

SUNNY SIDE UP:

Strengthening the Consumer Protection Regime for Solar Panels in Victoria



The energy market is changing, but the regulatory system is not keeping up.

Rooftop solar systems and other new energy products and services are growing in popularity and are assuming a critical role in essential service delivery. By the end of 2017, around 1.8 million Australian households had installed rooftop solar systems,¹ significantly increasing the number of installations recorded in 2008.² Momentum was recently spurred in Victoria when the State Government announced their \$1.24 billion Solar Homes Package. One month after the package was announced, 11,000 applications had been made³ and by 18 January 2019, 7,000 Victorian households had installed solar panels under the package.⁴

And yet, little has been done in the way of regulatory reform to ensure that current regulatory frameworks stay relevant to the changing landscape.

The landscape is currently characterised by rapid growth, a significant number of players entering and exiting the industry, government financial incentives, and complex technology and processes. Unfortunately, this is a landscape in which consumer harm can thrive.

Through our casework, Consumer Action Law Centre (**Consumer Action**) has witnessed this harm being done to people already experiencing significant vulnerability.

Consumer Action is a consumer advocacy organisation based in Melbourne. Our lawyers and financial counsellors provide advice

and assistance to Victorians who are experiencing vulnerability, disadvantage and financial hardship. The casework relied on in this report has been drawn from their work.

In this report we present seven case studies. In all but one of these case studies, the people involved are living off social security or worker's compensation payments and are usually experiencing other issues making them more vulnerable to predatory behaviour.

From our casework experience, Consumer Action has observed a number of concerning trends in the retail solar industry. The most common and pressing issues we identified are as follows.

¹ Australian Energy Council, Solar Report: January 2018 (January 2018), 3 <<https://www.energycouncil.com.au/media/11188/australian-energy-council-solar-report-january-2018.pdf>>.

² Ivor Frischknecht, Arena, Editorial: The Distributed Energy Revolution (31 July 2018) Arena Wire <<https://arena.gov.au/blog/ivor-frischknecht-the-distributed-energy-revolution/>>.

³ Victorian Labor, Media Release: The Hon Daniel Andrews MP (Premier): Time is up for energy retailers ripping off Victoria (20 November 2018) <<https://static1.squarespace.com/static/5b46af5a55b02cea2a648e93/t/5bf31f844fa51a6734933264/1542659978528/181120+-+Time+Is+Up+For+Energy+Retailers+Ripping+Off+Victorians.pdf>>.

⁴ Premier of Victoria, Thousands of Victorian Homes Save Millions on Solar, Delivering for all Australians (18 January 2019) <<https://www.premier.vic.gov.au/thousands-of-victorian-homes-save-millions-on-solar/>>.

Failings in solar installations or grid connection



In order to sell any excess electricity produced by a solar system, the system needs to be connected to the electricity grid. This is a complex process requiring a bundle of documents to be completed, sent and actioned by a diverse range of entities involved in the process. It essentially means that the solar retailer, the solar installer, the local electricity distributor, the relevant electricity retailer and an independent Licenced Electrical Inspector all need to talk to each other and work together.

Adding to the complexity is a lack of clarity around who is responsible over this process. We have seen retailers either intentionally or inadvertently take advantage of the confusion that this complex arrangement creates by denying responsibility and denying people's legal rights when solar systems are not performing as promised. In Consumer Action's view, the default position ought to be that solar retailers should be responsible for ensuring that solar panels are properly connected to the grid.

Misleading and high-pressure sales tactics in the context of unsolicited sales



Consumer Action has long been reporting on the harm caused by unsolicited sales in the form of door knocking and cold-calling. Most recently, we have seen this concerning sales practice trending in the solar panel industry. Behavioural economics, studies and previous reports all suggest that people are more vulnerable to predatory sales practices when they are in their home.

Our casework experience is that it appears that people experiencing vulnerability are being targeted. Because of the risks associated with unsolicited selling, this type of selling has attracted additional legal regulation. However, concerning forms of this type of selling continues. The most principled solution, and one that would future proof against harm being done in other industries, is to ban unsolicited sales altogether – a measure that the Victorian Government has already committed to with respect to mainstream energy retailing.

Inappropriate or unaffordable finance being offered to purchase solar systems



People are being offered finance arrangements that they cannot afford in order to buy solar systems. For many finance and credit arrangements, the national consumer credit laws apply to say that lenders and credit providers must make enquiries and verify that the credit they are offering will meet a person's requirements and objectives, and that the person can afford the repayments without suffering substantial financial hardship. However, an undesirable anomaly exists within the regulations in that that these responsible lending laws do not apply to the sale of all finance products.

The people who stand to lose the most from the existence of these exceptions are the people that the law is supposed

to protect – people experiencing difficult financial circumstances. We suspect that the legal exceptions are being exploited by small finance companies. If true, the only innovative business practices that the legal gap incentivises are the innovative ways finance providers take advantage of people who are already doing it tough.

The national consumer credit laws should be amended so that all credit products, including so-called 'buy now, pay later' finance arrangements, are regulated to ensure that people are not being offered finance that will cause them hardship.

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Product faults and poor performance



Currently, the Australian Consumer Law (ACL) protects consumers against being sold products and services that are of unacceptable quality or not fit for the purposes they were purchased for. Nevertheless, we are still seeing people being sold products that are not performing as promised. When things go wrong, it is hard for people to get acceptable solutions due to the technically-complex nature of the product, the number of people involved in getting them up and running and a lack accessible dispute resolution. Consumer Action's view is that the law should be changed so that solar products come with a whole system 10-year statutory warranty.

