Furthermore, this Audit has identified situations where the compliance against the Code was deemed Not Applicable (N/A). This was due to the following reasons:

- the applicable situation does not or had not occurred;
- the applicable material is not used;
- the entity is a Marketer rather than a Retailer; or
- the relevant material was not available for use by Retailers during the Code Audit period.

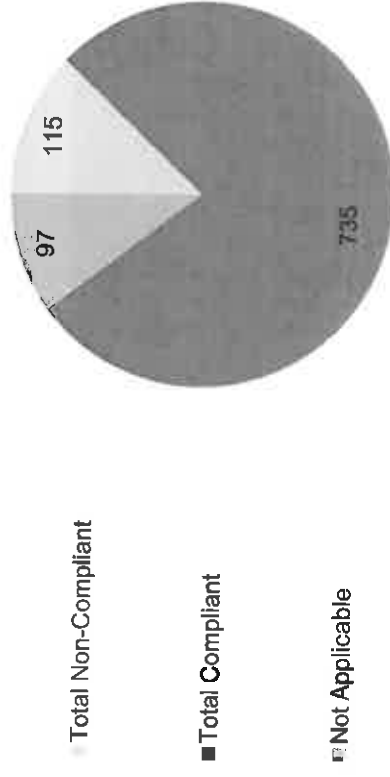
Detailed Audit Findings (cont...)

Compliance vs. Non Compliance Across all Energy Retailers and Comparator

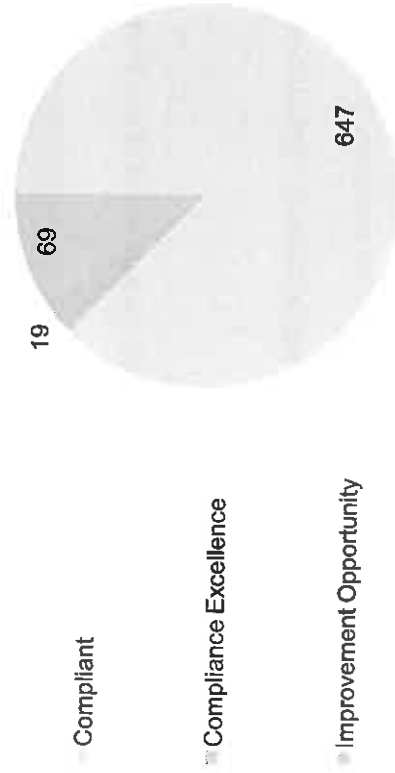
Energy Retailer and Comparator Overview

- Audit period – 1 July 2012 to 30 June 2013
- Documents and processes submitted – September 2013
- On site Energy Retailer visits – September to October 2013
- Energy Retailers assessed as part of this report – 7
- Energy Comparator - 1
- Energy Marketers assessed as part of this report – 12

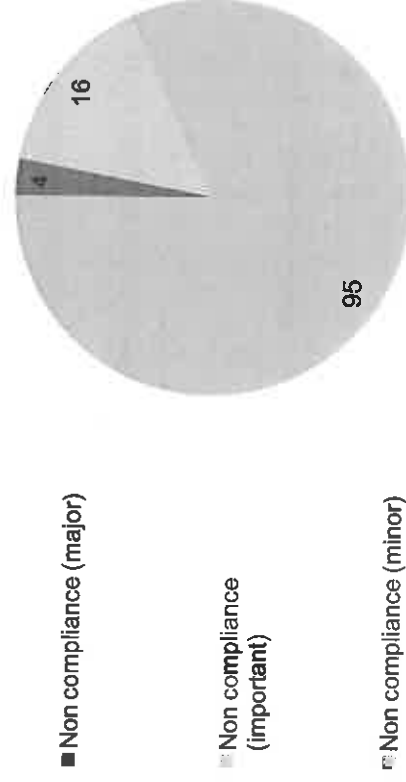
Total Compliance vs. Non Compliance



Compliance Distribution



Breakdown of Non Compliance



Detailed Audit Findings (cont...)

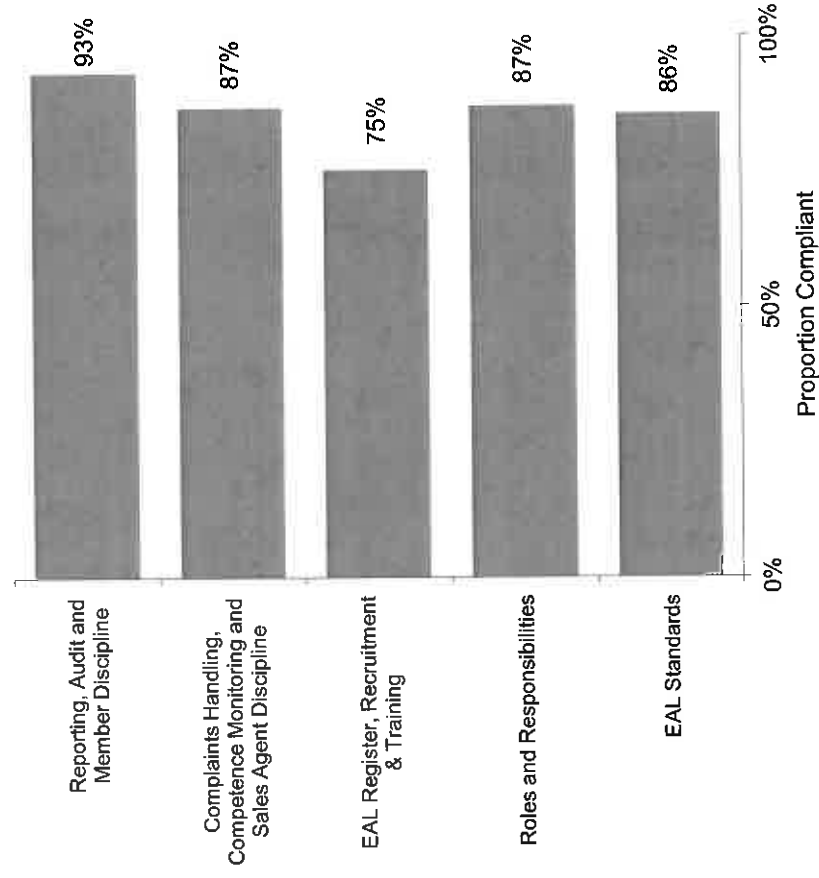
Proportion of Compliance Against Code Parts Across all Energy Retailers and Comparator

The graph below shows the proportion of compliant outcomes, for each of the five (5) Focus Areas of the Code.

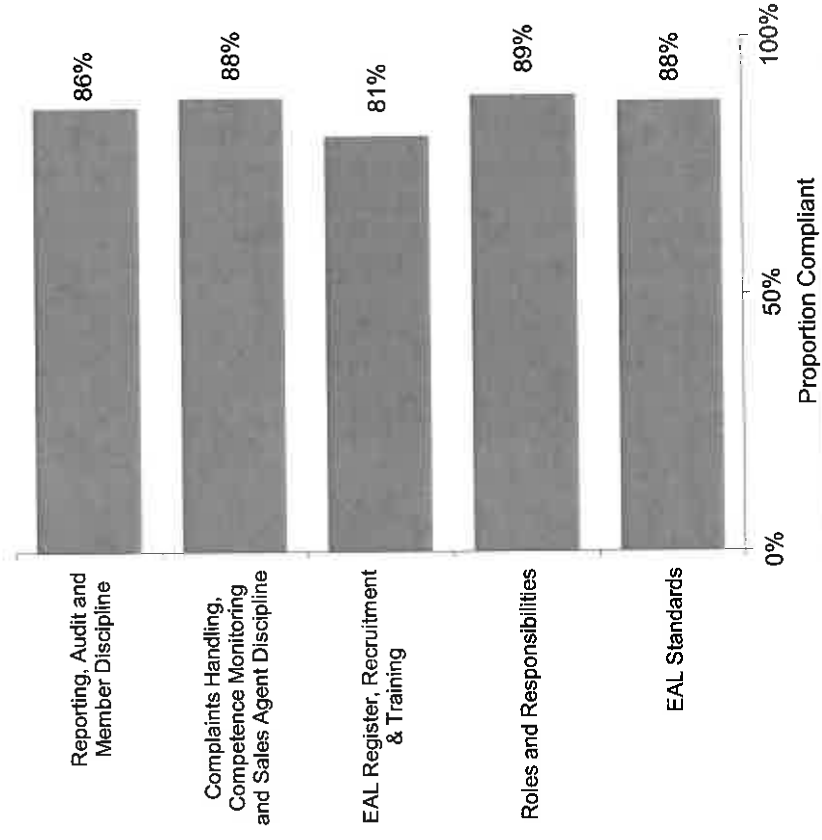
The proportion compliant illustrated is based on the number of compliant outcomes and the total number of tests performed across the 5 focus areas.

$$\frac{\text{Total Compliant Findings}^*}{\text{Total Components tested}^{**}}$$

Proportion of Total Compliance Against All Code Parts (2013)



Proportion of Total Compliance Against All Code Parts (2012)

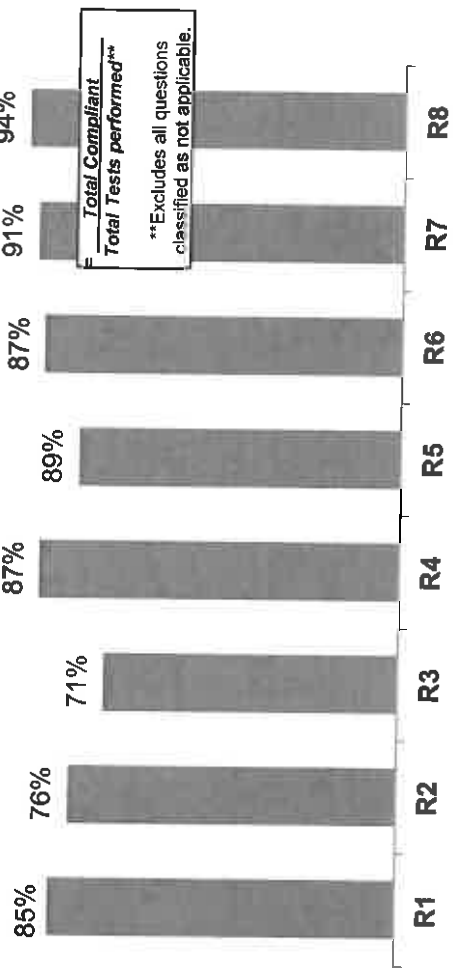




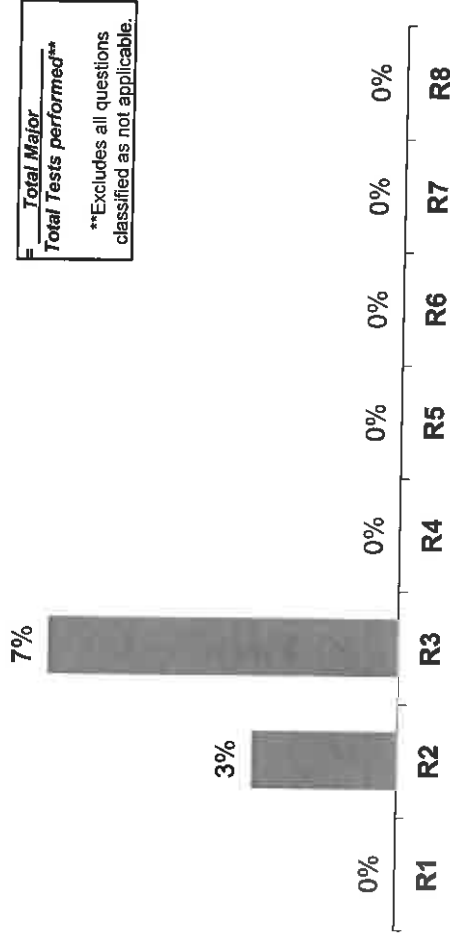
Detailed Audit Findings (cont...)

