



19 December 2013

Mr Baethan Mullen
Director, Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Emailed to tanya.hobbs@accc.gov.au

Dear Mr Mullen

Re: Energy Assured Limited's application to the Australian Competition and Consumer Commission for reauthorisation of its Code of Practice to self-regulate door-to-door energy sales

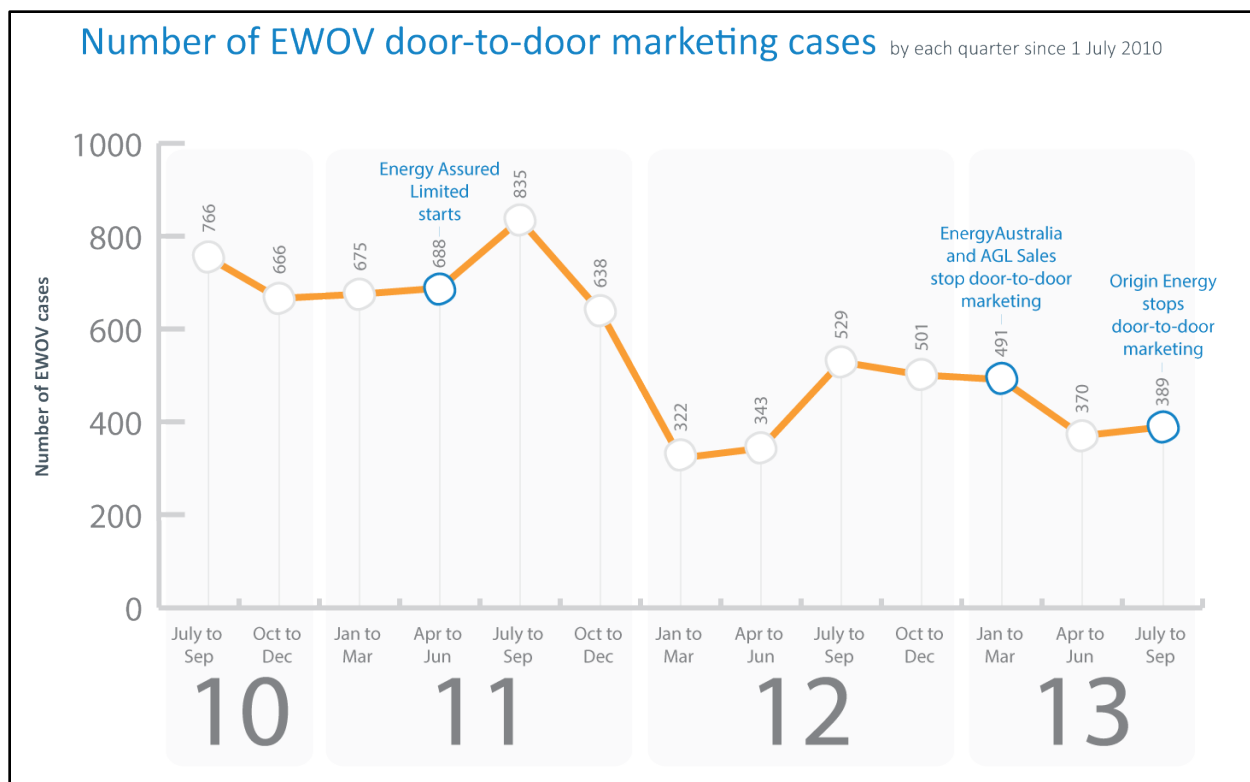
Thank you for the opportunity to comment *on Energy Assured Limited (EAL)'s application to the Australian Competition and Consumer Commission (ACCC) for reauthorisation of its Code of Practice (EAL Code) to self-regulate door-to-door energy sales.*

The Energy and Water Ombudsman (Victoria) (EWOV) is an industry-based external dispute resolution scheme that helps Victorian energy and water consumers by receiving, investigating and facilitating the resolution of their complaints. EWOV's interest in responding to EAL's application is based on our extensive experience in handling customer complaints. EWOV provides in-principle support for the self-regulation of door-to-door energy sales and has a well-established working relationship with EAL.

This submission explains how EWOV envisages an ongoing role for EAL in the training, registration, and sanction of energy sales agents, with an increase in its function to identify systemic issues and regulate face-to-face shopping centre kiosk sales. We also provide details of the number and recent trends in EWOV door-to-door marketing cases and consider the various reasons for the decrease in these cases over the last two years.

The trend in EWOV door-to-door marketing cases

The graph below shows the number of EWOV door-to-door marketing cases by quarter since 1 July 2010.



In summarising the case trends, the above graph shows that EWOV experienced a significant reduction in door-to-door marketing cases during the first year of EAL’s operation. Then in 2012, the number of these cases rose and remained steady, with a marked decrease in cases from April 2013 after EnergyAustralia (formerly TRUenergy) and AGL Sales stopped door-to-door marketing in Victoria¹.

The EAL Code was introduced on 23 June 2011, however during the following quarter, EWOV’s door-to-door marketing cases grew by 21% - an increase of 147 cases from the April to June 2011 quarter. For the next two quarters, door-to-door marketing cases dropped quite significantly, from 835 cases in July to September 2011, to 322 cases in January to March 2012. This is a 61% decrease over two quarters – a drop of 513 cases.

