

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



Your Ref: 43916

24 May 2011

Dear Dr Chadwick

Energy Assured Limited amended application for authorisation A91258 & A91259

I am writing to document the Public Interest Advocacy Centre's (PIAC) position on Energy Assured Limited's (EAL) proposed scheme to self-regulate door-to-door energy sales (the EAL Scheme).

PIAC is an independent, non-profit, law and policy organisation that works for a just and democratic society by taking strategic action on public interest issues. PIAC has, as a key area of work, energy and water policy. The Energy + Water Consumers' Advocacy Program (EWCAP) represents the interests of low-income and other residential consumers of electricity, gas and water, including social housing residents.

PIAC does not support authorisation of the EAL Scheme at this time. PIAC takes the view that any scheme set up to regulate the conduct of door-to-door sellers of energy should be independent and transparent. The EAL Constitution states that the Board is to be made up of Directors from 'Large Active Retailer Members', 'the executive director' of the Energy Retailers Association of Australia (ERAA) and 'nominees put forward by Energy Marketer Members'.¹ Under this governance structure, PIAC is concerned that commercial decisions will take precedence over producing better consumer outcomes in relation to door-to-door sales.

In raising this concern, PIAC notes that the amended Code of Practice (the Code) stipulates that sales agents are required to provide information about the Code only where a consumer enters into a contract² or where a consumer makes a specific request for such information.³ PIAC argues that without proactive information provision at the point of contact, the Code provides little benefit to consumers who have not entered a contract but have been subjected to marketing misconduct.

While PIAC acknowledges that the Code includes a framework for an independent firm to review and report on the effectiveness of the Code, PIAC also notes that the scope of the review is to be set by 'EAL, the Code Manager and the Code Panel'.⁴ Under this arrangement, consumer input into the scope of the review would be limited to the influence wielded by the one consumer advocate on the four member Code Panel. PIAC has concerns that the review process is not designed for maximum transparency and may not lead to reporting that could be used to ascertain whether the Code is working to provide meaningful benefit to consumers.

¹ Energy Assured Limited *Constitution* 2011 s 41.1.

² Energy Assured Limited *Code of Practice* 2011 s 5.1 (4)(d).

³ Energy Assured Limited, above n 2, 4.1(10).

⁴ Energy Assured Limited, above n 2, s 13.2.

Similarly, the Code outlines that statistics on the issuing of warning notices for suspected code breaches, the imposition of sanctions, and the number of appeals heard, will be included in the Annual Report; however the members involved will not be named.⁵

Given the issues noted above, PIAC is not confident that this self-regulatory Code is capable of balancing the interests of EAL members and the interests of consumers in such a way that would foster adequate levels of consumer benefit. As such, PIAC is unable to recommend that the Australian Competition and Consumer Commission approve EAL's application for authorisation.

Should you require any further information, please contact Carolyn Hodge, Senior Policy Officer on 02 8898 6520.

Yours sincerely



Edward Santow

Chief Executive Officer

Public Interest Advocacy Centre

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⁵ Energy Assured Limited, above n 2, s 9.6(7).