

21 August 2019

By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Delia Rickard, Sarah Court, Mick Keogh and Stephen Ridgeway  
Commissioners  
Australian Competition & Consumer Commission

Dear Commissioners

## AA1000439 New Energy Tech Consumer Code Application for Authorisation Draft Determination

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide comment on the Australian Competition and Consumer Commission (**ACCC**) AA1000439 New Energy Tech Consumer Code Application (**the Code**) for Authorisation Draft Determination (**Draft Determination**). Our organisation has regularly assisted vulnerable and disadvantaged consumers in Victoria with legal and financial issues arising from inadequate protections for the provision of new energy technology. We have engaged in the development of the Code to ensure that systemic issues we have identified in our work are adequately addressed for the public's benefit.

It is critical that the ACCC maintain their draft determination to approve the Code's requirement on signatories to only offer deferred payment arrangements that are regulated by the National Consumer Credit Protection Act 2009 (**NCCPA**) and National Credit Code (**NCC**) and provided by credit providers who are licensed under the NCCPA. We also attach our submission<sup>1</sup> and a joint letter with other consumer groups<sup>2</sup> in relation to the ACCC's earlier consultation paper on the Code's application to reiterate the need for the code to go further and require signatories not to undertake unsolicited selling.

Our more detailed comments are continued below.

### About Consumer Action

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy

<sup>1</sup> Consumer Action, 2019. *Re: AA1000439 New Energy Tech Consumer Code*. Available at: <https://consumeraction.org.au/wp-content/uploads/2019/05/190515-SUB-ACCC-NETCC.pdf>

<sup>2</sup> CHOICE, Consumer Action, COTA Victoria et al, 2019. *Re: Support for AA1000439 New Energy Tech Consumer Code*. Available at: <https://consumeraction.org.au/wp-content/uploads/2019/05/190522-ACCC-NETCC-Joint-.pdf>

work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

## Address Consumer Harm

### Consumer Action's case work

Buy Now Pay Later (BNPL) providers have claimed that excluding their products from the deferred payment options that new energy technology providers offer to consumers is a disproportionate response to the consumer protection concerns that we and other groups have raised. However, our previous submission<sup>3</sup>, *Sunny Side Up* report,<sup>4</sup> *Knock it Off*<sup>5</sup> and *Power Transformed*<sup>6</sup> reports have demonstrated that there are systemic issues in the provision of complex new energy technology products that have significantly harmed our clients and warrant this action.

Consumer Action regularly hears of issues with new energy technology provision with BNPL products and the consequences that result. In a six-month snapshot of our data in 2018, 11 of 21 callers to our legal advice service who mentioned one of the major BNPL providers had issues with that BNPL provider in relation to the provision of solar products. Examples of consequences people face include instances of our clients being at risk of losing their home due to the provision of unaffordable finance<sup>7</sup> and instances where our clients have gone without food and medical appointments to service unaffordable debt.<sup>8</sup> In these situations significant harm arises through inappropriate BNPL finance or unsolicited sales or a combination of these two systemic issues that must be addressed.

### Solar providers should not facilitate finance with unlicensed businesses

We support the ACCC's draft determination to approve the Code. We also support including the prohibition of new energy technology retailers offering deferred payment through providers not licensed under the NCCPA and NCC regulation.<sup>9</sup>

As recognised by the ACCC in the Draft Determination, the NCCPA and NCC offer significant consumer protections, including requiring:

- Lenders to undertake responsible lending checks to ensure finance is affordable for a customer and will not put them at risk of financial hardship or put them at risk of bankruptcy.
- Lenders to be members of the Australian Financial Complaints Authority.
- Lenders to provide product information disclosures.

