15 April 2015

Council Energy Council Secretariat
GPO Box 9839
Canberra ACT 2601

energycouncil@industry.gov.au

Submission to the new products and services in the electricity market; Consultation on regulatory implications

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide input the Energy Market Reform Working Group's (**EMRWG**) paper, *New products and services in the electricity market—consultation on regulatory implications* (**Consultation**).

It is essential that consumers are provided the certainty of effective consumer protections and affordable access to energy in a changing market. We support this consultation as the first step towards development of a framework that is capable of responding to new and emerging technologies, in a flexible and timely manner that acts to prevent consumer detriment before it occurs.

We believe that energy market reforms must place consumers at the centre of the energy market. This can be achieved by a strong and effective consumer protection regime and particularly access to the energy ombudsman, no matter what business type.

For new energy products and services to be successful, it is paramount that consumers can participate with confidence, knowledge and with trust. Consumers must see that there is value in their participation. If consumers are not front and centre in the market, there is significant risk that new products and services will not deliver the market efficiencies that policy makers are seeking from a reformed energy market.

We have responded to the range of issues raised in the consultation paper. In addition, we have made recommendations designed to facilitate a market with consumer interests at the forefront.

Smart Moves for a Smart Market

We welcome that the Consultation references Consumer Action's *Smart Moves for a Smart Market*. The Consultation primarily references commentary about privacy, but the report's focus is behavioural economics and the risk that new providers can exploit consumers' constrained brain power and emotions to their disadvantage. It argues that the following elements are required for consumers to be able to effectively and intelligently participate in a future smart technology enabled electricity market:

Consumer Action Law Centre
Level 7, 459 Little Collins Street
Melbourne Victoria 3000
Telephone 03 9670 5088
Facsimile 03 9629 6898
info@consumeraction.org.au
www.consumeraction.org.au

ABN 37 120 056 484 ACN 120 056 484

1) Information must be clear and relevant: Contract terms and conditions, technology costs in bundled contracts and product information sheets must be simple, accurate and engaging. Disclosure of information about product attributes and use will also be essential.
2) Flexibility will be essential: Long lock-in contracts and undue exit fees will not allow consumers to realise benefits as their situations or understanding change.
3) Increased standardisation of products and services will be necessary: This should not be so onerous as to limit innovation but undertaken to ensure maximum comparability of products and services for consumers..

We encourage the EMRWG to undertake its own analysis of behavioural economics in relation to this reform to further inform the Energy Council on how consumers interact with complex markets.

What consumers?
This consultation must use the lens of 'consumer experience' in the development of policies relating to complex emerging markets. The assumption that consumers want, need or can manage 'greater control' over how their electricity is delivered and consumed fails to acknowledge the heterogeneity of energy consumers across Australia.

It is essential to consider; the way energy is consumed by consumers, demographic and socio-economic factors, the market reach of traditional industry players *as well as* new participants, climate, fuel mix (eg access to gas, rooftop solar, solar hot water), household arrangements, such as embedded or exempt networks, and even housing stock and appliance mix. These all vary considerably, there is no 'one size fits all'.

While there are more and more "prosumers", many consumers merely want energy to be available, and have little interest in having to "engage" with new complexity. If everyone is expected to "engage", we risk creating a second class of consumer, who does not participate in the emerging market, and ultimately is likely to pay more as a result.

Consumer protection
We agree that regulatory frameworks should not create a barrier to innovative products and services, and that new products and services should not infringe on the protections and customer outcomes that regulatory frameworks are intended to ensure. We note, however, that without a comprehensive consumer protection framework, consumer detriment is likely to arise, leading to consumer distrust. Such consumer sentiments are likely to inhibit competition and efficiency in energy markets.

Appropriate consumer protections in this environment, will need to consider the following:

Converging markets
While the three markets identified including the electricity supply market, the demand management market and the energy information market do go some way to describing the market and covering new products and services for small electricity consumers, this is complicated by the issue of converging markets, and the bundling of products and services.