Proportion of Compliance and Non Compliance Against All Code Parts by Energy Retailer and Comparator

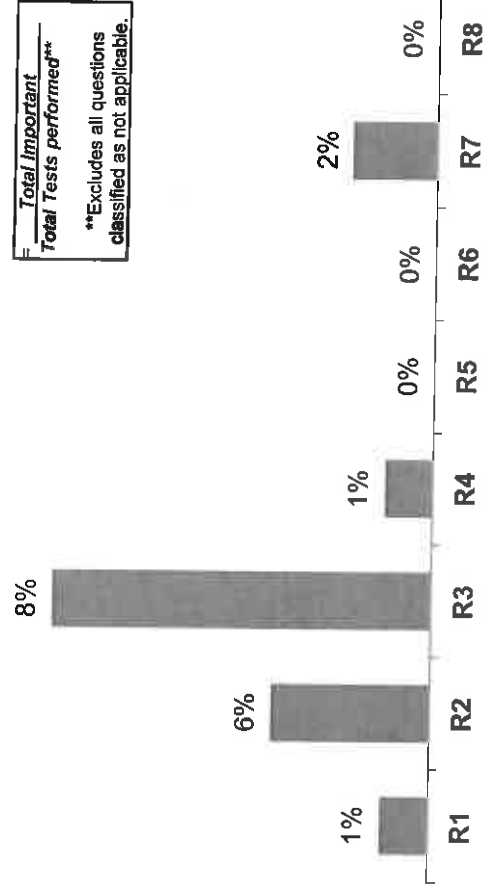
Proportion Compliant



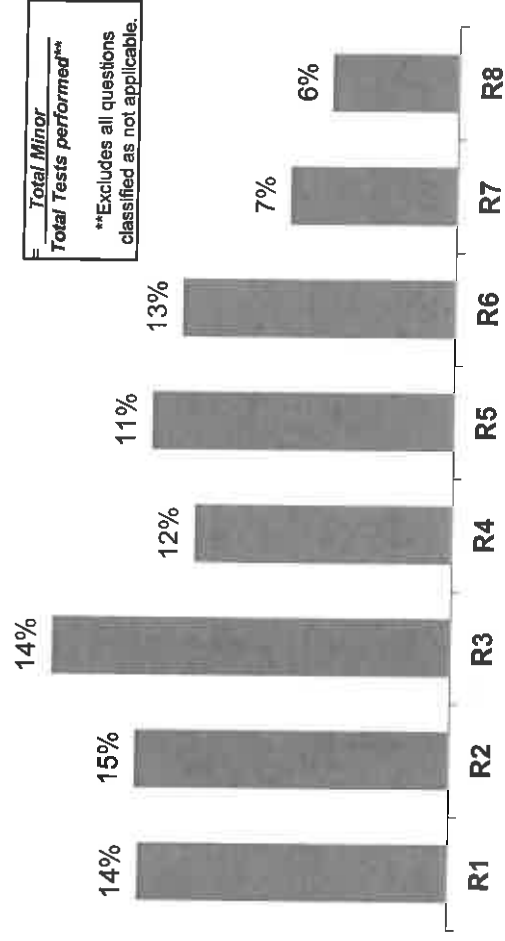
Proportion Major Findings



Proportion Important Findings



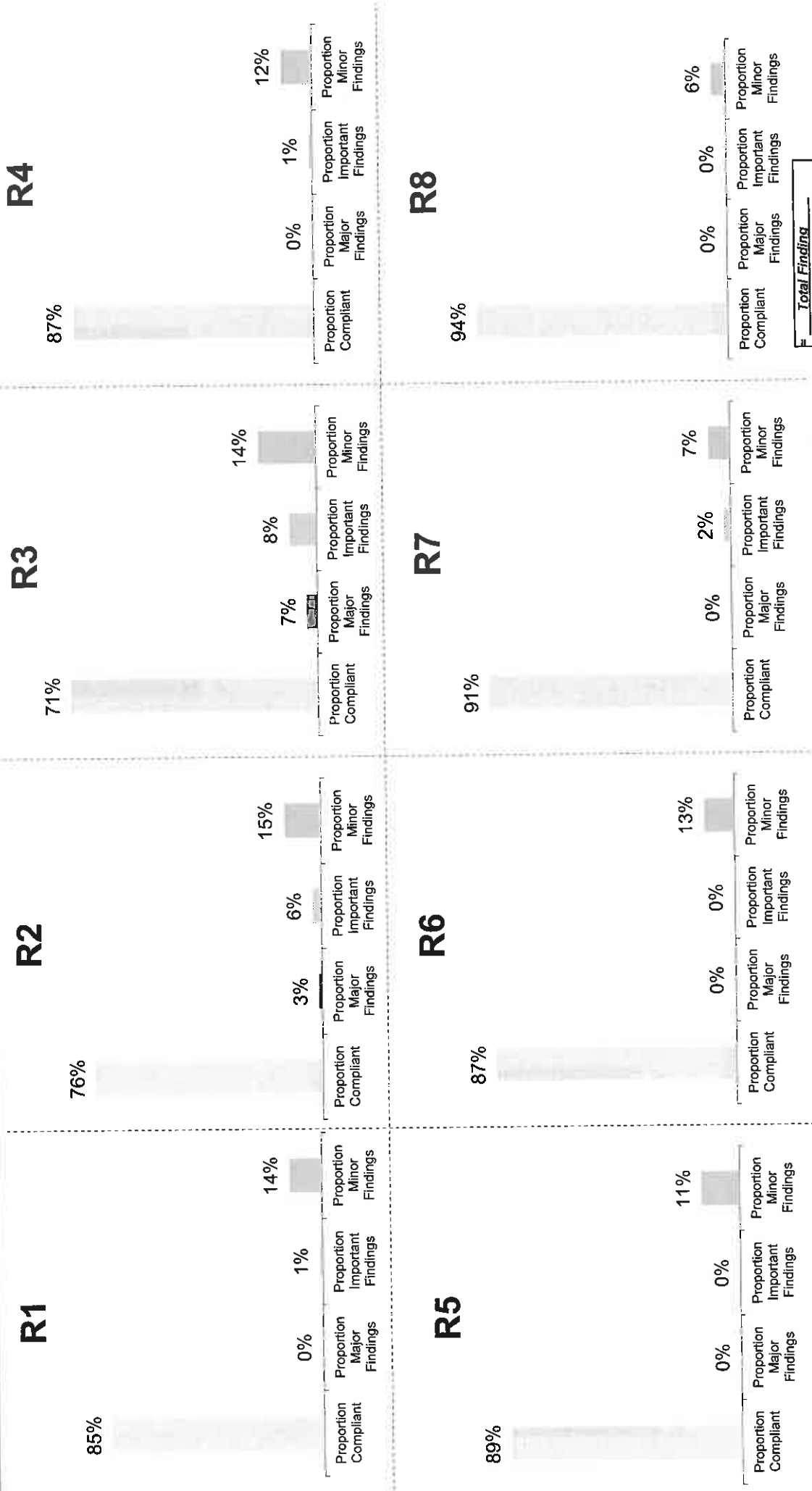
Proportion Minor Findings





Detailed Audit Findings (cont...)

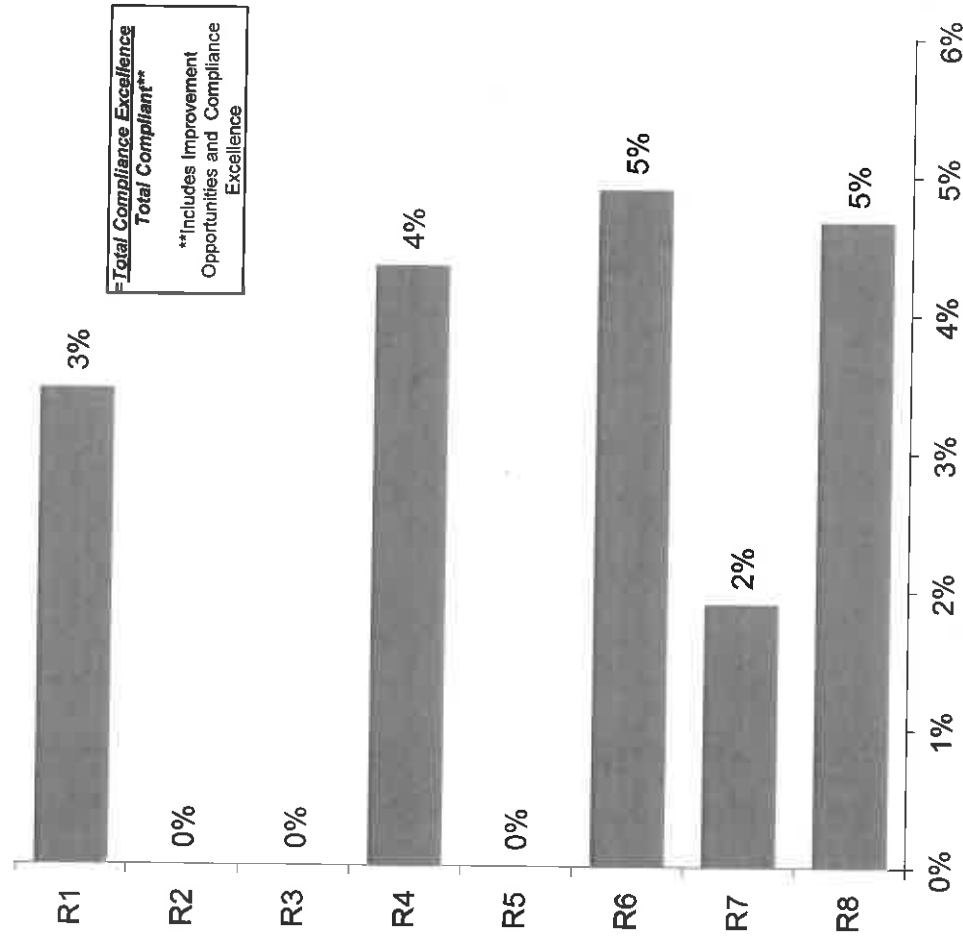
Proportion of Compliance and Non Compliance Against All Code Parts by Energy Retailer and Comparator



Detailed Audit Findings (cont...)