While some BNPL providers may voluntarily undertake affordability checks, provide information disclosure and join external dispute resolution schemes, BNPL are not required to do so. BNPL providers also don't have as strong an incentive to comply with a resolution decided by an external dispute resolution scheme where they are not

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<sup>3</sup> Consumer Action, 2019. *Re: AA1000439 New Energy Tech Consumer Code*. Available at: <https://consumeraction.org.au/wp-content/uploads/2019/05/190515-SUB-ACCC-NETCC.pdf>

<sup>4</sup> Consumer Action, 2019. *Sunny Side Up; Strengthening the Consumer Protection Regime for Solar Panels in Victoria*. Available at: <https://consumeraction.org.au/20190404-sunny-side-up-report/>

<sup>5</sup> Consumer Action, 2017. *Knock it off! Door-to-door sales and consumer harm in Victoria*. Available at: <https://consumeraction.org.au/knock-it-off/>

<sup>6</sup> Consumer Action, 2016. *Power Transformed; Unlocking effective competition and trust in the transforming energy market*. Available at: <https://consumeraction.org.au/power-transformed-2/>

<sup>7</sup> *Ibid*, p.22

<sup>8</sup> Consumer Action, 2019. *Re: AA1000439 New Energy Tech Consumer Code* p.2 & Consumer Action, 2019. *Sunny Side Up; Strengthening the Consumer Protection Regime for Solar Panels in Victoria* p.29, 36

<sup>9</sup> ACCC, 2019. *Draft Determination; Application for authorisation AA1000439*, p.16

required to be a member. Even if BNPL providers do become a member of an external dispute resolution scheme, this will be a very limited form of consumer redress as the scheme will be largely unable to resolve complaints about affordability, for example, where rules relating to affordability do not apply to the sector.

The adoption of the Code is intended to result in greater protections for consumers. Allowing finance providers that fall outside the remit of the NCCPA will undermine this aim and allow systemic issues causing significant consumer harm to continue to arise.

## Inadequate protections for BNPL products

Consumers who use BNPL products do not have the same protections as products regulated by the NCCPA. The fact that BNPL arrangements are regulated by the ASIC Act and ASIC's product intervention powers (**PIP**), does not afford people who use these products additional protections. This is because ASIC has not, and has not indicated an intention to, use the PIP in relation to BNPL products.

The intention of the PIP is to give ASIC the capability to make targeted interventions when financial products are causing significant consumer detriment. Thus, while the PIP does have the potential to intervene in products such as BNPL arrangements this is not the same as offering consumers anywhere near the same levels of protection and oversight as the NCCPA provides. The PIP legislation specifically limits ASIC from requiring a person to hold a credit licence or join an external dispute resolution scheme.<sup>10</sup> Similarly, the ASIC Act does not provide the same level of regulatory oversight as the NCCPA does for credit products.

The number of people using BNPL arrangements underscores the importance of ensuring these consumers are protected by Australia's credit laws. The possibility of this transition has not been ruled out by BNPL providers. Flexigroup, a BNPL provider who estimate they have provided deferred payment arrangements for 10 per cent of installed grid connected solar systems in Australia,<sup>11</sup> has recently publicly indicated that "it is open to considering the national credit code."<sup>12</sup>

Complying with the NCCPA should not diminish the number of individuals taking up this financing arrangement where it is appropriate to do so, but will instead ensure that BNPL arrangements are safe, suitable for an individual's circumstances and give them rights should their situation change or if things go wrong. It would be reasonable to assume that consumers who opt to use a deferred payment model when purchasing solar panels do not have funds available to pay for the total costs of the system up front. The protections in the NCCPA, which include obligations to carry out responsible lending assessments, are necessary to ensure payment arrangements are suitable and sustainable. This will reduce the financial harm we see occurring to our clients who use finance arrangements that are unsuitable and/or unregulated.

ASIC's study of BNPL reported that users found that the products allowed individuals to spend more than they otherwise would and to buy things they otherwise might not have.<sup>13</sup> Consumer Action's casework experience confirms this, and our April 2019 report on solar panels and consumer protection identifies questionable sales techniques used by door-to-door solar panel merchants who facilitate finance through BNPL providers.<sup>14</sup> These practices include:

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<sup>10</sup> Section 1023D(4)(b), Corporations Act 2001

<sup>11</sup> As quoted by the ACCC in this Draft Determination

<sup>12</sup> Atkin, M. 2019, August 15. Calls for greater regulation of 'buy now pay later' services like Afterpay and Zip Pay. *ABC News*. Retrieved from: <https://www.abc.net.au/news/2019-08-15/buy-now-pay-later-services-regulation-afterpay-complaints-zip/11416996>

<sup>13</sup> ASIC, 2018. *REP 600 Review of buy now pay later arrangements*, available at: <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-600-review-of-buy-now-pay-later-arrangements/>

<sup>14</sup> Consumer Action, 2019. *Sunny Side Up; Strengthening the Consumer Protection Regime for Solar Panels in Victoria*. Available at: <https://consumeraction.org.au/20190404-sunny-side-up-report/>

- inappropriate or unaffordable finance being offered to purchase solar systems;
- misleading and high-pressure sales tactics in the context of unsolicited sales; and
- a lack of affordable dispute resolution when things go wrong.

