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27 July 2012

Committee Secretary  
House of Representatives Committee  
on Social Policy and Legal Affairs  
PO Box 6021  
Parliament House  
CANBERRA ACT 2600

By email: [spla.reps@aph.gov.au](mailto:spla.reps@aph.gov.au)

Dear Sir/Madam,

**RE: Inquiry into the Do Not Knock Register Bill 2012**

Energy Assured Limited (Energy Assured) welcomes the opportunity to provide comment on the Inquiry into the *Do Not Knock Register Bill 2012* (the Inquiry). In particular, it gives us the opportunity to discuss strong monitoring and compliance measures in door to door marketing that are already in place as well as our concerns about the constitutionality of the Bill.

Energy Assured is an initiative of the retail energy industry to monitor and improve door to door marketing standards. It seeks to improve compliance by both retailers and marketing companies to promote consumer confidence in energy door to door sales, to improve the customer experience and reduce the incidence of sales issues arising from door to door sales.

Energy Assured manages a Code of Practice (the Code) which has been authorised by the Australian Competition and Consumer Commission (ACCC).

The Code includes:

- A program to ensure sales agents are recruited, trained and assessed in a consistent manner across the industry;
- A central register of sales agents which identifies their accreditation level;
- Monitoring sales agent behaviour such that a proven breach of Energy Assured's standards may result in disciplinary measures and deregistration of the sales agent for five years;
- Annual compliance audit of each energy retailer; and
- Imposing sanctions on energy retailers or marketing companies who fail to comply with the Code.

The Inquiry's terms of reference focus on the constitutionality of the Bill. Energy Assured would like to make the following points:

- **Section 51(i)** of the Australian Constitution provides that the Parliament may make laws with respect to trade and commerce with other countries, and among the States. Section 5(2)(b) of the Bill is drafted in a way which appears to be consistent with this section. However, this head of power arguably has little (if any) relation to the activities the Bill proposes to regulate, as they do not involve an international or interstate element. It is arguable that the Bill is not legitimately supported by this head of power.
- **Section 51(v)** of the Constitution provides that the Parliament may make laws with respect to postal, telegraphic, telephonic and other like services. The *Do Not Call Register Act 2006 (Cth)* was legitimately based on this power, as it is clearly a law with respect to telephonic services. However, again, this power arguably has little connection with the subject matter of the Bill, as none of the services mentioned in the section of the Constitution are involved in the activities the Bill proposes to regulate.
- **Section 51(xx)** of the Constitution provides that the Parliament may make laws with respect to foreign corporations and trading and financial corporations formed within the limits of the Commonwealth. It is arguable that this is the only head of power upon which the Bill could legitimately be based, as it is conceivable that corporations (or persons acting on their behalf) would be engaging in door knocking.
  - Laws regulating the actions of corporations, their employees and shareholders may be validly made by Parliament based on the corporations power set out in section 51(xx) of the Constitution. At least to that extent, therefore, the Bill is likely to be constitutionally valid. However, the question of whether the corporations power can form the basis of a law regulating the actions of persons acting on behalf of a corporation (e.g. an agent) or for the benefit of a corporation (e.g. an individual), is not immediately clear.

Energy Assured considers the terms of reference for the Inquiry to be quite narrow, and is uncertain as to why this Bill has not undergone measures that are consistent with the Council of Australian Governments (COAG) Principles for Best Practice Regulation. Firstly, it has not been demonstrated that the benefits that will be imposed by the new restrictions of this proposal to the community as a whole outweigh the costs that will be caused by the impact of the bill. Secondly, there does not appear to have been effective consultation with affected key stakeholders including those who engage in door to door marketing.

In addition to the work being undertaken by Energy Assured, door knocking is covered by the Australian Consumer Law (ACL), Australian privacy laws and, in the case of the energy industry, state-based Marketing Codes of Conduct and energy regulations. The ACL regulates permitted hours and provides powers to consumers to terminate unwanted approaches. Introduced just last year, the ACL should be given time to run its course before considering whether to impose additional requirements. Existing Fair Trading Act provisions and privacy laws provide further protections for consumers.

Furthermore, Do Not Knock stickers are available for those who do not wish receive door to door sales. Energy Assured supports a customer's ability to choose whether to be approached by affixing the sticker to their property. Under the Energy Assured Code, agents who are found to have ignored a Do Not Knock sticker are deregistered and are not permitted to sell energy door to door for five years. Energy Assured has deregistered 52 agents since the Code was implemented in January 2012 for a variety of breaches - including ignoring Do Not Knock stickers.

There is potential for a Do Not Knock register to create administrative difficulties. A Do Not Knock register will have administrative costs to set up and manage; costs which could ultimately be passed on to families. Energy Assured believes that a Do Not Knock register would add more red tape to an already heavily regulated marketing channel.

In addition to the direct costs involved for all industries undertaking door to door marketing, a reduction in the competitiveness of the Australian energy market creates a risk that consumers will be less able to obtain better offers in the market. Australia has four of the most competitive energy markets in the world measured by switching rates (see Appendix 1). As door to door is the most effective sales channel for the energy industry, any legislation which reduces door to door activity beyond existing restrictions, may arguably lead to a lessening of competition.