In a number of instances businesses across service streams are offering multiple products (ie AGL offering retail services as well as solar installation and servicing). In other instances, multiple parties are present with multiple contracts for multiple services (installation of solar, finance agreements etc).

In others still, parties are sub-contracting with multiple other parties (installation, delivery, maintenance), to provide the services.

The complexity of these market arrangements raises key questions over *which* regulatory frameworks apply and what consumer protections and dispute resolution avenues are available to the consumer.

We cite the example of British Gas' *'Homes are about to get Smarter'* video[1] which follows the journey of a family throughout the day, focused on their interactions with their smart home. On a number of occasions in the video, there are a range of interactions that go beyond energy specific consumer protection. In the table below, we illustrate how some of these services, enabled by technology, actually intersect across areas such as; privacy, safety, marketing, appliance guarantees, maintenance and service arrangements, contractual arrangements, among others.

Technology /Smart home enabled activity	**Consumer interaction**	**Potential Consumer issue**	**Likely applicable regulation**	**Applicable regulatory bodies and dispute resolution schemes**
Smart appliance operation eg oven, heater, alarm	Communications Sales/marketing Guarantees Maintenance	Appliances that communicate with home communications networks include information on behaviour which influences tariffs etc.	Australian Consumer Law National Energy Retail Law Jurisdictional energy laws National Consumer Credit Protection Act 2009 ASIC Act 2001 Corporations Act 2001 ACMA's telecommunications acts, such as: The Do not call register The Spam Act Privacy Act 2012	ACCC AER Jurisdictional energy regulators ASIC ACMA Energy ombudsman schemes TIO FOS CIO Privacy Commissioners
Property access	Log of occupant activity (presence / absence) In home and remote communications	Information detailing which occupants are home is being transmitted via the communications network	Australian Consumer Law ACMA's telecommunications acts, such as: The Do not call register The Spam Act Privacy Act 2012	ACCC ACMA TIO FOS CIO Privacy Commissioners

We also cite the recent example of Samsung televisions which raise concerns in relation to privacy, when televisions purportedly 'listen' to consumers, with the information being recorded and available to third parties. "*Please be aware that if your spoken words include personal or other sensitive information, that information will be among the data captured and transmitted to a third party through*

[1] British Gas, 'Homes are about to get smarter' July 2012, https://www.youtube.com/watch?v=hd4oaSigBuc, Accessed 23 February 2015.

your use of Voice Recognition"[2], these issues relate to the transmission of data through a telecommunications network.

Interactions will necessarily cross sectors, and include regulations and regulatory bodies such as telecommunications (Australian Communications Media Authority ACMA), privacy (state and national), safety (state), as well as the competition and consumer via Australian Competition and Consumers Commission (and state based representatives such as Consumer Affairs Victoria), financial services via Australian Securities and Investment Commission and of course energy specific regulators including the Australian Energy Regulator and state based representatives (eg Essential Services Commission). Most importantly, as markets converge, it is not clear which ombudsman has jurisdiction, or whether any does.

Where there are multiple regulators responsible across an issue, there are likely to be regulatory gaps. Specialist regulators tend to focus on the industry and its needs, rather than consumers and theirs. The existence of the consumer regulators, including the ACCC, is considered sufficient to protect consumer interests. While regulators of the Australian Consumer Law have their responsibility, these bodies cannot facilitate emerging market development to ensure that it's fair and effective—they only pick up the pieces if there are problems.

[2] Samsung Privacy Policy--SmartTV Supplement, http://www.samsung.com/sg/info/privacy/smarttv.html?CID=AFL-hq-mul-0813-11000170 Accessed 23 February 2015

Dispute resolution left to the consumer consumers

In May 2013 consumer S entered into a contract with EuroSolar (as initiated by the consumers builder) for the supply and installation of solar panels. Eurosolar pursued the consumer for alleged outstanding amounts under the contract of supply. These amounts were not paid because the consumer believed that they had paid for them as part of their building contract and therefore the builder was liable to the solar company. Eurosolar ultimately issued proceedings against both the consumer and her builder.