Over the next two quarters of 2012, EWOV’s door-to-door cases rose by 64%, from 322 cases in January to March 2012 to 529 cases in July to September 2012. Case numbers then generally remained steady until the April to June 2013 quarter, which received significantly fewer door-to-door marketing cases than the previous quarter – a 25% decrease. EWOV attributes this reduction to the separate decisions in February 2013 by EnergyAustralia (formerly TRUenergy)²

¹ See <http://www.energyaustralia.com.au/about-us/media-centre/current-news/knock-knock> , and <http://www.agl.com.au/about/ASXandMedia/Pages/AGLwithdrawsfromunsoliciteddoor-to-doorsales.aspx>

² See <http://www.energyaustralia.com.au/about-us/media-centre/current-news/knock-knock>

and AGL Sales³ to end door-to-door energy marketing in Victoria by the end of March 2013. On 19 June 2013, Origin Energy⁴ similarly announced that it would stop residential door-to-door energy marketing by 30 September 2013.

EWOV predicts that Origin Energy's decision will, in the short term, further reduce the number of door-to-door marketing cases we receive. From 1 October 2013 to 18 December 2013, we received 223 door-to-door marketing cases and estimate to receive about 235 cases for the October to December 2013 quarter. This would equate to a 40% quarterly decrease. However, it is also possible that smaller energy retailers will increase door-to-door marketing to fill the space left by the larger retailers, which could potentially lead to more customers contacting EWOV.

The reason for the decline in door-to-door marketing cases

While EWOV door-to-door marketing cases have declined significantly since the introduction of the EAL Code, there are several other reasons for the fall in EWOV door-to-door marketing cases in the last two years:

- The ACCC legal action against certain energy retailers for breaches of the Australian Consumer Law, resulting in significant fines.⁵
- The decision by the big three retailers to stop door-to-door marketing in Victoria.⁶
- The increased consumer awareness and distribution of Do Not Knock stickers.⁷
- Greater consumer understanding of their rights during door-to-door sales, partly because of campaigns and projects carried out by regulators, government, Ombudsman schemes and community groups.⁸
- Customer familiarity with door-to-door marketing means that some customers are less likely to complain about intrusive or pressured behaviour, and are more empowered to handle issues themselves.

³ See <http://www.agl.com.au/about/ASXandMedia/Pages/AGLwithdrawsfromunsoliciteddoor-to-doorsales.aspx>

⁴ See <http://www.originenergy.com.au/news/article/asxmedia-releases/1495>

⁵ See <http://www.accc.gov.au/media/media-releases>

⁶ See <http://www.energyaustralia.com.au/about-us/media-centre/current-news/knock-knock> , <http://www.agl.com.au/about/ASXandMedia/Pages/AGLwithdrawsfromunsoliciteddoor-to-doorsales.aspx> and <http://www.originenergy.com.au/news/article/asxmedia-releases/1495>

⁷ For example, see <http://consumeraction.org.au/get-the-do-not-knock-sticker/> and <http://www.accc.gov.au/publications/door-to-door-do-not-knock-sticker>

⁸ For example, see <http://www.ewov.com.au/> , <http://www.consumer.vic.gov.au/shopping/energy-products-and-services/tips-for-buying-energy-products-and-services> , <http://www.energymadeeasy.gov.au/> , <http://www.energyinfohub.org.au/> and <http://donotknock.org.au/>

- EWOV is not aware of the historical amount of door-to-door marketing in Victoria – it may be that the extent of door-to-door marketing has also decreased in the last two years.

EWOV believes that a combination of these factors contributed to the decrease in EWOV door-to-door marketing cases, with the ACCC enforcement actions and the decisions by the big three retailers to stop door-to-door sales being the recent primary drivers.

The ongoing role of EAL

EWOV believes that there is an important future role for EAL in the training, accreditation, monitoring, registration, and sanction of energy sales agents. EAL appears to handle these areas well and EWOV strongly supports the principle of having a sales agent register and a process for agent deregistration. EWOV entered into a Memorandum of Understanding with EAL⁹ and enjoys a good and reciprocal working relationship which includes regular face-to-face meetings, the sharing of reports and complaint data, and quarterly Stakeholder Working Group Meetings.

However, EWOV believes that to maximise the public benefits of industry self-regulation there are two areas that the ACCC may wish to consider – the identification and addressing of systemic issues and an expansion of the EAL role to include face-to-face kiosk sales, often found in shopping centres.

Systemic issues role

Based on EWOV's experience in working with EAL, we believe that there is an opportunity for EAL to take a broader role in investigating and addressing systemic issues with retailers and marketing companies, and for the timely reporting any potential issues to the jurisdictional regulators and Ombudsman schemes.

Based on EWOV's own investigation of systemic issues, it is imperative that problems are proactively identified so that the appropriate and early course of action can be taken to prevent further complaints from arising. For EAL to take a greater role in reporting on systemic issues it may need to widen its focus from the responsibilities of individual 'rogue' sales agents, to the wider accountability of a retailer for its agent's actions.

⁹ See <http://www.ewov.com.au/about-us/relationship-to-industry-and-government/memorandums-of-understanding>

Face-to-face kiosk sales

An analysis of EWOV marketing cases received in 2013 suggests a move away from door-to-door sales by some retailers into other sales techniques, such as telephone sales, direct advertising and shopping centre kiosk contacts. This is a response in part to the decision by the three large retailers to stop door-to-door marketing.

Marketing behaviour, such as misleading sales representations and pressure sales, is not exclusive to door-to-door sales. From 1 January 2013 to 18 December 2013, EWOV received 42 cases from customers concerned about the marketing behavior of sales agents operating from a shopping centre kiosk.

EWOV supports the inclusion of all types of face-to-face marketing in the EAL scheme. This type of sales practice should meet the same standards and be subject to the same oversight as other door-to-door energy marketing methods. The key public benefit of including face-to-face marketing would be the disciplining and potential de-registration of individual marketers who are found to have engaged in conduct prohibited under the EAL Code.

We trust that these comments are useful. Should you require further information or have any queries, please contact Justin Stokes, Senior Research and Communications Advisor on (03) 8672 4272.

Yours sincerely



Cynthia Gebert
Energy and Water Ombudsman (Victoria)