ASIC's BNPL report also expressed concern that these products may pose a risk of overcommitment to some consumers and sometimes cause inflated prices for consumer goods. It noted that one in six consumers reported difficulty in meeting payments. It pointed out that there was a particular danger in the 23 per cent of cases where consumers used credit cards to pay these debts, thus incurring substantial interest charges.<sup>15</sup>

Individuals that purchase solar panels or other new energy technology of significant value for their homes, and pay through deferred payment models, are also at risk of insolvency if something goes wrong and they find themselves unable to keep up with repayments. The Senate Economics References Committee inquiry into financial products heard evidence that BNPL funding was present in more than 20 percent of insolvencies.<sup>16</sup> Individuals who install solar panels are more than likely to own their home and that asset would be at risk if the BNPL debts were unable to be serviced and creditors took bankruptcy action to recoup the debt.

### **Consumers will still have choice without BNPL**

Consumers will still have choice if BNPL deferred payments are not offered by signatories to the Code. There are hundreds of licensed providers that consumers can engage to access new energy technology. Also, the Code only prevents new energy technology providers from offering consumers non licensed deferred payment options but does not prevent a consumer making these arrangements independently of the provider. If anything, BNPL being offered at point of sale by a new energy technology provider gives consumers less choice as salespeople are incentivised to encourage a consumer to only consider that deferred payment option. This is the case particularly in a high-pressure unsolicited sales situation where a consumer has little ability to compare what options are most suitable to their situation.

### **Competition and innovation**

The availability and inadequate regulation of BNPL products has an anticompetitive impact on licensed lenders engaging in the provision of new energy tech. This is because licensed lenders must devote resources to satisfying regulated standards while BNPL providers do not. These standards include important protections such as the requirements to conduct themselves efficiently, honestly and fairly; requirements to lend responsibly; requirements to offer assistance in instances of financial hardship and the requirement to be part of external dispute resolution scheme. BNPL providers not having to comply with these requirements creates an uneven playing field impacting fair competition. The Code should be approved as it was proposed to counter this anticompetitive impact that is not for the public benefit.

Also, the prohibition of BNPL would not impact on effective innovation for public benefit in this sector. If innovation is possible because of a lack of appropriate protections, then this innovation inappropriately puts risk on consumers that is not in their interests or of public benefit.

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<sup>15</sup> <sup>15</sup> ASIC, 2018. *REP 600 Review of buy now pay later arrangements*, available at: <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-600-review-of-buy-now-pay-later-arrangements/>

<sup>16</sup> Senate Standing Committees on Economics, *Senate Inquiry into Credit and financial services targeted at Australians at risk of financial hardship*, 9 November 2018, p 69

Despite claims by providers that they offer zero-interest finance for goods, ASICs report highlighted that sometimes the cost of finance in BNPL arrangements is bundled into the prices offered for goods where the price is over \$2,000. ASIC also stated that these high prices can be misleading to consumers as they affect consumer's ability to make an informed decision about the costs of deferred payment arrangements.<sup>17</sup>

Where consumers are unaware of the added costs for BNPL when purchasing complex and confusing new energy tech products then the use of BNPL is not for public benefit. BNPL products may be resulting in the retail prices offered to customers being greater than the value without this being disclosed. This may mean that all purchasers of the new energy tech providers who offer BNPL deferred payments are paying more for the goods than their value whether they do or do not take up the offer of BNPL deferred payments. This is not of public benefit and anticompetitive as this lack of transparency distorts price signals in a complex marketplace where consumers are likely to base their understanding of product's value through pricing.