Proportion of Compliance Excellence Against Code Parts by Energy Retailer and Comparator

Compliance Excellence
(as proportion of Compliant)



Key Compliance Excellence Observations

- Each Marketer supporting this Energy Retailer performs a monthly reconciliation with the EAL database and makes necessary amendment on behalf of the Energy Retailer.
- Energy Retailer has established a complaint investigation framework by having template documents to assist the Marketers respond to complaints. These documents support the Energy Retailer's Complaint Management System in providing an audit trail in relation to each complaint.
- Energy Retailer regularly visits the Marketers offices to test that all Sales Agent training material is up to date and appropriate candidates are being hired.
- Energy Retailer has created a Governance Statement document that highlights its position in relation to the Energy Assured Limited Scheme.
- Energy Retailer has all information relating to clause 5.1 (3) of the Code explained thoroughly and clearly in it's Customer Charter document.
- Energy Retailer carries out compliance "spotlight" or EAL update sessions to ensure Sales Agents remain up to date with specific Code requirements.
- Energy Retailer conducts weekly sales assurance meetings in order to identify and/or analyse trends. Each month, the Energy Retailer gets together with the marketers to discuss the top 10 complaints. This session is designed to identify and rectify systemic issues. The session is followed up with a 'dashboard' detailing systemic issues that is sent out to all internal stakeholders to ensure awareness.

EAL Standards

Part 2 – Total of all Code Findings and Sample of Management Actions

The information below was obtained through discussions with management and documentation review from the seven (7) Energy Retailers and one (1) Comparator and forms the basis of our findings.

	Compliant	Compliant			Non Compliant		
		Compliance Excellence	Improvement Opportunity	Major	Important	Minor	
R1	21	1	2	0	1	4	
R2	20	0	3	0	1	8	
R3	23	0	3	0	1	5	
R4	21	0	3	0	0	7	
R5	19	0	4	0	0	2	
R6	23	0	7	0	0	3	
R7	29	0	2	0	0	4	
R8	31	0	3	0	0	0	

No Major and three (3) Important non-compliance findings were identified.

The information below was obtained through discussions with management and documentation review from the seven (7) Energy Retailers and one (1) Comparator and forms the basis of our findings. All important findings that were found, are summarised below and duplicates removed :

- The Code recommends that the Energy Retailer's Voice Verification script contain 4 standard questions. It was identified that the Energy Retailer's Voice Verification script excludes one standard question, specifically, "Do you understand that you should receive one more final bill from your current Energy Retailer and that the next one will be from "retailer YYY"? " is not being asked.
- The Energy Retailer's Company Policy Document includes insufficient information in relation to the verification call process.
- There are no procedures in place outlining what would happen in the case of non compliance in accordance with the Code.
- The Energy Retailer's training material is limited to practical information. On this basis not all EAL Code requirements have been integrated.
- Energy Retailer did not have any guidance around the impact and application of their Assurance Manual or EAL Policies.

Management from the seven (7) Energy Retailers and one (1) Comparator considered the Code Assessor's important findings and provided management actions. All management actions for important findings that were found, are summarised below and duplicates removed:

- Energy Retailer has noted that exclusion of a Code prescribed call question has occurred as a result of feedback that the question was in some circumstances causing issues.
- Energy Retailer notes although some components of the Code are not explicitly stated in its training packs, all staff complete an online training module with testing that the candidates must pass at a level of 100% before proceeding. This on-line training material was unable to be provided during the Audit. The Energy Retailer further notes in order to ensure all requirements are captured, it will update its staff training packs.
- Energy Retailer has reviewed its verification scripts during 2012 and 2013. They have also been independently assessed and tested, with their statements worded such that verification conversations should identify if the customer has any particular issues. However, whilst compliant in terms of consumer protections they are not in compliance with the EAL Code.

Key Themes

Key themes from the above findings across three (3) Energy Retailers are:

- Verification scripts are not drafted in accordance with Code requirements, namely inadequate coverage of the relevant EAL material. (R1, R3)
- Energy Retailers have not taken steps to ensure all EAL prescribed questions for verification calls is included. (R1, R3)
- Sales Agent training material does not contain all requirements as outlined under the EAL Code. (R2)

Roles and Responsibilities

Part 3 – Total of all Code Findings and Sample of Management Actions

The information below was obtained through discussions with the management and documentation review from the seven (7) Energy Retailers and one (1) Comparator and forms the basis of our findings.

	Compliant	Compliant			Non Compliant		
		Compliance Excellence	Improvement Opportunity	Major	Important	Minor	
R1	9	0	1	0	0	1	
R2	6	0	2	0	0	1	
R3	6	0	2	1	0	2	
R4	8	1	1	0	0	1	
R5	9	0	1	0	0	1	
R6	8	0	1	0	0	1	
R7	11	0	0	0	0	0	
R8	8	0	1	0	0	2	

One (1) Major and no Important non-compliance findings were identified.

The information below was obtained through discussions with management and documentation review from the seven (7) Energy Retailers and one (1) Comparator and forms the basis of our findings. All major findings that were found, are summarised below and duplicates removed:

- In the sample of 10 it was identified that:
 - 10 calls did not inform the customer they should receive one more final bill from their current retailer and that the next one will be from Energy Retailer; and
 - 4 calls did not confirm the Sales Agent provided the customer with the Energy Assured Code of Practice/brochure.

Roles and Responsibilities

Part 3 – Sample of Key Major and Important Findings

Management from the seven (7) Energy Retailers and one (1) Comparator considered the Code Assessor's major findings and provided management actions. All management actions for major findings that were found, are summarised below and duplicates removed:

- Energy Retailer has noted that the exclusion of a Code prescribed question has potentially occurred as a result of feedback that the question was in some circumstances creating issues. Claim that this is a sporadic issue to be addressed with targeted training, noting that absence of question confirming provision of the brochure does not evidence failure on other parts of the Code.

Key Themes

Key themes from the above findings across one (1) Energy Retailer are:

- Verification scripts are not drafted in accordance with Code requirements, namely inadequate coverage of the relevant EAL material. (R3)

EAL Register, Recruitment and Training

Part 4 – Total of all Code Findings and Sample of Management Actions

The information below was obtained through discussions with management and documentation review from the seven (7) Energy Retailers and one (1) Comparator and forms the basis of our findings.

	Compliant	Compliant			Non Compliant		
		Compliance Excellence	Improvement Opportunity	Major	Important	Minor	
R1	12	1	1	0	0	4	
R2	8	0	4	0	2	2	
R3	5	0	3	0	1	10	
R4	12	0	1	0	0	1	
R5	8	0	3	0	0	4	
R6	14	0	1	0	0	4	
R7	15	0	2	0	0	1	
R8	11	1	2	0	0	4	

No Major and three (3) Important non-compliance findings were identified.

The information below was obtained through discussions with management and documentation review from the seven (7) Energy Retailers and one (1) Comparator and forms the basis of our findings. All important findings that were found, are summarised below and duplicates removed :

- There was no established policy or process for assessing training needs and monitoring Sales Agents' ongoing competence. Management confirmed that Sales Agents are overseen by a State Level manager who has an awareness of the competence of Sales Agents.
- Energy Retailer does not have a policy on how to assess Sales Agent training needs and monitor their ongoing performance. It is noted that the Energy Retailer Sales Channel Contracts - Compliance Register dated 23 November 2012 sets rights and obligations of the Marketer and Energy Retailer in respect to training and, if followed, would be adequate to ensure training and competence is in accordance with the Code. However, this document provides limited guidance or oversight to ensure a consistent approach to training and competence.
- It was identified that Energy Retailer's employment contract did not make reference to the EAL Code requirements.

EAL Register, Recruitment and Training

Part 4 – Sample of Key Major and Important Findings

Management from the seven (7) Energy Retailers and one (1) Comparator considered the Code Assessor's important findings and provided management actions. All management actions for important findings that were found in this Part, are summarised below and duplicates removed:

- Energy Retailer believes they meet their obligations under the Code but acknowledge that they need to formally document the required process and integrate into company policies.
- Energy Retailer advises that it has a term within its Field Sales Agent contracts and are of the view that if the particular requirements in relation to the Code are emphasised it will detract from other contractual terms. Furthermore, all these terms are stated in Energy Retailers EAL Terms and Conditions of registration.
- During the Audit limited information was available due to a legacy manual process, in process of transitioning to an automated complaints management system. Energy Retailer is working with its Marketer to improve on the identified issues around complaints management and recording.

Key Themes

Key themes from the above findings across two (2) Energy Retailers are:

- Energy Retailers do not verify/check activities that their Energy Marketers perform on their behalf. (R2)
- Employment contracts did not contain all Code requirements. (R2, R3)

Sales Complaints Handling, Competence Monitoring and Sales Agent Discipline

Part 5 – Total of all Code Findings and Sample of Management Actions

The information below was obtained through discussions with management and documentation review from the seven (7) Energy Retailers and one (1) Comparator and forms the basis of our findings.

	Compliant	Compliant			Non Compliant		
		Compliance Excellence	Improvement Opportunity	Major	Important	Minor	
R1	28	1	0	0	0	4	
R2	21	0	1	1	0	0	
R3	29	0	4	2	4	2	
R4	30	3	1	0	1	2	
R5	27	0	3	0	0	5	
R6	30	4	2	0	0	5	
R7	32	2	1	0	2	2	
R8	35	1	2	0	0	0	

Three (3) Major and seven (7) Important non-compliance findings were identified.

