

04 November 2020

Submitted via email: solarpvreview@cer.gov.au

Clean Energy Regulator
5 Farrell Pl
Canberra ACT 2601

Dear Madam/Sir

Rooftop Solar Sector Review

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide input into the Clean Energy Regulator's (**CER**) review into the rooftop solar photovoltaic (**PV**) sector.

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.

Consumer issues in the solar industry

As noted in the preamble to the review's Terms of Reference, recent years have brought unprecedented growth in the rooftop solar PV sector. However, this growth has been accompanied by numerous consumer issues. Through Consumer Action's legal advice service, we have had frequent reports of issues related to rooftop solar PV. People have raised issues such as:

- misleading and high-pressure sales tactics (i.e. unsolicited door-to-door sales, cold-calling);
- inappropriate or unaffordable financing being offered for the purchase of solar systems;
- failings in solar installation or grid connection; and
- product faults and/or poor performance.

While the industry has taken some steps to address these issues, significant consumer protection gaps remain. We are also disappointed by industry moves to water down proposed consumer protections, such as through the recent Australian Competition Tribunal (**ACT**) matter. The ACT was considering the New Energy Technology Consumer Code (**NET Code**) provisions, which is a voluntary industry code for new energy technology such as solar panels. Flexigroup (which offers unregulated finance arrangements for solar PV) challenged core provisions of the

proposed NET Code. The ACT handed down its decision in September, and removed critical consumer protections from the NET Code that would have helped to protect people from being mis-sold solar panels through unsolicited sales and subsequently being offered unaffordable unregulated finance.¹ This decision was made despite evidence provided by Consumer Action to the ACT about the consumer harms we see, which included examples of individual hardship, unsuitable products, consumer complaints, as well as examples of solar retailers inflating the cost of solar panels through deceptive marketing practices.² We have provided an extract of the evidence presented to the ACT as **Appendix A**.

Additional consumer protection measures must be put in place to reduce consumer harm and ensure continued consumer confidence in and take up of rooftop solar technologies.

Summary of previous reports

Consumer Action has been assisting Victorians experiencing issues with their rooftop solar PV systems for many years. Drawing on our casework we have published several reports on the harm being caused to people through poor business practices by solar retailers and linked finance providers. We would like to draw your attention to the issues covered, and solutions offered in these reports.

Our '[Sunny Side Up](#)' report,³ published in April 2019, focused on the issues surrounding the sale and installation of solar panels. We have provided a copy along with this submission as **Appendix B**. From our casework, the seven most common and pressing issues people reported to us were:

- failings in solar installations or grid connection;
- inappropriate or unaffordable finance being offered to purchase solar systems;
- misleading and high-pressure sales tactics in the context of unsolicited sales;
- product faults and poor performance;
- a lack of affordable dispute resolution;
- business closures;
- poorly structured and highly problematic solar power purchase agreements.

The report explored several possible regulatory solutions to these issues, including:

- solar retailers being made responsible for ensuring that PV panels are properly connected to the grid, unless people elect to take responsibility themselves;
- regulation of 'buy now pay later' finance arrangements through the *National Consumer Credit Protection Act 2009 (NCCPA)*; and
- a ban on unsolicited sales.

While some of the proposed regulatory solutions fall outside the role of the CER, this only speaks to the importance of the CER working with other regulatory bodies as part of this review, including the Australian Securities and Investments Commission (**ASIC**) with respect to financing, and the Australian Competition and Consumer Commission (**ACCC**) to address misleading and high-pressure sales tactics. A holistic regulatory response would ensure appropriate protections are in place for people purchasing rooftop PV solar. The potential for consumer

¹ The Australian Competition Tribunal Determination can be accessed at <https://www.competitiontribunal.gov.au/current-matters/act-1-of-2019>, published 28 September 2020.

² Consumer Action's submissions to the ACT are available at https://www.competitiontribunal.gov.au/_data/assets/pdf_file/0011/76871/200601-CALC-Outline-of-Submissions.pdf

³ *Sunny Side Up: Strengthening the consumer protection regime for solar panels in Victoria*, published 3 April 2019, available at <https://consumeraction.org.au/20190404-sunny-side-up-report/>

harms linked to new energy products and services which may fall outside the current regulatory framework was initially explored in our July 2016 report '[Power Transformed](#)'.⁴ We noted at that time that ensuring consumer protections apply to all energy products and services is essential for informed consumer engagement and trust in the market.

Further exploration of the consumer harms linked to unsolicited selling of solar products is contained in '[Knock it off](#)',⁵ jointly published with WEStjustice and Loddon Campaspe Community Legal Centre in November 2017. Although this report focused on unsolicited selling more broadly, the rooftop solar PV sector was identified as a 'consumer harm hotzone' with more than half of the case studies presented in the report related to unsolicited selling of solar systems. As noted in the report, solar panels are often sold with a promise that a person will save significant amounts on their electricity bill, with salespeople leveraging anxiety around rising electricity costs to facilitate sales.

Additionally, the frequent use of unregulated 'buy now, pay later' finance to fund the purchase of panels often leaves people with unaffordable payment plans and facing significant financial hardship. Because these finance products are not covered under the NCCPA people purchasing solar using buy now, pay later finance arrangements do not benefit from the usual consumer protections which apply to other credit products. This also means finance providers are under no obligation to assess a person's capacity to pay, leaving individuals and families with unaffordable loans and limited options of where to turn for help. Amending national consumer credit laws to cover buy now, pay later finance arrangements, as well as banning unsolicited sales, would help shield consumers from these issues. The proposed buy now pay later voluntary industry code would not address these issues.


Conclusion

The above issues in the rooftop solar PV sector are leading to significant consumer harm. A strong and coordinated regulatory response is needed to address these issues and ensure adequate protections are in place for people purchasing rooftop solar PV panels. Failure of regulators to work together and address these gaps will only undermine consumer confidence in the solar sector and reduce investment in greener energy products.

Thank you again for the opportunity to contribute to the review. If you have any questions about this submission please contact Policy Officer **Luke Lovell** at **Consumer Action Law Centre** on 03 9670 5088 or at luke@consumeraction.org.au.

Yours Sincerely,

CONSUMER ACTION LAW CENTRE



Gerard Brody | Chief Executive Officer

⁴ *Power Transformed: Unlocking effective competition and trust in the transforming energy market*, published July 2016, available at <https://consumeraction.org.au/wp-content/uploads/2016/07/Power-Transformed-Consumer-Action-Law-Centre-July-2016.pdf>

⁵ *Knock it off! Door-to-door sales and consumer harm in Victoria*, published 20 November 2017, available at: <https://consumeraction.org.au/knock-it-off/>