Credit laws require that vendors of goods (like a new energy tech retailer) conducting unsolicited sales and offering credit to hold a licence.<sup>18</sup> The effect of this provision is that we do not see vendors of goods offer licensed credit as part of an unsolicited sale, as they do not want to get a credit licence. This increases competition as consumers subject to an unsolicited sale are protected to freely compare finance options available to them as opposed to just a limited choice of one provider that is common in the context of an unsolicited sale. BNPL are not subject to these regulations and are therefore anticompetitive and not of benefit to the public where offered in such unsolicited sales. In these scenarios they may be the sole choice presented to a consumer who is being pressured not to compare all options that may be available and better suit their needs.

The ACCC must also consider the relevance of recommendation 1.7 of the Royal Commission into Misconduct in the Banking, Superannuation and Finance Industry:

*The exemption of retail dealers from the NCCP Act should be abolished.*<sup>19</sup>

The Federal Government has supported this recommendation. When it proceeds to implement the recommendation, vendors like new energy technology retailers offering appropriately licensed finance at the point of sale will either have to be licensed or change their sales process to ensure they only refer to licensed credit providers and take no active part in the application process.

Commissioner Hayne made this recommendation in recognition that vendors are incentivised to have finance approved in order to complete a sale and are therefore incentivised to portray a consumer's financial position in a way that will warrant loan approval. Case studies in the commission provided sufficient evidence that vendors do not always record the true financial circumstances of consumers.<sup>20</sup>

The recommendation demonstrates that the same issue is likely to arise in the provision of BNPL arrangements at the point of sale for new energy technology where there are even less requirements for salespeople to check that finance is affordable. Once implemented, the changes will also create a competition issue. That is, where new energy technology providers offer deferred payment through licensed finance providers, they will be significantly disadvantaged by having to utilise more resources in complying with appropriate protections when competing with other providers utilising BNPL with inadequate protections. The ACCC should approve the Code's requirement for signatories to only offer licensed finance to counter the competition issues that we have identified.

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<sup>17</sup> ASIC, 2018. *REP 600 Review of buy now pay later arrangements*, p.10-11 available at: <https://asic.gov.au/regulatory-resources/find-a-document/reports/rep-600-review-of-buy-now-pay-later-arrangements/>

<sup>18</sup> 23(4) National Consumer Credit Protection Regulations 2010

<sup>19</sup> Hayne, K. 2019. *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*, Volume 1, p.88

<sup>20</sup> *Ibid*, p.86.

## The new energy technology industry should not conduct unsolicited selling

We reiterate the points from our previous submission that called for a ban on unsolicited sales by retailers who are signatories to the Code.

- The requirement that businesses who join the code 'avoid high pressure sales tactics'<sup>21</sup> is vague and only provides guidance on avoiding problematic sales practices. It does not commit those who join the code to not conduct high-pressure sales.
- An additional requirement must be added to the Code, which stipulates that businesses who join will not conduct unsolicited sales. This will prevent circumstances where power imbalance, information asymmetry and high-pressure sales tactics lead to bad outcomes for consumers from arising in the first place.

Our *Sunny Side Up* and *Knock it off* reports both point to systemic issues and consumer harm caused by high pressure sales of complex solar products to Victorian households. *Knock it off's* findings included:

- That the review of the Australian Consumer Law identified that the consumer detriment caused by harmful unsolicited sales is significant and persistent.
- That the "cooling off" protection for unsolicited sales was largely ineffective.
- That vulnerable consumers including elderly, culturally and linguistically diverse and Aboriginal consumers are disproportionately affected by harmful unsolicited sales.
- That unsolicited retail sales of solar panels were causing significant consumer harm with access to finance that is often inappropriate and consumer's lack of understanding about these products and appropriate costs as major driving factors.<sup>22</sup>

Our *Sunny Side Up* report also identified misleading and high-pressure sales tactics in the context of unsolicited sales of solar as being among the most pressing and common issues in the provision of solar for households in Victoria.<sup>23</sup>

As new energy technologies, different to solar but similarly complex and costly, are introduced to the market these products are likely to present similar issues for consumers, in addition to the existing systemic issues with the provision of solar. Consumers should have the ability to compare options about new energy options or simply achieving their objective in relation to energy consumption.

For instance, in many situations consumers interested in accessing new energy technology to save costs may be better off switching to a cheaper tariff or installing insulation in their roof. In other situations, those seeking to consider their options for lowering the carbon emissions from their energy consumption may be better off changing to 'green tariff' or implementing energy efficiency measures.