The information below was obtained through discussions with management and documentation review from the seven (7) Energy Retailers and one (1) Comparator and forms the basis of our findings. All major and important findings that were found, are summarised below and duplicates removed :

- Complaints handled outside the twenty (20) day timeframe were identified.
- Issues in the data capture process were identified during the Audit period and the Energy Retailer was only able to provide limited information in relation to how their Ombudsman's requests were dealt with.
- In two (2) cases a complaint was classed as a Category 1 breach where the breach was more appropriately a Category 2 'serious breach' as per 20.3(2) of the Code.
- It was identified that the Competency Record provided to EAL on a monthly basis did not accurately reflect the breach level determined by the Energy Retailer.
- Processes are in place in relation to the Independent Post Sale Verification Process which is performed by a Service Provider. This process is documented in the 'Activation Call Scripting' and the 'Complaints Management System (CMS) Sales Channel User Instructions'. However, it was identified there is no policy and procedures for corrective action identified in 5% Monthly Assessment and the Annual Formal Competency checks.
- From a sample of 19 complaints, 10 complaints that were addressed as Level one breaches should have been classified as Level 2 or greater based on guidance in 20.3 of the EAL Code. It was identified that in nine cases a complaint was classed as a Level 1 breach where the breach is more appropriately classed as a Level 2 'serious breach' or Level 3 'wilful or gross breach' per 20.3 of the Code.

Management from the seven (7) Energy Retailers and one (1) Comparator considered the Code Assessor's major and important findings and provided management actions. All management actions for major and important findings that were found in this Part, are summarised below and duplicates removed:

- During the Audit limited information was available due to a legacy manual process, in process of transitioning to an automated complaints management system. Energy Retailer is working with its Marketer to improve on the identified issues around complaints management and recording.
- Energy Retailer is working with their Marketer to improve data integrity and accuracy of complaints reporting.
- Energy Retailer acknowledges that they need to formally document the process for ongoing assessment of Sales Agents and will formally integrate into their company policies.

Key Themes

Key themes from the above findings across four (4) Energy Retailers are :

- EAL breaches/complaints are not addressed in accordance with Code requirements. (R2, R4, R7)
- Level of EAL breaches and how they are addressed are not contained in several Energy Retailer's policy documentation. (R2)
- Instances where complaints have been categorised incorrectly at the lower levels. (R2, R7)
- Verification calls are not performed in line with Code requirements. (R1)

Reporting, Audit and Member Discipline

Part 6 – Total of all Code Findings and Sample of Management Actions

The information below was obtained through discussions with management and documentation review from the seven (7) Energy Retailers and one (1) Comparator and forms the basis of our findings.

	Compliant	Compliant		Major	Non Compliant		
		Compliance Excellence	Improvement Opportunity		Important	Minor	
R1	10	0	0	0	0	0	
R2	10	0	0	0	0	1	
R3	8	0	1	0	3	0	
R4	11	0	0	0	0	0	
R5	9	0	0	0	0	1	
R6	11	1	0	0	0	0	
R7	11	0	0	0	0	1	
R8	8	3	1	0	0	0	

No Major and three (3) Important non-compliance findings were identified.

The information below was obtained through discussions with management and documentation review from the seven (7) Energy Retailers and one (1) comparator and forms the basis of our findings. All important findings that were found, are summarised below and duplicates removed :

- Under the Code the Energy Retailer is required to have a corporate governance framework/document/s to address various aspects of the Code, including a governance and control framework, KPIs or metrics monitored, acceptable thresholds for non compliance, remediation or action to be taken for non compliance, team/individual responsible for monitoring, frequency of monitoring, coverage of monitoring, policy for Marketeters used. During the Audit period Energy Retailer did not have such a document/s in place.
- Whilst the Energy Retailer monitors their performance against the Code, including the identification of "failures" and remediation plans implemented and tracked to closure, it was identified that this process was not documented.

Reporting, Audit and Member Discipline

Part 6 – Sample of Key Major and Important Findings

Management from the seven (7) Energy Retailers and one (1) Comparator considered the Code Assessor's important findings and provided management actions. All management actions for important findings that were found in this Part, are summarised below and duplicates removed:

- Energy Retailer accepts that they have no complete governance framework in place, however have a significant level of compliance through the provision of mentioned supporting documents including copies of field audits; compliance statements; agent training material; agent audit forms; and extracts of relevant marketing service agreements, which set out relevant compliance causes and business processes.
- Energy Retailer has developed a Channel Contracts – Compliance Register to ensure the responsibility for aspects of the Master Services Agreement between the Marketer, Retailer and the EAL Code are allocated to Energy Retailer and Marketer or fulfilled jointly in a tabularised roles and responsibility format.

Key Themes

Key themes from the above findings across one (1) Energy Retailer are :

- No documented corporate governance framework document. (R3)
- No document outlining EAL Code compliance roles and responsibility of Energy Retailer vs. Marketer. (R3)

3. Appendices

- A. List of Key Energy Retailer and Comparator Documents Sighted
- B. Categorisation of Non Compliance and Compliance Status

A. List of Energy Retailer and Comparator Documents Sighted

Illustrated below are documents, processes and controls referenced throughout this report.

Document
Company policies & procedures
Complaints policies & procedures
A list of current Sales Agents details
A list of new Sales Agents
Complete Sales Agent registration evidence
Copy of standard Sales Agent employment contracts
Copy of approved training materials
A list of approved Trainers
A list of approved Experienced Individuals
A list of approved Assessors
Training/Product Information (attendance) records
A copy of a current customer contract sample
Copy of sales support materials used/provided to all Sales Agents
Member's Code of Practice for complaints
Complaints Register

Document
Competence Record Register
Full year monthly reports as provided to the Code Manager
List and categorisation of complaints
Results of internal audits of complaints undertaken
List of all new consumer contracts entered into and time consumers were contacted.
Website map displaying EAL content
Member's Self Assessment return
Results of Warning Notices/Sanctions Issued and actions taken
Overview as to how issues and systemic issues are identified and how these are addressed
Monthly EAL Register reconciliation checks
Compliance Manual and Monitoring Program Policy & Procedure
EAL Marketing material
Consumer materials
Sales Agent Records

B. Categorisation of Non Compliance and Compliance Status

Non compliance have been categorised as Major, Important, Minor or Not Applicable. Definitions of these categorisations have been provided by EAL.

NON-COMPLIANCE CATEGORISATION	DEFINITION	EXAMPLES
Major	Major defined as serious and/or repeated breach of the Code that may result in reputational risk for Energy Assured or the Energy Retailer and possible financial risk for the Energy Retailer.	<p>If any of the following are met:</p> <ul style="list-style-type: none"> EAL Code requirement is not integrated into Retailer's operational and compliance activities. No evidence of EAL Code requirement monitoring and reporting conducted. If third parties are used for EAL activities, no evidence of Retailer conducting verification or spot audits. No evidence of compliance to agreed upon procedure scope item. Limited or No Retailer policies and procedures in place to manage and oversee compliance to EAL Code requirements.
Important	Important defined as less serious and/or repeated breach of the Code with some reputational risk for Energy Assured and the energy retailer and possible financial risk for the Energy Retailer.	<ul style="list-style-type: none"> More than 2 requirements of an agreed upon procedure scope item is not in place or evidenced.
Minor	Minor defined as small or occasional breach of the Code with some reputational risk to Energy Assured and the Energy Retailer.	<ul style="list-style-type: none"> Agreed upon procedure scope item is in place but not aligned to the EAL Code requirement.
Not applicable	<p>This report has identified situations where the compliance against the Code was deemed <i>Not Applicable</i>. This was due to the following reasons:</p> <ul style="list-style-type: none"> the applicable situation does not or had not occurred; the applicable material is not used; the entity is a Marketer rather than a retailer; the relevant material was not available for use by Retailers during the Code Audit period. 	

The scope of this Code Audit is limited to compliance with the EAL Code and is not intended to assess compliance to other regulatory requirements.

B. Categorisation of Non Compliance and Compliance Status (cont...)

Where identified, Compliant findings have been further categorised as Compliance Excellence and Improvement Opportunities.

Compliance Categorisation	Definition
Compliant	Compliant defined as a finding compliant to Code requirement (s).
Compliance Excellence	Compliance Excellence defined as a compliant Code finding, which excels in both form and delivery in comparison to other Energy Retailers and best practice requirements.
Improvement Opportunity	Improvement Opportunity defined as a compliant Code finding, which requires minor improvement opportunity.

The scope of this Code Audit is limited to compliance with the EAL Code and is not intended to assess compliance to other regulatory requirements.



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Energy Assured Limited Code of Practice Assessment

July 2013



Contents

1	Executive Summary	4
2	Survey Results and Analysis	9
1	Achievement of Objectives	9
2	Composition and Support	10
3	Appeals and Determination Handling Process	11
4	Sanctions	12
5	Industry Awareness	12
6	Consultation with Stakeholders	13
3	Survey Commentary	14
	Appendix A: Detailed Survey Responses	17
	Appendix B: Benchmarking of Code of Practice Survey to ACCC Guidelines	24

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Because of the inherent limitations of any internal control structure, it is possible that errors or irregularities may occur and not be detected. The matters raised in this report are only those which came to our attention during the course of performing our procedures and are not necessarily a comprehensive statement of all the weaknesses that exist or improvements that might be made.

Our work is performed on a sample basis; we cannot, in practice, examine every activity and procedure, nor can we be a substitute for management's responsibility to maintain adequate controls over all levels of operations and their responsibility to prevent and detect irregularities, including fraud.

Any projection of the evaluation of the control procedures to future periods is subject to the risk that the systems may become inadequate because of changes in conditions, or that the degree of compliance with them may deteriorate.

Recommendations and suggestions for improvement should be assessed by management for their full commercial impact before they are implemented.

We believe that the statements made in this report are accurate, but no warranty of completeness, accuracy, or reliability is given in relation to the statements and representations made by, and the

information and documentation provided by Energy Assured Limited personnel. We have not attempted to verify these sources independently unless otherwise noted within the report.

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1 Executive Summary

Introduction

A Code of Practice (“the Code”) was established by Energy Assured Limited (EAL) to ensure that energy retailers and marketers to drive a consistent and ethical approach in the door to door sale of energy contracts. The Code includes a national scheme which aims to improve the overall experience for customers with a range of initiatives including robust recruitment, training and accreditation standards; and this scheme subjects its members (retailers) to an annual assessment of compliance.

The Code requires an independent review of its effectiveness at least every two years, and EAL engaged Deloitte to provide recommendations to improve its effectiveness and application. The recommendations in this report will also be used to help EAL prepare for their application to the ACCC (Australian Competition and Consumer Commission) for Code re-authorisation by June 2014.