S attended VCAT to defend the proceedings on the basis that not only was the S's builder (and not S) liable, but there were a number of serious defects in the supply and installation of the panels. In particular, by December 2014, she had discovered that:

1. the paperwork in relation to the inspection of the installation was not forwarded by Eurosolar to the consumer's energy supplier (also S wasn't ever provided with a copy either) and as a result, S hasn't ever received tariffs for the solar being generated;
2. the solar panels were faulty and therefore had to be replaced because they were a fire hazard (an expert advised that water was getting into the electrical areas of the panels). Furthermore, as a result of the poor panels, only small amounts of solar energy were being generated. According to the consumer, since replacing the panels, more power has been in 4 weeks than over a period of the preceding 17 months.[Prior to replacing the panels, they were on average generating 3 kw per day, since replacing the panels they are generating on average 13kw per day];
3. In addition to the above, the consumer has learned that the installation of the panels was faulty as the brackets are attached to the roofing but not drilled into the actual beams beneath the roofing. This means the panels are not secured to the roof safely and may not be water tight. Eurosolar have not been back to inspect the installation of the panels. S is also left with poorly installed brackets and internal wiring which is too expensive for her to fix.

The consumer attended VCAT which encouraged the parties to settle the matter. The matter was ultimately settled on the basis that EuroSolar withdrew proceedings against S, who has since had to engage another solar company to install new panels. The problems associated with the fixture of the panels to the roof and wiring remains ongoing.

Further case studies are available in ***Appendix A***.

Leaving complaint handling to state consumer affairs bodies is ineffective, as they do not have binding powers. This results in consumers having to go to tribunals such as the Victorian Civil and Administrative Tribunal (VCAT), where they face costs and an evidence burden. This can mean that consumers do not achieve an outcome, and businesses have little incentive to provide good service as the likelihood of being required to provide redress is small.

This can be contrasted with energy ombudsman schemes. The Energy and Water Ombudsman of Victoria has been very effective at resolving disputes, but also identifying systemic issues and providing details of these to government regulators. However, the ombudsman's jurisdiction is limited to traditional electricity and gas services, and is unlikely to cover new products and services, even where they are provided by existing regulated market participants. We submit that perhaps the key reform to ensure consumer protection in emerging energy products and services is to require providers to be members of the ombudsman services.

While it is impossible to predict what technologies will enter the market, it is important to acknowledge the impact of lags in enforcement and compliance, and the resulting consumer detriment. As such a

consumer protection framework is underpinned by a flexible approach to regulations which are capable of responding to new and emerging technologies as they appear, in a timely manner.

Disclosure statements

In an effort to prevent consumer complaints, it is essential that consumer rights and protections, as they relate to each product or service, be made clear to the consumer at *point of contract*. The way this information is provided is critical.

Information must be disclosed about both product attributes and product use. This information can assist consumers to reduce 'use-pattern' mistakes, and subsequently prevent businesses from benefiting from such mistakes, and from consumer detriment occurring.

Much information available with products we see entering the market relates to information about product attributes only, such as price or fees associated with a product, while omitting information about the product use, for example, consumption expectations.

Disclosure of information around product use can be general as well as customer-specific, for example, general would relate to information about how many consumers have installed a product, while customer-specific disclosure, would relate to how a consumer uses the product based upon their consumption needs.

An example of where disclosure is essential in the current market of emerging technology is solar power purchasing agreements (SPPAs) and in relation to the finance agreements.

Case study 2

Client M entered into an agreement with Integra Solar in 2014 to purchase a solar system for $18,000. Prior to signing the contract it was represented to M the solar panels had been manufactured in Germany. When Integra Solar employees arrived to install the system it was stated that the panels had instead been manufactured in China. Integra Solar's salesman also represented that M's power bill would not exceed $180 per month. In the period since installation there has been no reduction in M's power bills.