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<sup>21</sup> ACCC, 2019. *Draft Determination; Application for authorisation AA1000439*, Annexure – New Energy Tech Consumer Code, p.6.

<sup>22</sup> Consumer Action, 2017. *Knock it off! Door-to-door sales and consumer harm in Victoria*, p.68. Available at: <https://consumeraction.org.au/knock-it-off/>

<sup>23</sup> Consumer Action, 2019. *Sunny Side Up; Strengthening the Consumer Protection Regime for Solar Panels in Victoria*, p.5. Available at: <https://consumeraction.org.au/20190404-sunny-side-up-report/>

It must also be noted that unsolicited selling is in no way necessary to increase interest and access to solar or other new energy technology products. Consumers are already considering or investing in this technology. The June 2019 Energy Consumers Australia Consumer Sentiment Survey showed that around a third of consumers surveyed across Australia were considering or had already invested in battery technology and that over half were considering or already had rooftop solar panels.<sup>24</sup> Solar panels, batteries and solar hot water systems have also been proven popular as increasing their provision in households was a flagship election policy of a Victorian government recently re-elected with a strong majority.<sup>25</sup> Households in Australia have already invested in solar and other new energy technology or are considering doing so. Households in Australia do not need unsolicited and high pressure selling as it drives harm. They also do not need to be made aware of the technology given the high awareness that already exists in relation to solar.

Please contact Jake Lilley at **Consumer Action Law Centre** on 03 9670 5088 or at [jake@consumeraction.org.au](mailto:jake@consumeraction.org.au) if you have any questions about this submission.

Yours Sincerely,

**CONSUMER ACTION LAW CENTRE**



**Gerard Brody** | Chief Executive Officer

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<sup>24</sup> ECA, 2019. *Energy Consumer Sentiment Survey June 2019*, p.34

<sup>25</sup> Department of Premier, 2018 September 11. *Cheaper Electricity with Solar Batteries for 10,000 Homes*. Retrieved from: <https://www.premier.vic.gov.au/cheaper-electricity-with-solar-batteries-for-10000-homes/>

21 May 2019

By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Susie Black  
Director (A/g) Adjudication Branch  
Australian Competition and Consumer Commission

Dear Ms Black,

**Re: AA1000439 New Energy Tech Consumer Code**

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to comment on the application for authorisation of the New Energy Consumer Code. Energy is an essential service and the energy system is rapidly transitioning to new technologies. Householders are finding it increasingly complex, confusing and risky to make decisions about their energy supply so industry initiatives like this Code are welcome.

The New Energy Consumer Code (**The Code**) must incorporate appropriate consumer protections. We strongly support the requirements that those that join the Code only offer finance arrangements through providers that are licenced under the *National Consumer Credit Protection Act 2009* (**NCCPA**). However, the code must also go further and ban all unsolicited sales and require an 'opt-in' protection period following off premises sales for those that join the code.

Consumer Action's previous work demonstrates how a lack of regulatory protections are leading to abysmal consumer outcomes in the new energy technology market, particularly in relation to the installation of solar panels. Such conduct risks eroding consumer trust in new energy technology and the businesses that provide this technology. Such risks impact the viability of new entrants as well as the viability of markets that would otherwise deliver great benefits for consumers and our environment.

Consumer Action's legal practice regularly hears reports from, or provides assistance to, vulnerable and disadvantaged people with issues arising from the conduct of solar retailers. Residential Solar PV systems are the first wave of New Energy Products that have been sold to households. Our 2019 *Sunny Side Up*,<sup>1</sup> 2017 *Knock it off!*<sup>2</sup> and 2016 *Power Transformed*<sup>3</sup> reports have drawn on our assistance work in order to recommend changes to

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<sup>1</sup> Consumer Action Law Centre, 2019. [Sunny Side Up; Strengthening the Consumer Protection Regime for Solar Panels in Victoria.](#)

<sup>2</sup> Consumer Action Law Centre, 2017. [Knock it off! Door-to-door sales and consumer harm in Victoria](#)

<sup>3</sup> Consumer Action Law Centre, 2016. [Power Transformed; Unlocking effective competition and trust in the transforming energy market.](#)



strengthen the consumer protection regime for new energy products, reduce harm caused by door to door sales and improve trust and consumer outcomes in the transforming energy market.