Process Overview

Our assessment of the Code’s effectiveness was based on the following three sources of information:

- Stakeholder feedback, gathered via an electronic survey
- Review of the retailers’ code compliance audit results
- Comparison of the Code’s composition and content to the ACCC’s *Guidelines for developing effective voluntary industry codes of conduct* (“the ACCC Guidelines”).

The survey questions were developed in consultation with EAL’s Chief Executive Officer and Code Manager, and covered aspects of the Code’s composition and industry awareness such as:

- **Achievement of objectives:** does the Code increase transparency and consumer confidence in door to door marketing of energy contracts?
- **Composition and support:** are roles and responsibilities clear, leading to increased consumer confidence?
- **Appeals and determination handling process:** is there a transparent and equitable determination and appeals process?
- **Sanctions:** is the sanctions process transparent and understood?
- **Industry awareness:** are customer expectations of door to door marketing practices clear?
- **Consultation with stakeholders:** were stakeholders effectively engaged in the development of the Code?

In addition to the above themes, the survey looked to determine whether there are any other holistic issues with the code from the perspectives of the nominated stakeholders.

Survey Responses

In the survey, respondents were asked to rate their agreement to statements on a five-point scale ranging from 'Strongly Disagree' through to 'Strongly Agree'. For some questions, a Yes or No was applicable.

16 internal stakeholders (comprising Board and EAL Members) and 19 external stakeholders (comprising Consumer Affairs, consumer groups, ombudsmen and regulatory bodies from each state) were invited to respond. The response rate across each stakeholder group was as follows:

Stakeholder Category	Group	Invited	Responded	Response Rate
Internal	Board	14	12	86%
	EAL Member (non-Board)	2	2	100%
External	Consumer Affairs	2	1	50%
	Consumer Group	8	2	25%
	Ombudsman	4	4	100%
	Regulatory Body	5	1	20%
TOTAL		35	22	
		100%	61%	

Whilst the survey responses were largely positive, there were some notable areas for improvement. Overall, six recommendations were made to improve the effectiveness of the Code and are summarised below. An additional two opportunities for improvement were also noted in our comparison of the Code to the ACCC Guidelines.

Summary of Recommendations

Recommendations to improve the effectiveness of the Code broadly relate to:

- Raising consumer awareness of the Code's provisions
- Engaging with external stakeholders as part of the Code assessment process to understand whether there are any other provisions that should be clarified, or added to the Code
- Education opportunities with external stakeholders to clarify the Code's provisions (such as appeals and sanctions)

- Clarifying the definition of a Code complaint to exclude Code breaches
- Clarifying the number of signatories/members relative to the number of retailers in the market

Further details on each finding and respective recommendation are tabled below.

Survey Analysis

The following recommendations with regard to Code's effectiveness emerged from the survey results. Further details in relation to each finding and recommendation can be found in Section 2 of this report.

Theme	Summary of survey feedback	Recommended Action
Consumer complaints	There was general disagreement by both internal and external stakeholders that the Code reduced the number and severity of consumer complaints. There was also general disagreement that the Code has increased consumer confidence in energy contract door to door marketing practices.	Recommendation 1: Consideration should be given as to how EAL can raise consumer awareness of the Code and its complaints handling provisions (i.e. retailer newsletters, media) in order to promote consumer confidence. Also refer to Recommendation 5.
		Recommendation 2: EAL should engage with external stakeholders such as consumer groups, Ombudsmen and regulatory bodies as part of the Code review process to understand the nature of complaints that: <ul style="list-style-type: none"> • Are within the boundaries of the Code, and whether there are any provisions that may require improvement • May be addressed by additional provisions to the Code.
Appeals and determinations	About one third of external stakeholders who responded, were either neutral or did not know whether there is an adequate review mechanism for appeals to the Code Panel. Further, one third of external stakeholders who responded were either neutral or did not know that natural justice is applied by the Code Manager when applying sanctions or deregistering agents.	Recommendation 3: There is an education opportunity with selected external stakeholders (Consumer Affairs and Consumer Groups) in order to increase the level of understanding around the review mechanism for appeals to the Code Panel.
		Recommendation 4: There is an education opportunity with selected external stakeholders (particularly among Consumer Groups and the Ombudsmen) on the process for applying sanctions and/or deregistration of agents.
Industry awareness	There was a mixed response from external stakeholders on whether the post-sale verification call to customers ensures that explicit, informed consent is provided. Further to this, of the five (5) external stakeholders who	Recommendation 5: There is an education opportunity with selected external stakeholders (particularly among the Ombudsmen, Consumer Affairs and Consumer Groups) on the purpose of the post-sale verification call.

Theme	Summary of survey feedback	Recommended Action
	deal with customers, there was general disagreement that there is customer awareness of the Code and complaints handling provisions.	<p>Recommendation 6: As per Recommendation 1, consideration should be given as to how EAL can raise consumer awareness of the Code and its complaints handling provisions (i.e. retailer newsletters, media).</p> <p>Any awareness activities should also be made transparent to external stakeholders to increase confidence in the awareness program.</p>

Comparison to ACCC Guidelines

We also undertook a benchmarking comparison of the Code to the ACCC's "Guidelines for developing effective voluntary industry codes of conduct" (July 2011). Generally, we noted strong alignment to the ACCC's model however there were two minor improvement opportunities identified. These are summarised below. Refer to Appendix B for the full and detailed analysis.

Theme	ACCC Code of Practice Guideline	Opportunities for Improvement
Code Administration	<p>Effective complaints handling</p> <p>The code should include a definition of complaint that includes any expression of dissatisfaction with a product or service offered or provided.</p> <p>Coverage</p> <p>The wider the coverage a code has in an industry, the more effective it will be. The level of coverage should be measured in terms of number of actual code signatories against potential signatories within the industry, as well as in terms of coverage of the issue that the code is attempting to address.</p>	<p>Recommendation 7: The Code outlines the definition of a breach. However it does not formally define a complaint. This should be restricted to potential/actual Code breaches so that this is not confused with dissatisfaction with services provided.</p> <p>Recommendation 8: Whilst the EAL website shows the number of signatories (10 retailers as well as the ERAA), it does not state how many members there are relative to the number of retailers in the market.</p>

1.1 Acknowledgement

We take this opportunity to thank EAL management and survey respondents who participated in the assessment for their assistance and the professional manner in which they responded to our inquiries.

The contents of this report were discussed with the following EAL personnel:

- Anne Whitehouse, Chief Executive Officer, EAL
- Rebecca Karp, Code Operations Manager, EAL.

A handwritten signature in black ink, appearing to read 'D. Tandora', with a long horizontal flourish extending to the right.

Diana Tandora

Partner, Risk Services

Deloitte Touche Tohmatsu

June 2013

2 Survey Results and Analysis

This section outlines key highlights and recommendations resulting from survey responses. Detailed survey responses are included in Appendix A.

Respondents were provided with response options to each survey question, from “Strongly Disagree” to “Strongly Agree”, or “Yes/No”, depending on the type of question. All questions allowed for a “n/a” or a “Don’t Know” option. Responses are outlined below.

The survey gauged stakeholder feedback on key areas of the Code, including:

- Achievement of objectives
- Composition and Support
- Appeals and Determination Handling Process
- Sanctions
- Industry Awareness
- Consultation with Stakeholder

1 Achievement of Objectives

Highlights

Internal stakeholders (14):

- Largely agreed that the Code has increased transparency in door to door marketing practices (79%, 11 respondents), internal stakeholder confidence (86%, 12 respondents), and customer/stakeholder understanding of the complaints handling and escalation process (71%, 10 respondents)
- Generally agreed that the code increased internal stakeholder commitment to door to door marketing (57%, eight (8) respondents)
- However a slightly mixed response was received when asked whether the scheme increased consumer confidence (3 respondents (21%) disagreed, and 6 respondents (43%) were neutral).

External stakeholders (8):

- Agreed that the Code increased transparency in door to door marketing practices (63%, 5 respondents), and customer and stakeholder understanding of the complaints handling and escalation process (50%, 4 respondents)
- However there was general disagreement in the Code increasing consumer confidence (50%, 4 respondents). The remaining 4 were neutral/didn't know or N/A. These responses are outlined below:
 - Disagree: 1 Consumer Affairs Group, 2 Ombudsmen
 - Strongly Disagree: 1 Consumer Group

- Don't know: 1 Consumer Group
 - Neutral: 2 Ombudsmen
 - N/A: 1 Regulatory Body
- Respondents also generally disagreed the Code has resulted in a reduction in number and severity of complaints (63%, 5 respondents):
 - No: 1 Consumer Affairs Group; 3 Ombudsmen; and 1 Regulatory Body
 - N/A: 2 Consumer Groups.

Recommendations

1. Consideration should be given as to how EAL can raise consumer awareness of the Code and its complaints handling provisions (i.e. retailer newsletters, media) in order to promote consumer confidence. Also refer to Recommendation 5
2. EAL should engage with external stakeholders such as consumer groups, Ombudsmen and regulatory bodies to understand the nature of complaints that:
 - Are within the boundaries of the Code, and whether there are any provisions that may require improvement
 - May be addressed by additional provisions to the Code.

2 Composition and Support

Highlights

Internal stakeholders (14):

- Largely agreed that the purpose of the Code and its objectives are clear to stakeholders and interested parties (93%, 13 respondents), and that EAL's recruitment, training, assessment and accreditation process increase consumer protection and confidence (93%, 13 respondents)
- There was full agreement that internal stakeholders understand their roles and responsibilities in relation to the code (100%, 14 respondents).

External stakeholders (8):

- Largely support the self-regulated scheme to improve door to door marketing practices (75%, 6 respondents), believe there is clarity of the Code's objectives to stakeholders and interested parties (88%, 7 respondents), and agree that EAL's recruitment, training, assessment and accreditation process increasing consumer protection and confidence (88%, 7 respondents).

Due to the largely positive results in this category, there are no recommendations to improve the Code's effectiveness.

3 Appeals and Determination Handling Process

Highlights

Internal stakeholders (14):

- Largely agreed that parties are appropriately informed of decision for determinations and appeals (86%, 12 respondents), and that internal stakeholders self-report complaints and systematic issues to EAL (79%, 11 respondents)
- There was full agreement that there is an adequate review mechanism for appeals to the Code Panel (100%, 14 respondents).