During the installation of the solar system on M's roof, Integra Solar employees caused extensive damage to roof tiling that allowed water to leak through during a storm, resulting in flooding to his laundry. Whilst the solar panels were being moved to the roof they were dragged along the guttering, badly scratching both the panels and M's guttering. Poor electrical work during installation caused continual power failures throughout the whole house, requiring M to engage an electrician at his own cost to rectify.

M entered into the agreement on the understanding he was purchasing a 5kW solar system with a 5kw inverter to convert the solar power and make it suitable for household appliances. However, the inverter installed only had a capacity of 4.3k. The reduced inverter capacity is unable to convert much of the captured solar power, leading to much wastage.

Client M entered into a finance arrangement with Certegy-Ezi to fund the remaining $9000 on the solar panels. Despite receiving no tangible benefits since the solar panels were installed, M is still required to make fortnightly repayments of $107 for a total of 40 months. On top of this M was required to pay an Account Establishment Fee of $75 and is liable for $2.95 fee for each of the 87 times money will be debited from his account. This is in addition to the mandatory Monthly Account Keeping Fee of $3.50. If Client M calls to change his details, Certegy-Ezi will charge him $15. In the event that client M makes a late payment, he will be required to both a late payment fee and a collection fee that will come to $45.

Accordingly, although the contract states the total ascertainable amount to repay for the purchase will be $9332.49, with all the charges and fees added to the actual figure will likely be significantly more.

This case study highlights a range of issues, including misleading sales and poor conduct. However, importantly it identifies the issue of the finance arrangements that exist in the contract.

Increasingly, credit products are now being linked to energy products in the form of solar leasing or PPAs. This is significant, as while credit arrangements can improve accessibility to products such as these, the information available to the actual and final cost of the agreement is lacking. Consumers are rarely aware of what interest rate is being charged as it applies to the finance product. We note, in looking at some PPAs that the cost of credit is actually quite significant, with examples of some at 40% or more. Further, additional fees and charges can add considerable cost to the purchase agreement.

In many cases, where most of those installing panels are homeowners, it may be more cost effective for consumers to extend their mortgage by the capital amount, eg $5,000, and pay for the solar outright, leaving any credit arrangements under the form of the mortgage of the property, at considerably lower rates.

It is essential therefore that consumers are provided sufficient, and simple warnings of the cost of credit in these arrangements, particularly where the cost of interest rates and additional fees are too hard to calculate. If cost of credit disclosure was too complex, then perhaps disclosure could simply state "Solar leasing and PPAs may be an expensive way to purchase solar. It may be cheaper to seek alternative finance, including extending your home loan".

The level of disclosure allows consumers to make more informed choices about a product or service, to ensure they will gain the most benefit. This in itself will facilitate more informed engagement and increased levels of trust within the market, but it will also go some way to prevent a range of complex disputes.

Data use

Key concerns of consumers (as reported in our Smart Moves for a Smart Market), is the way in which consumer data is used and the protection of their privacy.

We understand that Australian Energy Market Operator is establishing a procedure with the goal of ensuring that consumers are able to access their data from a retailer or distribution business in a manner that is of value to them. We see this as a positive step to ensuring consumers can access the information on their data to inform their future participation in the market.

Certainly, from a consumer's perspective, data needs to be simple to access but also to use themselves. Currently in relation to My Power Planner, consumers find it difficult to get their data from their retailer or distributor, and then face further difficulty uploading it into the My Power Planner website. For data use to be effective, it needs to be seamless from the consumer perspective, i.e. one click.

We are concerned about the clarity of the process around which third parties will access data on behalf of a consumer, as 'authorised' by the consumer. In particular it will be essential that these parties verify that a consumer has in fact provided their explicit informed consent to a business accessing that data before an energy retailer or distribution business releases that data.

We understand that the products and services that are coming into the market rely on lots of data, to provide what could be a very complex tailored solution.

Those third parties as authorised by the consumer to collect that data, must have clear processes that ensure that any data collected on that consumer is used solely for the purposes agreed by the consumer, via an opt in arrangement and with their explicit informed consent. Data must be kept securely, and timelines for keeping that data must be made clear.