We draw on these reports further in our comments below.

## **About Consumer Action**

Consumer Action is an independent, not-for profit consumer organisation with deep expertise in consumer and consumer credit laws, policy and direct knowledge of people's experience of modern markets. We work for a just marketplace, where people have power and business plays fair. We make life easier for people experiencing vulnerability and disadvantage in Australia, through financial counselling, legal advice, legal representation, policy work and campaigns. Based in Melbourne, our direct services assist Victorians and our advocacy supports a just marketplace for all Australians.

## **Solar providers should not facilitate finance with unlicensed businesses**

### **Case Study One – Rose and Leonard**

Rose and Leonard (not their real names) receive Disability Support and Carers Pensions. They already had a functioning solar system when they were door knocked by a solar retailer last year. Although they initially stated that they were not interested as they already had solar, on three of the occasions when the salesperson visited the property, the salesperson continued with high pressure sales tactics. Additional panels were installed and are not delivering the returns that Rose and Leonard expected based on what the salesperson told them.

Finance for the panels was provided by an unlicensed credit provider. Repayments on the loan increased without being explained and Rose and Leonard had felt pressured to sign documents that weren't properly explained. The finance company is not required to be a member of an ombudsman scheme or required to provide hardship assistance because it is unlicensed. Rose and Leonard are experiencing financial hardship and they have less reliable options to resolve this than if the finance was provided by a licenced business. Their financial hardship meant they could not afford food at times and could not attend some specialist medical appointments.

As highlighted in case study one, finance arrangements from providers that are not licensed under the NCCPA leave consumers unprotected from poor outcomes. For this reason, we strongly support the code only allowing signatories to offer finance arrangements through providers that are licenced under the NCCPA. Allowing new energy providers to arrange finance from unlicensed providers may also incentivise them to undertake sales practices that are not in the interests of consumers, like the high-pressure sales mentioned in case study one.

Unlicensed finance providers can be predatory lenders when partnered with new energy product providers. Currently new products like solar or batteries often cost above the \$5,000 bankruptcy threshold (especially with the hidden cost of finance built into the price) and are almost always installed in owner-occupied properties as opposed to rentals. If an irresponsible loan is provided in a high-pressure sale where a salesperson makes misrepresentations about the savings a household can make, then the household is easily exposed to hardship when paying back the finance arrangement. They also have the threat of loosing their home and their provider is not required to have internal dispute resolution or provide fair, free and effective external dispute resolution.



Consumer Action's *Sunny Side Up* report found that inappropriate or unaffordable finance is regularly being offered to purchase solar systems and is causing consumer harm in the solar industry. The Code's requirement for NCCPA licensed finance providers may incentivise these problematic lenders to work within national consumer credit laws or cooperate with decision makers to have these laws amended to include their business models in the laws' ambit and protection framework. If it doesn't do this it will still prevent unnecessary consumer harm from the providers who join, facilitate better outcomes for consumers and prevent conduct that will threaten consumer's trust in new energy technology providers as a whole.

#### **Case Study – Robert's not getting what he was promised.**

Robert (not his real name) is an older person who lives in an outer suburb of Melbourne and receives Centrelink benefits. He recently contacted Consumer Action's legal service because a solar retailer has left him with a solar system on his roof that, as far as he can tell, is doing absolutely nothing.

Robert recalls being door knocked by a LED lights salesperson who also suggested he get solar. The salesperson set up an appointment for a solar retailer's salesperson to visit a week later. The LED lights installers never returned.

The solar retailer's salesperson sold Robert a 5kW solar system for \$6050. Robert paid the full amount and from what he was told he understood that:

- he would be entitled to the Victorian Solar Homes Rebate and that the paperwork for this would all be arranged by the solar retailer;
- the solar retailer would arrange all the paperwork for him to receive a feed in tariff;
- he would save money as he was told the feed in tariff would mean that his electricity bills would reduce to virtually nothing.

The system was installed by a subcontractor. The paperwork necessary to certify the system is safe to operate and connect to the electricity grid has not been completed. He is not receiving the feed in tariff and it is possible the panels are not providing electricity to his property. Even if they are, he has not received confirmation that they are safe. It is also unlikely Robert meets the requirements of the Victorian Solar Homes rebate despite the representations made to him, which would mean he needs to pay \$2,225 more than he expected. Even if he does receive the feed in tariff, it is very unlikely to reduce his bills as much as he was told.