External stakeholders (8):

- Largely agreed that there is an adequate review mechanism for appeals to the Code Panel (63%, 5 respondents). The remaining 3 (37%) did not know, or responded N/A. These responses are outlined below:
 - Neutral: 1 (12.5%), 1 Consumer Affairs Group
 - Don't Know: 1 (12.5%) Consumer Group
 - N/A: 1 (12.5%) Ombudsman
- Largely agreed that natural justice is applied by the Code Manager when using discretion for sanctions and deregistration of agents (63%, 5 respondents). The remaining 3 (37%) did not know, or responded N/A. These responses are outlined below:
 - Don't Know: 2 (25%) Consumer Groups
 - N/A: 1 (12.5%) Ombudsman
- There was a full understanding that as per the Code, members are required to report on complaints and systematic issues to EAL by members (100%, 8 respondents).

Recommendations

3. There is an education opportunity with selected external stakeholders (1 Consumer Affairs Group, 2 Consumer Groups) on the review mechanism for appeals to the Code Panel.
4. There is an education opportunity with selected external stakeholders (particularly among Consumer Groups and the Ombudsmen) on the process for applying sanctions and/or deregistration of agents.

4 Sanctions

Highlights

Internal stakeholders (14):

- Largely agreed that there is an effective and documented sanctions process for dealing with member breaches (79%, 11 respondents). 1 respondent (7%) did not agree (one of 12 Board Members)
- There was full agreement and understanding that appeals by agents and members are heard by an independent Code Panel (100%, 14 respondents).

External stakeholders (8):

- Agreed that there is an effective and documented sanctions process for dealing with member breaches (75%, 6 respondents)
- There was full agreement and understanding that appeals by agents and members are heard by an independent Code Panel (100%, 8 respondents).

Due to the largely positive results in this category, there are no recommendations to improve the Code's effectiveness.

5 Industry Awareness

Highlights

Internal stakeholders (14):

- Largely agreed that there is sufficient content in EAL marketing material to inform customers of door to door marketing expectations (86%, 12 respondents), and that there is a post-sale verification call to customers providing consent for entering into new contracts (93%, 13 respondents)
- Largely agreed that customers entering into contracts are made aware of the Code and complaints handling process (64%, 9 respondents). Only 1 respondent (7%) disagreed (one of 12 Board Members), and the remaining 4 respondents (28%) were either neutral or didn't know

External stakeholders (8):

- Largely agreed that there is sufficient content in EAL marketing material to inform customers of door to door marketing expectations (6 respondents (75%) agreed; 1 respondent (12.5%) was neutral, and 1 (12.5%) responded N/A)

- Mixed response on whether the post-sale verification call to customers ensures that explicit, informed consent is provided. Four respondents (50%) agreed, 1 respondent disagreed (12.5%) and the remaining 3 (37.5%) either didn't know or were neutral. These responses are outlined below:
 - N/A: 1 (12.5%) Consumer Affairs Group
 - Don't Know: 1 (12.5%) Consumer Group
 - Neutral: 1 (12.5%) Ombudsman
- Of the 5 stakeholders who deal with customers, there was general disagreement that there is customer awareness of the Code and complaints handling provisions:
 - Disagree: 3 respondents (60%) (including 2 Ombudsmen, 1 Consumer Group)
 - Neutral: 1 respondent (20%) Ombudsman
 - Don't Know: 1 respondent (20%) Ombudsman

Recommendations

5. There is an education opportunity with selected external stakeholders (particularly among the Ombudsmen, Consumer Affairs and Consumer Groups) on the purpose of the post-sale verification call.
6. Consideration to be given to how EAL can raise consumer awareness of the Code and its complaints handling provisions (i.e. retailer newsletters, media). Any awareness activities should also be made transparent to external stakeholders to increase confidence in the awareness program. Also refer to Recommendation 1.

6 Consultation with Stakeholders

Highlights

Internal stakeholders (14):

- Largely agreed that EAL is adequately engaging with external stakeholders in administration of the code (86%, 12 respondents)

External stakeholders (8):

- There was full agreement that EAL is adequately engaging with external stakeholders in administration of the code (100%, 8 respondents)

Due to the largely positive results in this category, there are no recommendations to improve the Code's effectiveness.

3 Survey Commentary

Survey respondents were invited to provide free form comments on the effectiveness of the Code. Our assessment found that these comments were consistent with survey responses and no new issues were raised.

Internal Stakeholders
Stakeholder Group: Board
<p>Response 1: “Given the relative newness of the scheme and the code, at this point in time it would be pertinent to conduct a more detailed review of the effectiveness of the code looking at how the code can be structured to ensure it is flexible enough to cater for both innovation and future market developments. An issue with the code is the ACCC approval process, which has the impact of “locking down” the code, in that any change or amendment to the code required to cater for industry or market advances has to go through the approval process of the ACCC. This has the impact of stifling the development of the code itself. Given that the market is moving quite quickly this is an issue that needs to be considered in terms of longer term strategy issues.”</p>
<p>Response 2: “In relation to Question 15: They may be made aware but do they understand?”</p>
<p>Response 3: “It is my strong belief that the introduction of the code has made sale people more accountable for their actions while dealing with customers who should have improved the customers experience and the reputation of the Energy industry.”</p>
<p>Response 4: “(We are a) scheme initiator but (do) not have customers or marketers. Hence some answers should be seen in that context.”</p>
<p>Response 5: “I believe that the Code of Practice works very effectively and has significantly improved the D2D experience. I cannot identify any major changes, arising from the experience of the first year of operation that would make any significant improvement.”</p>
<p>Response 6: “Sanctions need to be introduced to ensure adherence to the code. I feel the code has been effective & as a whole the industry has responded well & act in accordance with the code. However, I feel there are several gaps- 1) There is still too much room for interpretation / therefore inconsistency in how the code is applied by each retailer / marketer. 2) Sanctions for retailers / marketers need to be clear, documented & enforced. My view is that some marketers are giving the code "lip service" only -> and don't genuinely abide by it.”</p>

Internal Stakeholders
Stakeholder Group: Board
<p>Response 7: “I feel there should be greater power given to the EAL to scrutinise and if necessary punish member organisations (both marketers and retailers) to ensure they are following the code appropriately and giving compliance the attention required. The Government views the industry as a whole and therefore all organisations need to follow the rules and adhere to the code to avoid significant impacts to the businesses and individuals relying on the industry.”</p>
<p>Response 8: “Overall I believe that the EAL scheme has enhanced compliance in the door to door marketing of energy both with retailer and marketer. There has been significant focus placed on compliance in our business as a consequence of the EALs introduction and also the more recent action taken by the ACCC with litigating retailers and their marketers for falling short of their obligations under the ACL. I similarly note that our clients (retailer) have supported and assisted our business with this focus. I note that the scheme has been particularly effective in disciplining and where needed removing “rogue” sales agents from our business and industry. That said, we are still receiving quite a number of complaints which I believe stems from the lack of consumer confidence in door to door sales in the energy industry. That’s not to say that the standard of customer interaction by accredited EAL Sales Agents has decreased since the EAL’s introduction, but I believe is a result of recent media communications regarding the negative aspects of the door to door industry and instances where consumer rights have not been protected. It would be great to see the EAL challenge this on a public platform and in the media. Unfortunately, I don’t believe the public’s perception of the industry has dramatically changed with the introduction of the EAL. In an effort to make the scheme more effective, I would like to see the introduction of marketers being able to access compliance history information of all Sales Agents that have been accredited under the scheme. This would ensure that both retailer and marketer are also fulfilling their obligations as members through the assistance of the central register of Sales Agents in instances where agents move from one marketer to another.”</p>
External Stakeholders
Stakeholder Group: Consumer Group
<p>Response 1: “(We are) particularly supportive of EAL’s recruitment, training, assessment and accreditation processes, and has found EAL very willing to consult and work with consumer groups, to provide information and answer questions, etc. We are less certain about the effectiveness of the sanctions regime. From the outside it can be difficult to determine how the scheme really works in practise (for example, the verification call procedures have been described to us in EAL meetings and sound good. We do support this procedure, but we don’t know enough to be able to confidently say it ensures explicit informed consent in all cases)”</p>

External Stakeholders
Stakeholder Group: Ombudsman
<p>Response 2: “In my view, there remains confusion with consumers about administrative transfers in error and door to door sales. The outcome is the same for consumers in that they are transferred without their explicit informed consent. My suggestion is that the cases should have the same level of rigour applied as the conduct of agents otherwise consumers will continue to mistake the two.”</p>
<p>Response 3: “I understand as a result of the EAL scheme a number of unscrupulous agents have been removed from D2D marketing for serious breaches of the Code which is good for consumers and the industry as a whole.”</p>

Appendix A: Detailed Survey Responses

1 Achievement of Objectives

Internal Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1. The scheme has increased transparency in door to door marketing practices	-	-	1	-	2	4	7
2. From your dealings with customers, the level of consumer confidence in door to door marketing practices has improved.	1	-	1	2	5	5	-
3. From your dealings with EAL, your level of confidence in door to door marketing practices for the industry has improved.	-	-	1	-	1	6	6
4. The introduction of the Scheme has strengthened your organisation's commitment to door to door marketing	1	-	1	-	4	2	6
5. As a result of being a member of this scheme, you have strengthened your compliance practices.	2	-	-	-	2	5	5
6. Customers and stakeholders understand the complaints handling and escalation process. (That is, first referral to the retailer; then to the Ombudsman if not satisfied with the outcome).	-	-	-	1	3	10	-
TOTAL	4	-	4	3	17	32	24
	5%	-	5%	4%	20%	38%	29%

External Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
1. The scheme has increased transparency in door to door marketing practices.	-	-	-	-	3	5	-
2. From your dealings with customers, the level of consumer confidence in door to door marketing practices has improved.	1	1	1	3	2	-	-
3. Customers and stakeholders understand the complaints handling and escalation process. (That is, first referral to the retailer; then to the Ombudsman if not satisfied with the outcome).	-	-	-	1	3	4	-
TOTAL	1	1	1	4	8	9	-
	4%	4%	4%	17%	33%	38%	-
Question	n/a	Don't Know	Yes	No			
4. Have you noted a reduction in the number and severity of customer complaints as a ratio of marketing activity? (Note: this question is for Ombudsmen, Department of Fair Trading and Regulators only)	2	-	1	5			
TOTAL	25%	-	13%	63%			

2. Composition and Support

Internal Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
7. The purpose and objectives of the Code are clear to stakeholders and interested parties.	1	-	-	-	-	5	8
8. You understand your role and responsibilities under the Code.	-	-	-	-	-	5	9
9. EAL's recruitment, training, assessment and accreditation processes lead to better consumer protection and confidence.	-	-	-	1	-	6	7
TOTAL	1	-	-	1	-	16	24
	2%	-	-	2%	-	38%	57%
External Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
5. You support the self-regulated scheme to drive improvement in door to door marketing practices.	-	1	-	-	1	5	1
6. The purpose and objectives of the Code are clear to stakeholders and interested parties.	-	-	-	1	-	5	2
7. EAL's recruitment, training, assessment and accreditation processes lead to better consumer protection and confidence.	-	1	-	-	-	6	1
TOTAL	-	2	-	1	1	16	4
	-	8%	-	4%	4%	67%	17%

