

## **Blanch, Belinda**

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**From:** Anne Whitehouse  
**Sent:** Friday, 13 December 2013 8:31 AM  
**To:** Mullen, Baethan  
**Cc:** Hobbs, Tanya; Anne Whitehouse  
**Subject:** Response to submissions for Revocation and substitution applications A91390 and A91391

Mr Baethan Mullen  
Director  
Adjudication Branch  
Australian Competition and Consumer Commission

Attention: Tanya Hobbs

Dear Mr Mullen,

### **Energy Assured Limited - Revocation and Substitution - A91390 & A91391**

Reference is made to the above applications and supporting Submission lodged by Energy Assured Limited (**EAL**) on 5 November 2013 (**Application**). Reference is also made to the four submissions lodged by interested parties in relation to the Application.

Consistent with EAL's submission that the EAL Scheme will continue to deliver significant public benefits that outweigh negligible (if any) anti-competitive detriments, three of the four submissions are supportive of the Scheme, including the submission lodged on 28 November 2013 by the Energy & Water Ombudsman NSW (**EWON Submission**). Nonetheless, EAL considers it appropriate to respond to certain matters raised in the EWON Submission and the submission lodged by the Consumer Action Law Centre on 26 November 2013 (**CALC Submission**).

#### **EWON Submission**

##### **Inclusion of face to face marketers selling bundled products**

Sales Agents that sell energy contracts to consumers face to face as part of bundled products (as described in the EWON Submission) will be covered by the Scheme if the marketers that engage those Sales Agents are Members of the Scheme and the sale occurs in a company branded Kiosk. In this way, the Scheme would apply to address and minimise some of the growing complaints that EWON has identified in this area.

##### **Definition of systemic issue**

EAL submits that the definition of "systemic issue"/"systemic breach" in the Code is sufficiently clear and does not need changing. The concept was developed to categorise breaches of the Code that are not "operational" or "material" breaches (please refer to clause 28.3 of the Code). The definition of "material breach" specifically includes breaches that are isolated in nature. These concepts are used to give guidance to the Code enforcers to determine the appropriate sanction to seek against a Member.

It is appropriate that a "systemic" breach / issue not cover an isolated incident and that the definition retain its current meaning. Please refer to the instances in which the term is used in

clauses 9.6(9), 11.1(7) and 19.5 – 19.8 of the Code, which demonstrate the need for the term to specifically cover broader issues.

EAL already fields complaints received by one Member about another Member that are regularly passed on to it. Members are encouraged to do so. EAL submits that the phrase “inherent overall issue” is sufficiently clear on its ordinary and natural meaning and does not require further clarification. There have been no interpretation issues with this phrase over the time the Scheme has been in force.

### **Reporting issues to the Code Manager**

The Code Manager is required (under clause 26.1 of the Code) to investigate potential breaches of the Code that are raised by other Members (using Form C, Annexure F to the Code), by the ombudsman, Consumer Advocacy Groups, any energy regulator or regulatory bodies or the government. Customer complaints relating to agent behaviour that are made to any of these persons or bodies and are reported to the Code Manager will therefore be investigated.

EAL submits that this is a sufficiently wide scope of complaint referral sources and that the vast majority of complaints relating to sales agent behaviour will be investigated.

### **CALC Submission**

#### **Clear public benefits and improved consumer welfare**

EAL wholly rejects CALC’s assertion that EAL’s efforts are disingenuous or that real outcomes have not been or will not be delivered. As outlined and supported by evidence in the Application, the Scheme has delivered and will continue to deliver clear benefits for consumers that exceed those that would be achieved under the existing consumer protection laws (please see, in particular paragraphs 25 – 32 of the Submission). Over the time that the Scheme has been in operation, the ratio of customer ombudsman complaints to customer door to door sales visits has reduced (please see the graph set out at clause 30.2 of the Submission).

EAL submits that the reference in the CALC Submission to the number of complaints received on CALC’s Do Not Knock website should be considered in light of the high level of activity that occurs through this channel. Since the scheme commenced, an average of 1 million households and businesses are contacted via the door to door channel each month.

A key element of the Scheme which goes above and beyond the Australian Consumer Law (**ACL**) is its focus upon and guidance in relation to Sales Agent standards and behaviour. Providing clear guidance and standards for the recruitment, training, competency assessment and disciplining of Sales Agents gives Members greater control and accountability and enables Members to more easily meet ACL requirements. The framework established by the Scheme for the registration and deregistration of Sales Agents gives both Members and consumers greater confidence in the behavioural standards of individual Sales Agents. The deregistration of Sales Agents who consistently breach consumer protection requirements limits the energy marketing employment opportunities for those Sales Agents for a specified period of time and is an important deterrent. This clearly enhances consumer welfare and increases consumer confidence.

## **Consumer Awareness**

For the reasons stated in the Application, awareness of the Scheme has grown since its inception. Awareness is important so that complaints about Sales Agents can be raised with Members and/or the Code Manager and appropriate disciplinary action taken accordingly. The need for awareness of the Scheme was raised as a benefit relevant to the ACCC's determination three years ago when it first considered EAL's Application.

As currently occurs, all consumer facing documentation makes clear the rights of the consumer to complain under the scheme are additional to and do not detract from the consumer's existing ability to refer a complaint to the relevant regulator or ombudsman. Indeed the scheme will promote adherence to existing regulatory requirements to make consumers aware of such rights. This can only serve to deliver public benefit, not detract from it

## **The industry**

Whilst CALC may hold the opinion that consumers do not like door-to-door selling, this is not relevant to the matters to be considered in the ACCC's re-authorisation process. EAL exists to improve face to face (not just door to door) marketing standards. The fact that door to door marketing occurs is a reality. It is also a method of marketing that EAL supports, especially in the energy industry. The nature of energy purchasing, having low customer involvement, necessitates unsolicited forms of selling to facilitate customer switching and competition in energy retail markets. Without such competition, consumers are likely to be worse off overall.

CALC criticises EAL for having a strong disciplinary focus on individual Sales Agents. Indeed, and as noted in the Application and in paragraph 2.1 above, holding individuals accountable is an important element of the Scheme that goes above and beyond that provided in existing law and regulation. Bringing individual accountability to bear also counteracts the possibility of any adverse impact of commission-based sales incentives on Sales Agent behaviour.

Members are also held to account through the sanctions regime.

## **No anti-competitive detriments**

CALC has not pointed to any anti-competitive detriments of the Scheme. Given the Scheme is open to all Energy Retailers, Energy Marketers and Sales Agents, all participants will be on a level playing field and any decision to sanction a member or Sales Agent will be made by independent decision-makers, there is unlikely to be any real impact on competition, certainly not enough to outweigh the benefits of the Scheme.

If you would like to discuss these matters further or require additional information, please contact me.

Yours sincerely

Anne Whitehouse  
Chief Executive Officer