Robert has contacted the Solar Retailer on several occasions, but they have not resolved his problems. While Consumer Action will represent Robert to assist with this dispute, we are unable to offer representative assistance to many people who contact us with solar issues due to our capacity.



## **The Solar industry should not conduct unsolicited selling**

The requirements around marketing and sales in the code are not strong enough. The requirement that businesses who join the code 'avoid high pressure sales tactics'<sup>4</sup> is vague and only provides guidance on avoiding problematic sales practices. It does not commit those who join the code to not conduct high-pressure sales.

An additional requirement must be added to the Code, which stipulates that businesses who join will not conduct unsolicited sales. This will prevent circumstances where power imbalance, information asymmetry and high-pressure sales tactics lead to bad outcomes for consumers from arising in the first place. The need to add this requirement is evident from our legal advice and policy work on solar issues.

Our *Sunny Side Up* report identified misleading and high-pressure sales tactics in the context of unsolicited sales as a major systemic issue causing harm in Victoria's solar market. It recommended a ban on unsolicited sales in the solar industry. Almost all new energy technology will be a complex offering like solar and without appropriate protections history will be repeated as new technologies increase in popularity and are sold to consumers.

### **Require an 'opt in' protection period after off premises sales**

The Code should also require that signatories provide an 'opt in' protection period following all off premises sales. Doing so will fill a protection gap by giving consumers rights that are likely to be more effective than cooling-off periods. This will in particular benefit those who face barriers to cancelling a contract following high pressure sales.

Our *Knock it off!* report noted a trend of solar products being prevalent amongst harmful door to door sales. One of the recommendations outlined in the report emphasised that decision makers must give consideration to broadening unsolicited sales protections so that they apply to all 'off-premises' contracts. This is currently the case in the European Union and United Kingdom. The report also pointed to evidence that an 'opt-in' protection period, where consumers must actively contact a business to confirm the sale, is likely to be a more effective protection than 'cooling off period' protections that often fail to prevent harm caused by unsolicited selling. The report recommended trialling 'opt-in' protections in the new energy technology market.

Broadening protections beyond unsolicited sales in the Code would mean that solar retailers that join could not utilise a loophole and leave consumers with less protections where an initial unsolicited approach from a salesperson with vague information sets up an in-home appointment with a second salesperson. This is what happened to Robert in case study two. As a result, he was not covered by additional protections that apply for unsolicited sales.

The Code is voluntary and could therefore allow industry to raise standards in new energy technology sales.

### **Consumer protections will build people's trust to engage with new tech**

Our *Power Transformed* report sets out policy principles aimed to facilitate good outcomes for consumers in the transforming energy market. Consumer protections are identified as essential elements to a successful market where consumers trust suppliers to deliver what is expected and agreed upon. Consumer protections encourage consumers to trust that providers are competent to deliver or that if they are not, there are effective remedies.

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<sup>4</sup> Clean Energy Council, 2019. *RE: Application for authorisation made under sections 88(1) of the Competition and Consumer Act 2010* Appendix B, p.6.

Consumers can therefore engage more, and a market is more likely to thrive and be more attractive to new entrants.

Protecting consumers from arrangements with unlicensed finance providers, unsolicited sales and from high pressure off-premises sales of new energy tech will prevent consumer detriment that leads to overwhelming consumer distrust in new energy technology. New energy technology has the potential to provide many benefits to households, improve efficiency in the energy system and reduce Australia's emissions. These benefits are at risk of being undermined as consumer trust is eroded by detrimental experiences with the sale of new energy technology.

Please contact Jake Lilley on 03 9670 5088 or at [jake@consumeraction.org.au](mailto:jake@consumeraction.org.au) if you have any questions about this submission.