3. Appeals and Determination Handling Process

Internal Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
10. There is an adequate review mechanism through an appeal to the Code Panel for parties that are not satisfied with the determination by the Code Manager.	-	-	-	-	-	7	7
11. You believe that all involved parties are appropriately informed of the Code Panel or Code Manager's determination.	-	-	-	-	2	8	4
12. You self-report and effectively categorise complaints and systematic issues to EAL.	2	-	-	-	1	4	7
TOTAL	2	-	-	-	3	19	18
	5%	-	-	-	7%	45%	43%
External Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
8. There is an adequate review mechanism through an appeal to the Code Panel for parties that are not satisfied with the determination by the Code Manager.	1	1	-	-	1	4	1
9. In your view, and from your understanding of the Code, discussions you have held with EAL and from EAL's annual report, the Code Manager applies natural justice and uses appropriate discretion in determining whether an agent is to be deregistered or a member sanction applied.	1	2	-	-	-	5	-
10. From your understanding of the Code, members are required to report on all door to door marketing complaints and systemic issues on a monthly basis.	-	-	-	-	-	8	-
TOTAL	2	3	-	-	1	17	1
	8%	13%	-	-	4%	71%	4%

4. Sanctions

Internal Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
13. Sanctions applied to members reflect the nature, seriousness and frequency of the breach.	-	-	-	1	2	7	4
TOTAL	-	-	-	7%	14%	50%	29%
Question	n/a	Don't Know	Yes	No			
14. Are you aware that appeals by agents and members are heard by an independent Code Panel?	-	-	14	-			
TOTAL	-	-	100%	-			
External Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
11. From your understanding of the Code, you believe there is an effective, documented sanctions process for dealing with member breaches.	-	1	-	1	-	6	-
	-	13%	-	13%	-	75%	
Question	n/a	Don't Know	Yes	No			
12. Are you aware that appeals by agents and members are heard by an independent Code Panel?	-	-	8	-			
TOTAL	-	-	100%	-			

5. Industry Awareness

Internal Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
15. All customers who enter into contracts via door to door are made aware of the Code and complaints handling process.	-	1	-	1	3	7	2
16. EAL marketing material contains sufficient information to inform customers of what to expect at the door.	-	-	-	-	2	7	5
17. A post-sale verification call ensures customers are providing explicit, informed consent in entering new contracts.	-	-	-	-	1	9	4
TOTAL	-	1	-	1	6	23	11
	-	2%	-	2%	14%	55%	26%
External Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
13. From your dealings with customers, you believe customers are aware of the Code and complaints handling provisions. (Note: if you don't deal with customers, please respond N/A)	3	1	1	2	1	-	-
14. EAL marketing material contains sufficient information to inform customers of what to expect at the door.	1	-	-	-	1	6	-
15. A post-sale verification call ensures customers are providing explicit, informed consent in entering new contracts.	1	1	-	1	1	4	-
TOTAL	5	2	1	3	3	10	-
	21%	8%	4%	13%	13%	42%	-

6. Consultation with Stakeholders

Internal Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
18. Since the scheme commenced, you believe EAL is adequately engaging with external stakeholders in the administration of the Code.	-	-	-	1	1	4	8
TOTAL	-	-	-	7%	7%	29%	57%
External Stakeholders							
Question	n/a	Don't Know	5	4	3	2	1
			Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
16. Since the scheme commenced, EAL's level of engagement with your organisation has been satisfactory and effective in administering the Code.	-	-	-	-	-	6	2
TOTAL	-	-	-	-	-	75%	25%

Appendix B: Benchmarking of Code of Practice Survey to ACCC Guidelines

We undertook a benchmarking comparison of EAL's Code of Practice (the Code) in line with the ACCC "Guidelines for developing effective voluntary industry codes of conduct" (July 2011). The below table summarises our observations and any opportunities for improvement of the Code:

ACCC Code of Practice Guidelines	EAL Code of Practice	Opportunities for Improvement (Recommendation)
1. Code Administration		
<p>Composition</p> <p>A code administration committee needs to be established and its operations documented within the Code. That committee should ensure the successful implementation and ongoing effectiveness of the code.</p> <p>Typical stakeholders include:</p> <ul style="list-style-type: none"> Trade associations Consumer representatives (with demonstrated skills and expertise in consumer affairs, links to consumer organisations, etc.) Regulatory authority and consumer affairs agencies <p>Coverage</p> <p>The wider the coverage a code has in an industry, the more effective it will be. The level of coverage should be measured in terms of number of actual code signatories against potential signatories within the industry, as well as in terms of coverage of the issue that the code is attempting to address.</p> <p>Effective complaints handling</p> <p>The code should include:</p>	<p>The Code outlines the composition of the Code Panel, which is independent to Members and the Code Manager.</p> <p>The Panel is composed of five individuals with a variety of professional backgrounds:</p> <ul style="list-style-type: none"> one person with relevant experience, at a senior level, in the energy retailing industry; one person with relevant experience, at a senior level, in a regulatory or government body that administers consumer laws or marketing codes that govern door-to-door sales activities; one person with relevant experience, at a senior level, in a Consumer Advocacy Group; 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 one person with current legal qualifications, preferably in the energy industry. <p>A Stakeholder Working Group is described, and includes</p>	<p>7. The Code outlines the definition of a breach. However it does not formally define a complaint. This should be restricted to potential/actual Code breaches so that this is not confused with dissatisfaction with services provided.</p> <p>8. While the EAL website shows the number of signatories (10 retailers as well as the ERAA), it does not state how many members there are relative to the number of retailers in the market.</p>

ACCC Code of Practice Guidelines	EAL Code of Practice	Opportunities for Improvement (Recommendation)
<ul style="list-style-type: none"> a definition of complaint that includes any expression of dissatisfaction with a product or service offered or provided a procedure whereby complaints should first be considered by signatories to the code if the signatories cannot resolve a complaint it should be lodged with the administration committee or an independent decision-maker appointed by the committee performance criteria for effective complaints handling 	<p>representatives from industry, Consumer Advocacy Groups, and the energy ombudsman.</p> <p>The Code outlines roles and responsibilities relating to management of complaints. The Code also details the complaints handling, monitoring and escalation processes, as well as escalation processes. This includes:</p> <ul style="list-style-type: none"> roles and responsibilities of the Code Manager time to investigate recording of complaint referral by Code Manager to independent resolution bodies (ombudsman, Consumer Advocacy Group, etc.). <p>Performance criteria are outlined in the form of objectives (see "Performance Indicators" below).</p>	
9. Independent review of complaints handling decisions		
<p>The code should also provide for a review mechanism when a member of the public or an industry member is dissatisfied with an initial attempt to resolve the complaint.</p> <p>If all internal industry efforts fail to resolve the complaint then the industry should sponsor an independent complaint body to review it.</p> <p>This independent review body should:</p> <ul style="list-style-type: none"> be recruited from outside the industry hold no preconceived ideas about the industry be suitably qualified to hear and resolve complaints. 	<p>The Code outlines the roles of responsibilities of those involved in the complaints handling process, as well as escalation processes, and referral of complaint by Code Manager to independent resolution bodies (ombudsman, Consumer Advocacy Group, etc.).</p> <p>The code clearly defines the various levels of breaches and actions that would constitute these.</p> <p>The Code further outlines the appeals process for sales agents and members.</p>	None.
10. In-house compliance system		
<p>The code administration committee needs to ensure that each participant has some form of in-house system to ensure compliance with the code. It can also assist compliance at this level with advice and training.</p>	<p>The Code outlines member obligations, including:</p> <ul style="list-style-type: none"> compliance with the processes for the operation, maintenance and registration of Sales Agents on the EAL Register as determined in the Procedures Guideline and the Code. 	None.

ACCC Code of Practice Guidelines	EAL Code of Practice	Opportunities for Improvement (Recommendation)
	<ul style="list-style-type: none"> Members must only engage Sales Agents to conduct Sales Activities that: are registered under the EAL Register and have attained an appropriate Accreditation Status have been trained and assessed continually monitor report on, and submit to audits on, the extent of their compliance with the including reporting on their compliance in accordance with obligations under the relevant Applicable Law. <p>Further, the Code operates in conjunction with EALs 'Procedures Guideline, which sets out the procedures, principles and processes that underpin the Code. This includes registering and maintaining of Sales Agents on the EAL Register and recruiting, training and assessing Sales Agents.</p>	
11. Sanctions for non-compliance		
<p>Commercially significant sanctions are necessary to achieve credibility with and compliance by participants, and also engender stakeholder confidence in the industry code.</p> <p>Sanctions should reflect the nature, seriousness and frequency of the breach.</p>	<p>The Code outlines that sanctions will be applied to members who are in breach of the Code as determined by the Code Panel. The level of the breach identified will determine the sanction applicable, reflecting seriousness of the breach.</p>	None.
12. Consumer awareness		
<p>An effective code should incorporate a strategy that will raise consumers' awareness of the code and its contents, including its complaints handling provisions.</p> <p>A published list of code signatories may help raise code awareness.</p>	<p>Complaints handling provisions are clearly outlined within the Code. Further, the Code describes marketing material that is provided to consumers, which must refer to the Code, summarise EAL standards, complaints provisions and treatment of complaints, contact details of the Energy Retailer, etc.</p> <p>Marketing material will be provided to consumers by the Members, and is available on EAL's website in various languages.</p> <p>The signatories are listed on the EAL website (10 retailers as well as the ERAA). As such, no opportunities for</p>	None.