As the retailer or distributor is the agent ultimately releasing this data, the use of the data, as well as how the authorised representative stores that data, responsibility should lay with the retailer or distributor. Further, clear records must be kept by retailers and distribution businesses to confirm they have sighted the authorisation of that consumer, prior to releasing that consumers' data.

Explicitly, the use of consumers' data for any primary or secondary purpose should only be at the specific request of the consumer and any on-selling or sub-contracting of that data by an authorised agent should require a consumers' specific opt in.

This is particularly important based upon the risk that data will be used for marketing purposes, and the impact of this on consumers. Data around consumption patterns and use provide an incentive to do targeted and unsolicited selling: the business will have more detailed understanding about which "solutions" should be directed at which consumers. These sales methods restrict people’s ability to think through a product and determine if it suits their needs and also take the form of pressure sales.

For consumers to be able to make informed decisions that encourage efficient use of the electricity system, they must be given space to make those decisions. An opt in arrangement that is removed from a high pressure environment is essential in ensuring a market that considers consumers needs in a manner that does not undermine their decision making or further erodes their trust in the sector.

As the AEMC has determined a consumer's consumption data is to be classified as personal information, falling under the remit of privacy legislation, it is essential that privacy regulators actively monitor (and enforce) this space.

A principle of protection

Energy-specific consumer protections are required when a product or service impacts on a customer's access to a reliable, safe and high-quality supply of energy on fair and reasonable terms.

We broadly support this principle. Based upon our comments above however, energy specific consumer protections need to focus on clear, up front information that explains the risks as well as the interactions with other parties. These are necessary in more complex product offerings, with higher risks for consumers. Importantly, explicit informed consent and the cooling off period play key roles in this.

Further, we reiterate the findings and recommendations made in our Smart Moves for a Smart Market report; "*Increased standardisation of products and services will be necessary. This should not be so onerous as to limit innovation, but undertaken to ensure maximum comparability of products and services for consumers*."

The first point of interaction with the emerging market needs to ensure that consumers know what they are getting into. We support the AER's focus on guidelines around energy price fact sheets, and a move towards standardisation. We also support the Energy Retail Association Australia's commitment to bill simplification including standardisation and encourage the industry to embrace this as a means of gaining consumer trust at a time when trust remains at an all time low.

We were, however, disappointed by the Australian Energy Market Commission's failure to recommend standardisation of language in its advice to AEMO in relation to consumer data, and believe standardisation of terms is essential across all aspects of the energy market where consumer interaction is necessary. This includes those businesses entering the market with new products and services.

National Energy Customer Framework - exempt sellers, off grid and demand management

We welcome the recent announcement that the National Energy Customer Framework (NECF) will be reviewed. We believe, in its current form, that the NECF is not fit for purpose for the current market. The NECF will require significant improvements to meet the needs of existing markets as well as to accommodate the emerging markets and smart metering.

This is particularly pertinent to the way in which businesses are authorised or exempted by the AER from the NECF. Consideration needs to be given to whether the exemptions framework is appropriately equipped to deal with a range of emerging technologies and business models, or if an alternate approach needs to be taken. The recent move by authorised retailers (AGL and Origin Energy) to seek exemptions for energy services, could be seen as an attempt to bypass the obligations that exist to protect consumers—with potential to undermine consumer protections. As

noted above, this is also likely to mean these services are not covered by the ombudsman. We are not of the view that it is appropriate to require all alternative energy sellers to have full retailer authorisation however principles of consumer protection need to be established and strengthened to ensure that those consumers participating in the market via an authorised retailer, as well as those consumers investing in innovative services provided by alternative energy sellers, are afforded similar protections, including access to ombudsman schemes.

An ongoing and regular process of review is necessary to map the emerging market, to establish whether exemptions are the most appropriate approach to specific business or business models - this would give COAG (and the AER) the flexibility to change its approach to regulation of these businesses—with the goal of ensuring that consumers remain adequately protected regardless of their energy supply choices.