Yours sincerely,

**CONSUMER ACTION LAW CENTRE**



**Gerard Brody**  
Chief Executive Officer



The logo for CHOICE, featuring the word "CHOICE" in a bold, blue, sans-serif font with a horizontal blue line underneath.The logo for consumer action law centre, featuring a green circular icon made of connected dots and the text "consumer action law centre" in a grey, sans-serif font.The logo for COTA VICTORIA, featuring the text "COTA VICTORIA" in a grey, sans-serif font next to a stylized orange and yellow sunburst icon.The logo for FCRC, featuring a stylized red and purple flame icon to the left of the text "FCRC Financial & Consumer Rights Council Inc." in a grey, sans-serif font.The logo for Financial Rights LEGAL CENTRE, featuring a green and blue speech bubble icon above the text "Financial Rights LEGAL CENTRE" in a grey, sans-serif font.The logo for Moreland Energy Foundation, featuring a blue and orange circular icon with a white spiral inside, next to the text "Moreland Energy Foundation" in a grey, sans-serif font.The logo for public interest ADVOCACY CENTRE, featuring a red network of connected dots above the text "public interest ADVOCACY CENTRE" in a grey, sans-serif font.The logo for VCOSS, featuring a stylized blue and yellow mountain range icon above the text "VCOSS Victorian Council of Social Service" in a grey, sans-serif font.The logo for Uniting Church in Australia, featuring a black and white cross icon with a red flame inside, next to the text "Uniting Church in Australia SYNOD OF VICTORIA AND TASMANIA" in a grey, sans-serif font.

22 May 2019

By email: [adjudication@acc.gov.au](mailto:adjudication@acc.gov.au)

Susie Black  
Director (A/g) Adjudication Branch  
Australian Competition and Consumer Commission

Dear Ms Black,

**Re: Support for AA1000439 New Energy Tech Consumer Code**

Our organisations write to express our support for strong consumer protections being contained in the New Energy Tech Consumer Code (Energy Tech Code).

Australia is undergoing a renewable energy boom, more than 2 million households now have rooftop solar installed, and reliable, affordable renewable energy will play a critical role in helping people to take back control of their power bills and bring down Australia's greenhouse gas emissions. However, as our energy market undergoes rapid change, our regulatory system is struggling to keep up. This is what makes the Energy Tech Code critical, as it will help to strengthen consumer protections and ensure that new energy technologies like solar panels, batteries and electric vehicles are safe, reliable and live up to the promises of the businesses providing them.

The Energy Tech Code is a voluntary code which clearly sets out the service standards that new business should adhere to. We strongly support the proposal that the Energy Tech Code requires businesses to only provide finance arrangements through providers that are licensed under the National Consumer Credit Protection Act (2009). The new energy technology industry must avoid

partnering with businesses that have caused significant consumer harm as they are not regulated under credit law protections.<sup>1</sup>

However, the Energy Tech Code must go one step further when it comes to protecting consumers from high pressure sales. This can be achieved by requiring businesses to not conduct 'unsolicited' sales. Simply requiring businesses to 'avoid high pressure sales tactics'<sup>2</sup> as the Energy Tech Code currently proposes, is too broad and still allows for unsolicited sales. There is significant evidence that high pressure selling of new energy products is driving significant consumer harm, with households pressured to make rapid decisions in their homes or over the phone about expensive, confusing and complex pieces of technology. No one should be forced into making significant financial decisions without the ability to compare options or seek independent advice.

It is essential that the New Energy Tech code and other initiatives that seek to shape the transformation of the energy system through the uptake of new technologies incorporate strong consumer protections. Consumers need to be able to trust that the provision of these technologies will live up to what is promised be it safety, financial benefits or actual benefits for our environment.

Yours sincerely,

**CHOICE, Consumer Action Law Centre, COTA Victoria, Financial and Consumer Rights Council Inc, Financial Rights Legal Centre, Moreland Energy Foundation Limited, Public Interest Advocacy Centre, Victorian Council Of Social Service and Uniting Church in Australia Synod of Victoria and Tasmania.**

Jake Lilley at Consumer Action is the best point of contact in relation to this communication on 03 9670 5088 or at [jake@consumeraction.org.au](mailto:jake@consumeraction.org.au).

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<sup>1</sup> Consumer Action Law Centre, 2019. Sunny Side Up; Strengthening the Consumer Protection Regime for Solar Panels in Victoria.

<sup>2</sup> Clean Energy Council, 2019. *RE: Application for authorisation made under sections 88(1) of the Competition and Consumer Act 2010* Appendix B, p.6.