ACCC Code of Practice Guidelines	EAL Code of Practice	Opportunities for Improvement (Recommendation)
	improvement.	
13. Industry awareness		
<p>In many cases a code fails to operate effectively, not because its principles and procedures are inadequate, but because employees or industry members are either unaware of the code or fail to follow it in day-to-day dealings. It is therefore essential that the code contain a provision requiring employees and agents to be instructed in its principles and procedures. This is an ongoing task because of staff turnover in firms and should be overseen by the code administration body.</p>	<p>The Code includes provisions for registering and maintaining of Sales Agents on the EAL Register and recruiting, training and assessing Sales Agents.</p> <p>Members must:</p> <ul style="list-style-type: none"> • register all Sales Agents engaged by it on the EAL Register; • manage the Accreditation Status" of all Sales Agents; and • manage their Sales Agents and operate and access the EAL Register. 	None.
14. Data collection		
<p>Effective codes require collection of data about the origins and causes of complaints, and the identification of systemic and recurring problems which industry members need to address.</p> <p>The type of data collected should include details of:</p> <ul style="list-style-type: none"> • complainant • business complained about • the type and frequency of complaint • how the complaint was resolved • time taken to deal with complaint • type of sanction(s) imposed. <p>The data should be able to be analysed to produce reports that highlight any systemic issues and areas for potential improvement. These reports provide important feedback for management, staff and industry to continually improve compliance with the Act.</p>	<p>For each Sales Complaint, the Energy Retailer must record at least:</p> <ul style="list-style-type: none"> • the date, or approximate date, of the incident; • the date of the Sales Complaint; • the reason for the Sales Complaint; • a date and description of how the Sales Complaint was resolved; and • the corrective action taken, if required, including disciplinary action taken against the Sales Agent and the Sales Agent's details. <p>An Energy Retailer must have procedures in place to monitor and record, on an ongoing basis, its Sales Agents' compliance with the EAL Standards (including Applicable Laws) (Competence Monitoring) which must include but is not limited to:</p> <ul style="list-style-type: none"> • an independent Post Sale Verification Procedure that is done and recorded on all consumers that enter into a contract with the Energy Retailer; • monthly random assessments of 5% of Sales Agents that have obtained an Approved Accreditation 	None.

ACCC Code of Practice Guidelines	EAL Code of Practice	Opportunities for Improvement (Recommendation)
	Status; and <ul style="list-style-type: none"> an annual Formal Competence Assessment in accordance with the Procedures Guideline. 	
15. Monitoring		
<p>The code administration committee should regularly monitor codes for compliance to ensure the desired outcomes for all stakeholders and the community at large.</p> <p>The committee should have a system for monitoring compliance which may include evaluating data collected regularly to identify and remedy problems as well as to identify ways of increasing compliance.</p>	<p>The Code requires that Members report regularly on breaches and complaints.</p> <p>Members must continually monitor report on, and submit to audits 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.</p>	None.
16. Accountability		
<p>The committee should also produce annual reports on the operation of the code, allowing for periodic assessment of its effectiveness. These reports should be readily available to all stakeholders and interested parties.</p>	<p>EAL publish an Annual Report on its website. The Annual addresses and includes:</p> <ul style="list-style-type: none"> an overview of the Code; an overview of the Compliance Audits undertaken; statistics of proven breaches and deregistration applications against Sales Agents statistics of Sales Complaints made to an Energy Retailer as a proportion of consumers contacted and divided into categories the types of complaints received from data obtained from monthly reports examples of the type of Sales Complaints received and how these were addressed; statistics of the number of issues identified against Members examples of Member issues identified and how these were addressed; the nature of industry wide systemic issues and how these have been resolved; details of Sanctions 5 and Sanction 6 issued that were imposed and the naming of the Member; 	None.

ACCC Code of Practice Guidelines	EAL Code of Practice	Opportunities for Improvement (Recommendation)
	<ul style="list-style-type: none"> statistics of the number of Sanctions and Appeals considered and heard by each Panel Member; and outcomes or recommendations of any Code review. 	
17. Review		
The code should provide for regular reviews to ensure that the standards incorporated are meeting identified objectives and current community expectations and that it is working effectively.	<p>The Code will be reviewed at least every two years by an independent entity with legal or auditing expertise capable of assessing the effectiveness of the Code and familiar with the energy industry (Independent Firm).</p> <p>The scope of the review will be determined by EAL, 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.</p>	None.
18. Competition Implications		
Codes should not be written in an anti-competitive way. When a code includes potential anti-competitive provisions, authorisation should be obtained from the ACCC.	Our review of the code did not identify any anti-competitive provisions.	None.
19. Performance Indicators		
<p>Performance indicators should be developed with reference to these criteria and implemented as a means of measuring the code's effectiveness.</p> <p>The measurements may either be qualitative or quantitative but should be objective so that another person in similar circumstances would obtain the same measurement.</p>	<p>The objectives of the Code aim to:</p> <ul style="list-style-type: none"> promote consumer confidence in door to door sales in the energy industry; provide consumers with a better overall experience in energy sales at the door; improve the standards and effectiveness of door to door sales in the energy industry; reduce the rate of Sales Complaints; and discipline and/or remove "rogue" Sales Agents. <p>The code further outlines that objectives aim to be met through application of sanctions for breaches, monitoring of Members, training of Sales Agents, etc.</p>	None.



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.....

ENERGY ASSURED MEMBERS GO TO GREAT LENGTHS TO ENSURE THAT WE EMPLOY THE RIGHT PEOPLE TO SELL AT YOUR DOOR.

- ✓ All prospective sales agents are screened using a 100 point identification check, a criminal history check and reference check.
- ✓ New sales agents who succeed in achieving screening standards are then registered on an industry central register. Only fully registered sales agents may display the Energy Assured logo and undertake sales activities.
- ✓ Sales agents undergo an ongoing training, accreditation and assessment process to ensure they always comply with the Code and meet your expectations.
- ✓ Any sales agent who breaches the Code faces disciplinary action which can include, retraining, having their Energy Assured accreditation suspended and/or deregistration for up to 5 years.

YOUR RIGHTS

BE ASSURED
THAT OUR SALES
PEOPLE WILL:



respect your right to ask
a sales agent to leave

respect your right to say "no"

abide by any notice that door
knocking is unwelcome

be courteous, professional and
respect your wishes

only call during permitted
times of the day

cease contact when you
advise them that the contact is
inconvenient, unwelcome
or inappropriate

always identify themselves and
provide you with their name,
the company they represent
and their ID

communicate with you clearly
and truthfully and never use
high pressure sales tactics

explain any cooling-off period
and what will happen next

ensure that you understand any
agreements made

explain to you fully the terms of
any contract, inclusive of price
and any associated fees

never exploit your inexperience
or vulnerability; and

comply with applicable
regulatory requirements.

After a sale has been completed, the Code requires an independent person to verify that you were satisfied with the way the sale was conducted, and that you understand that a contract has been entered into.

YOUR MEMBER

If you have a complaint about a sales agent, please contact the number above. If you are not satisfied with their response, please contact the Dept of Fair Trading if you did not proceed with choosing a new Energy Retailer or call the Ombudsman if you did agree to switch to a new Retailer.

OMBUDSMAN

NEW SOUTH WALES
ewon.com.au
T: 1800 246 545

QUEENSLAND:
ewoq.com.au
T: 1800 662 837

SOUTH AUSTRALIA
eiosa.com.au
T: 1800 665 565

VICTORIA
ewov.com.au
T: 1800 500 509

FAIR TRADING

NEW SOUTH WALES
fairtrading.nsw.gov.au
T: 13 32 20

QUEENSLAND:
fairtrading.qld.gov.au
T: 13 74 68

SOUTH AUSTRALIA
cbs.sa.gov.au
T: 131 882

VICTORIA
consumer.vic.gov.au
T: 1300 558 181

For further information on the Code contact:

The Code Manager
Energy Assured Limited
Suite 3, Level 5, 189 Kent Street
Sydney, NSW 2000
info@energyassured.com.au
energyassured.com.au

Information Accessibility

Copies of this brochure are available online at energyassured.com.au in larger font sizes for those with visual impairment.



For Energy Assured information translated in Italian, Greek, Chinese, Arabic, Vietnamese and Korean please visit energyassured.com.au. If you require interpreter services please contact your Energy Assured member.

This brochure is printed on Australian made, recycled and greenhouse friendly paper.

COMPARATORS V4/12



Be **confident** in
buying energy at
your doorstep

energyassured.com.au

5MM BLEED

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WHAT IS
ENERGY
ASSURED?

Energy Assured operates a voluntary Code of Practice for face-to-face marketing of energy contracts. The Code aims to ensure the highest standards in door to door selling practices by energy salespeople.

Members of Energy Assured comprise both energy retailers and marketing companies that perform door to door sales.

THE CODE REQUIRES MEMBERS TO ONLY ENGAGE SALES PEOPLE THAT MEET THE CODE'S STRINGENT REQUIREMENTS.

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WHY
THE
CODE?

THE CODE WAS ESTABLISHED BY THE ENERGY INDUSTRY IN 2011 TO IMPROVE THE CONSUMER EXPERIENCE, REDUCE COMPLAINTS AND INCREASE CONSUMER CONFIDENCE IN THE DOOR TO DOOR SALE OF RETAIL ENERGY PRODUCTS.

Whilst recognising that there are laws, such as the Australian Consumer Law, that govern door to door sales, the Code aims to lift the bar further and ensure the strictest compliance and most ethical practices by sales agents that represent energy retailers at the door.



THUS THE
NAME 'ENERGY
ASSURED'.



98.5MM

HIGH
STANDARDS
ASSURED

The success of the Code relies on a member's full compliance with the Code and a robust approach taken to ensuring compliance which includes:

- ✓ the employment of a full time and independent Code Manager to oversee the day-to-day operational compliance of members;
- ✓ a range of sanctions available to the Code Manager if members breach the Code, including requiring remedial action and formal and public admonishments;
- ✓ monthly reporting by members to the Code Manager; and
- ✓ annual code audits to inspect members' systems and controls, report on any areas of non-compliance and implement remedial action if required.

INDEPENDENT CODE PANEL

An independent Code Panel has also been appointed to oversee the strategic operations of the Code.

The Code Panel is a group of experienced representatives from a variety of backgrounds that are independent to members.

THE PANEL APPROVES SANCTIONS, JUDGES ANY APPEALS, AND REVIEWS AND RECOMMENDS FURTHER DEVELOPMENTS TO THE CODE.

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THEY WILL ACTION YOUR COMPLAINT AND PROVIDE YOU WITH FEEDBACK WITHIN 21 DAYS

FEEDBACK

Energy Assured members monitor the performance of their salespeople regularly and have rigorous processes to ensure they provide the best service possible.

If you have had a visit from an energy sales agent and you were happy with your experience, why not let the member know (see back page for details).

If your experience was in any way unsatisfactory, or if you would like to make a complaint, please contact the member concerned.

They will action your complaint and provide you with feedback within 21 days of you raising a complaint and can also provide you with a full copy of the Code.

If you're still unsatisfied with the outcome or would like further advice to understand your rights as a consumer, you can always contact the relevant energy ombudsman or Department of Fair Trading in your State or Territory (see back for details). The Code operates separately to the ombudsman scheme.

If you have questions about the Code itself please contact the Code Manager or visit the Energy Assured website at energyassured.com.au

QUESTIONS?

For further information and to obtain a copy of the code, please visit energyassured.com.au