A lack of affordable dispute resolution



When people have a complaint against a traditional electricity supplier, they can go to the Energy and Water Ombudsman (EWOV) who can assist with resolving disputes. EWOV is cheap, informal and takes a more active role in investigating complaints than courts or tribunals. However, EWOV has very limited jurisdiction to hear complaints against solar retailers. EWOV is unable to hear around one in five cases it receives relating to solar panels, for example, because the solar retailer is not an EWOV participant.⁵

When disputes arise with solar retailers, people usually need to go to VCAT to enforce any legal rights they have under the ACL. If they have a dispute about unregulated finance, they would probably have to go to court. People often struggle to access justice in these forums, especially in court which can be prohibitively expensive and risky. EWOV's jurisdiction should be extended to include the retail sale of all new energy products and services, including solar panels.

Furthermore, if all credit and finance arrangements were regulated by the national consumer credit laws, people would be able to take their finance related complaints to the Australian Financial Complaints Authority (AFCA), a free industry funded Ombudsman scheme, rather than to court.

⁵ Energy and Water Ombudsman Victoria, Res Online 25 - November 2018 (November 2018) <<https://www.ewov.com.au/reports/res-online/201811>>. EWOV reports that it was unable to hear the complaints because the cases were out of jurisdiction primarily because the business complained about were not EWOV scheme participants.

Business closures



It has become so common for solar retailers to close, that commentators have started to refer to a crisis of 'solar orphans'.⁶ Based on their review of information published by ASIC, LG Solar have calculated that over 690 solar installation companies have had a change in trading conditions, gone into liquidation or stopped trading between 1 March 2011 and 31 January 2019.⁷ They estimate that this has left 650,000 'solar orphans' in Australia.⁸

When solar retailers go out of business, it leaves owners of faulty or underperforming solar systems with worthless warranties and little recourse. Consumer Action believes this problem should be addressed through the creation of an industry funded last resort compensation fund, similar to the one that exists in the motor car industry. The fund would operate to compensate people who have meritorious legal claims against their solar retailer but are unable to enforce them because their retailer has gone out of business or exited the market.

⁶ Sam Buckingham-Jones, 'Fly-by-night operators installing faulty solar panels', The Australian (online), 20 December 2018 <<https://www.theaustralian.com.au/business/mining-energy/flybynight-operators-installing-faulty-solar-panels/news-story/d7479168aa51b13073ebacfa7080aed>>; Choice, 'Sundown for your solar supplier?' (Choice monthly magazine, February 2019), 40.

⁷ LG, LG Solar FAQs: Show me solar installation companies that have left the industry in Australia, LG Solar FAQs <<https://www.lgsolar.com.au/faq/buying-a-solar-system/show-me-solar-installation-companies-that-have-left-the-industry-in-australia>>.

⁸ Ibid.

Poorly structured and highly problematic Solar Power Purchase Agreements (Solar PPAs)



Consumer Action has seen a small but highly problematic number of cases of Solar PPAs. These types of agreements are structured in such a way that people are getting a particularly bad deal: they can pay more for solar electricity than they get back and the electricity is being produced by panels they don't even own. These types of arrangements are also out of EWOV's jurisdiction due to an exemption that currently exists under Victorian retail electricity laws. There is no principled justification for this exemption and it should be removed to make justice more accessible.

ACTION NEEDS TO BE TAKEN

Consumer Action is not the only one reporting on issues surrounding the sale and regulation of solar systems and are not the only ones calling for change. For example:

- EWOV has reported that the number of complaints they have received about solar systems is increasing;⁹
- In January 2018, the Australian Communications & Media Authority reported that they will be putting solar industry telemarketing practices under the microscope as a result of a high number of complaints received from households.¹⁰
- In December 2018, the Auditor General's office released an independent performance audit reporting that between 21.7% and 25.7% of small generation unit installations inspected were rated as 'unsafe' or 'sub-standard' each year, with the exception of the years 2012 and 2013;¹¹

⁹ Energy and Water Ombudsman Victoria, Res Online 25 - November 2018 (November 2018) <https://www.ewov.com.au/reports/res-online/201811>.

¹⁰ ACMA, Australian Government, Instyle Solar penalised for calling numbers on the Do Not Call Register (22 January 2018) Do Not Call Register < <https://www.donotcall.gov.au/media-releases/instyle-solar-penalised-for-calling-numbers-on-the-do-not-call-register/>>.

¹¹ Ibid 49.

¹² Solar Victoria, Victoria State Government < <https://www.solar.vic.gov.au/en>>; CAV, Victoria State Government, Solar energy (15 February 2019) < <https://www.consumer.vic.gov.au/products-and-services/energy-products-and-services/solar-energy>>; CAV, Victoria State Government, Rebate scam (22 January 2019) < <https://www.consumer.vic.gov.au/resources-and-tools/scams/consumer-scams/rebate-scam>>.

- As recent as February 2019, both Solar Victoria and Consumer Affairs Victoria have warned Victorians against solar rebate scammers claiming to be from the Victorian Government or Solar Victoria.¹²

Significantly, in 2017 the Independent Review into the Electricity & Gas Markets in Victoria Report was released recommending a number of changes in order to improve the retail energy market in recognition of the changing landscape in this sector. The Victorian Government has committed to many of the changes recommended in the Independent Review. However, the Independent Review did not address all of the issues presented in this report.

Now is an opportune time for the Government to implement comprehensive regulatory reform to make all electricity and essential service delivery consistent, fair, principled and forward looking. A refusal to implement the regulatory reforms suggested in this report does not protect economic and environmental innovation. Rather, a failure to implement regulatory reform would protect unscrupulous businesses that continue to do the wrong thing, often at the expense of those in our community who are already doing it tough.