A host of potential operational issues could arise from the introduction of a Do Not Knock register which Energy Assured can discuss with the Committee during the consultation in August.

For the reasons outlined above, Energy Assured believes that the Bill is unnecessary given the consumer protections already in place and given the accessibility of the Do Not Knock sticker.

Due to the very nature of the proposed Bill and related industry impacts, Energy Assured welcomes the Committee's invitation for further consultation on the matter.

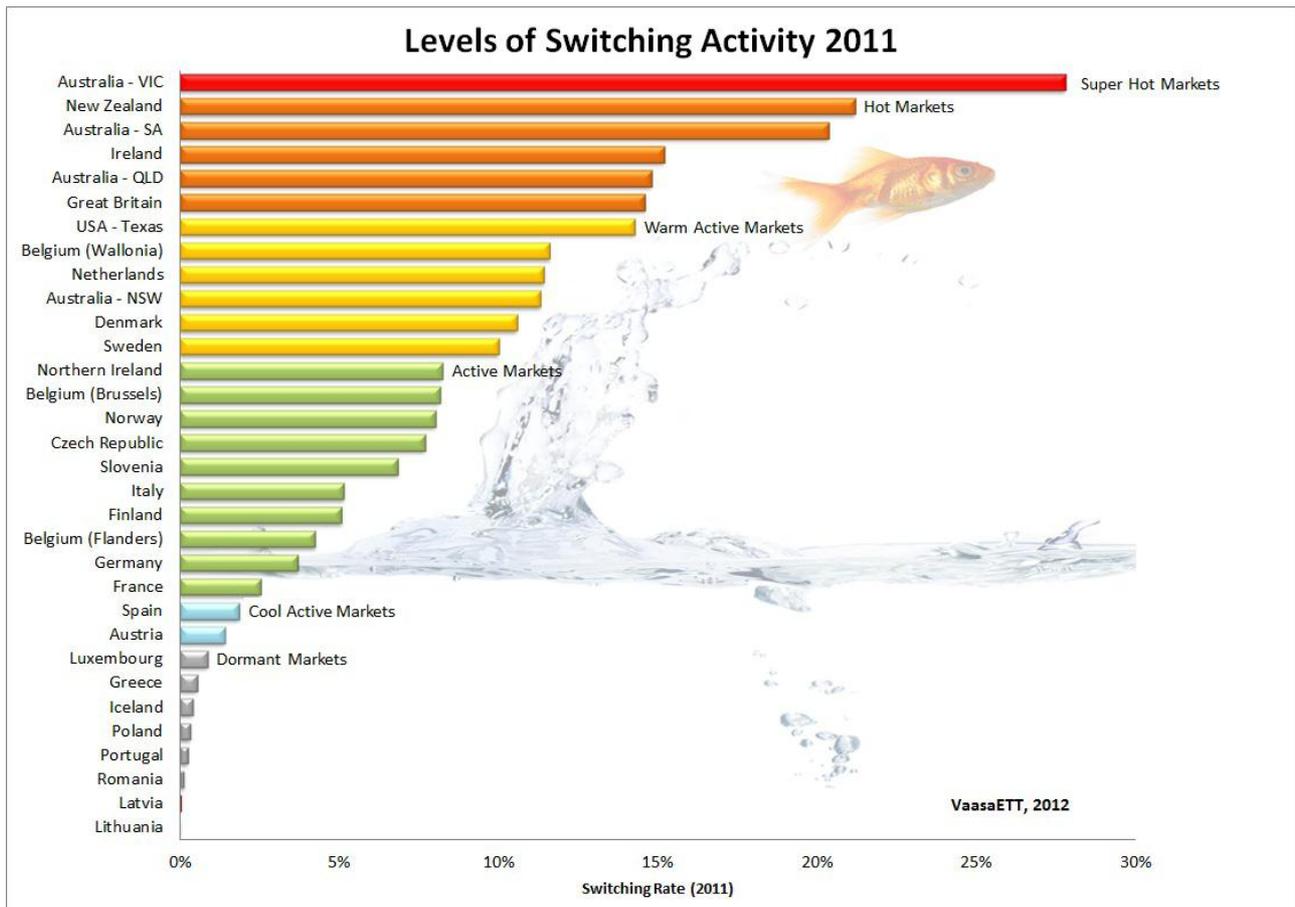
Should you wish to discuss this submission, please contact me on [REDACTED].

Yours sincerely

[REDACTED]

Anne Whitehouse  
Chief Executive Officer  
**Energy Assured Limited**

# Appendix 1



Full VaasaEtt switching report available at [http://eraa.com.au/wp-content/uploads/Dr\\_P\\_Lewis\\_World\\_Energy\\_Rankings.pdf](http://eraa.com.au/wp-content/uploads/Dr_P_Lewis_World_Energy_Rankings.pdf)