

21 May 2019

By email: adjudication@accc.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*,¹ 2017 *Knock it off!*² and 2016 *Power Transformed*³ reports have drawn on our assistance work in order to recommend changes to

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

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

³ 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'⁴ 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.

⁴ 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 if you have any questions about this submission.

Yours sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody
Chief Executive Officer