As we have outlined above, those consumers who are already investing in these services are exposed to significant risk, with the overall cost of their experience (see case studies above and in **Appendix A**), far outweighing the benefit they had hoped to obtain by participating in the market at this level. Key issues we have seen from our clients has been the leasing arrangements, broken parts, poor service, unclear terms and issues of insolvency. This is further conflated by the consumer understanding about the expense and the risks.

The way the AER has dealt with solar power purchase agreements appears to be based on the premise that it is an 'add-on' service. While we see this as reasonable in the current environment, where the majority of consumers are connected to the grid, we see this as problematic when consumers start to go 'off-grid'—or at a point when the majority of power is drawn from their solar installation.

We have outlined our concerns with the current arrangements (above, and directly to the AER in their review of exempt networks), based on the issues we see our clients face, however these changes represent a range of further complex and energy specific issues.

There are several issues consumers may face should they go off-grid such as; less reliable power supply. Implications of this could be a complete lack of access to an essential service until such time as repairs can be made, or disputes resolved. This is a significant concern. The cost of resolution could be prohibitive to a consumer, and lack of resolution could result in detriment, injury, illness or loss of life.

While consumers who go off grid are doing so based on their own choice, we do not believe that it will necessarily be based on a full understanding of the risks involved in taking this step. Consumers will have a limited ability to control such risks where they relate to the provision of technical services by contracted technical specialists and sub-contractors. We see this as an issue of significant concern now and should "off-grid solutions" become a 'mass-market' option.

More stringent protections for those customers of exempt sellers or as customers of businesses facilitating an off grid or demand management arrangement are required. This is because those consumers are relying on multiple parties to access supply to an essential service. These parties must all be subject to a range of consumer protection provisions, ranging from written explicit and informed consent, education programs, cooling off periods to performance guarantees and an obligation to provide back up arrangements.

Further, we consider that at minimum, there must be a framework for consumers going off grid that ensures that they can come back to the grid easily, should they choose, ensuring they are not stranded in these scenarios, without supply.

Demand Side-Reference Group

Consumer Action has convened a demand side-reference group comprising senior stakeholders from key national and Victorian regulators, government, industry and consumer organisations. The purpose of this group is to explore possible policy responses to the issue of effective consumer engagement in a complex market that protects consumer interests and unlocks significant innovation in energy products and services. The outputs of this group will be informed by the group's work, but will likely include a policy paper that further responds to the issues in this Consultation. We would be pleased to discuss this work with you further.

Recommendations:

1. The consumer experience must underpin any market reform.

2. Consumers can be irrational and may not use energy services in a way that is efficient for "the system". We encourage the EMRWG to undertake its own analysis with behavioural economics to inform them on how consumers interact with complex markets.

3. All providers of energy services must be members of energy ombudsman schemes.

4. Consumer authorised parties must be able to verify to retailers or distributors that a consumer has provided their explicit informed consent prior to releasing data.

5. Consumers must *opt in* via their explicit informed consent, in relation to the use of their data.

6. Data must be stored securely by third parties, with clear guidelines for keeping that data, including timelines.

7. The NECF must include explicit obligations on retailers and distributors to keep records that confirm they have sighted a consumer's authorisation to release their data.

8. Privacy regulators must actively monitor (and enforce) obligations in respect to data.

9. Consumer rights and protections as they relate to each service or technology, as well as a path for dispute resolution, must be made clear to the consumer at *point of contract.*

10. Disclosure of information must relate to both product attributes and product use.

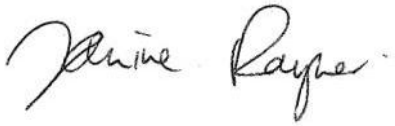
11. Key terms describing aspects of the energy market must be standardised to encourage consumer engagement and facilitate consumer trust and apply to energy service providers.

12. Key protections must be developed for those consumers investing in off grid supply.

13. A framework for re-connection to the grid must be developed for those on alternate supply.

We would welcome an opportunity to further discuss this submission with you. Please contact Janine Rayner on 03 8554 6943 or janine@consumeraction.org.au.

Yours sincerely
CONSUMER ACTION LAW CENTRE



Janine Rayner
Senior Policy Officer

Appendix A

Case studies from Consumer Action Law Centre focused on emerging issues of increased solar penetration in the Victorian market.

Case study 3 (151545)

Client X had solar panels and an inverter installed in May 2012 by company Solar Mega Mart (SMM), for the cost of approximately $8,000. The company the solar panels were purchased from subsequently underwent an ownership change (Illuminate Pty Ltd) followed by liquidation (Tech Energy). In November 2012 Client X's inverter was not working, and they tried to get them repaired. The Client replaced the inverter however the Client was then told by Tech Energy that it too was unsafe and was switched off.

Working with the client, Consumer Action advised about a potential claim for damages under the Australian Consumer Law against the seller, but as they were under external administration this could be problematic.

Further advice was that the client approach the manufacturer with one last opportunity to replace with a functioning inverter, but that if the problem still persisted that the client would reclaim purchase price and or damages suffered with advice to go to VCAT if they refuse to pay.

Case study 4 (151329)

Client Y entered into an agreement to acquire solar panels with company Unleash Solar. They subsequently closed down/went into insolvency.

Our client found that the way that the solar system was installed was problematic; the feed in tariff allocated was not correct, the watts in the system were higher than that required, and that the installation was not approved.

Further, our client had issues with a meter installed by SP Ausnet but which the solar system was not connected to.

Our client continued to pay for the solar system via the finance company, but is concerned that they are doing so without alterations or certifications for approval.

Case study 5 (162593)

Client Z entered into an agreement to acquire solar panels with company Unleash in September 2012. They subsequently closed down/went into insolvency.

The inverters however were not working, ie producing enough solar power. In June/July 2013 our client had an independent meter installed ($400 brand new from wholesaler) to check whether the smart meter was correct or the inverter. The independent meter agreed with the smart meter which further demonstrated the inverter was not working (it stated it would produce 50kw a day, however it produced 25kw a day).

Our client had paid for a 10 year warranty on the inverter, however Unleash Solar did not forward this to the manufacturer (JFY Son Twins) in China. The manufacturer has a five year guarantee.

The client had the inverter upgraded, so now all devices align and confirm 50kw produced per day. However over that time, with the inverter stating it produced 8000kw, and the smart meter recording 4000kw, our client was out of pocket for $1000 of the shortfall in energy produced.

Seeking refund for the consequential loss of acquiring the independent meter, a refund for the electricity rebate lost, we discussed whether the ACL would apply, re section 55 in relation to 'fitness for purpose', but the issue was whether there was anyone in Australia who was solvent to pursue for the loss. There was found to be no company to take action against.

Case study 6 (146211)

Client W entered into an agreement with company Sunburst Solar in 2011, however while their retailer was Simply Energy, our client was not getting the offset they thought they would get due to failed application to apply the correct feed in tariff, combined with a faulty inverter which was not feeding energy into the grid.

The client tried to resolve the dispute with Simply Energy, who claimed they didn't know any thing about it. The client then got their own electrician to look at the inverter who confirmed it wasn't working.

The Client raised the dispute with Sunburst Solar who claimed the issue was the fault of the manufacturer.

At time of contract the lock in the rate was 60ckw feed in tariff which the client was eligible for. That opportunity passed, and the feed in tariff is much lower at 21.3ckw. However as the inverter was not working, it was difficult to claim initial rate as no energy was being fed into grid at this point.

The client suggested to Sunburst that if they fixed the inverter by a certain date they would forego the loss suffered. They have done this, but then the client received a demand for $900 for payment of travel costs associated with fixing the inverter, who later filed against the client in VCAT for these costs.

Consumer Action provided extended advice to Loddon Campaspe Community Legal Centre throughout this process.

Outcome, settled with Sunburst Solar, Simply Energy continued to be unresolved.