

10 January 2022

Submitted via email to: info@esb.org.au

Energy Security Board
c/ COAG Energy Council Secretariat
Department of the Environment and Energy
GPO Box 787
CANBERRA ACT 2601

Dear Board Members,

Consumer protections and the Post-2025 Distributed Energy Resources Implementation Plan

As the Energy Security Board (**the ESB**) begins to develop its 3-year reform road map to unlock value for customers from the integration of Distributed Energy Resources (**DER**) and flexible demand into energy markets, Consumer Action Law Centre (**Consumer Action**) recommends that the Board include basic consumer protections to mitigate the risk of consumer harm. As Australia's energy market undergoes rapid change, we must ensure that delivers fair outcomes for all, including people on low incomes or in vulnerable circumstances.

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.

We have been working on consumer issues relating to new energy technology for many years, primarily rooftop solar. Over recent years, we have had frequent reports to our legal advice service from Victorians who have experienced issues with their solar system. Some of the most frequently raised issues have included:

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

Based on this experience, we have published several reports highlighting consumer harms occurring in the solar industry and offering solutions to improve consumer protections. We draw your attention to our 2019 report '[Sunny Side Up](#)' (which covers regulatory options to improve consumer protections for solar), our 2021 report '[The New Energy Tech Consumer Code](#)' (which highlights the challenges associated with industry codes of conduct)

and our joint 2017 report with WEstjustice and Loddon Campaspe '[Knock it off!](#)' (which unpacks the harms associated with unsolicited sales generally, as well as including multiple case studies of consumer harm caused by unscrupulous sales practices on behalf of solar retailers and/or their sales agents).

Although our casework experience to date has largely related to solar, we suggest that these problems will repeat and manifest themselves in relation to other new energy technology in Australia unless we take the opportunity to prevent their spread through the introduction of appropriate consumer protections. Thankfully, clear, practical solutions are readily available to address these challenges. Although covered in more detail in the linked reports, particularly in 'Sunny Side Up', we summarise these briefly here.

Any roadmap for the rollout of DER should ideally prohibit all forms of unsolicited selling, or at a minimum introduce an opt-in model for unsolicited sales (recognising that behaviour economics research has highlighted the inadequacy of cooling off periods as a form of consumer protection¹). Through our casework, we have seen significant consumer harm resulting from unsolicited sales of rooftop solar. For this reason, we strongly support the Victorian Government's commitment to ban door knocking for retailers participating in its Solar Homes program. We consider that the ESB should similarly look to prohibit door-knocking and cold call sales for DER and other new energy technology products and services as part of its implementation roadmap. Door-knocking and telemarketing is a nuisance that has no place in a fair and well-functioning future energy market.

Secondly, the roadmap should seek to improve the fairness of finance arrangements for DER, by ensuring that finance offerings are regulated through the National Consumer Credit Protection Act 2009 (**NCCPA**). This would ensure that people do not suffer harm due to the inconsistent legal protections that apply to unregulated credit products like 'buy now, pay later' (**BNPL**) finance. Because these finance providers are not covered under the NCCPA, they are not obligated to assess a person's capacity to repay a loan. We have had many people contact our service who have used BNPL to finance their solar purchase and found themselves with unaffordable loans and limited options for help. Amending the NCCPA to cover BNPL finance, or instead requiring that only regulated credit products can be used to fund the purchase of DER, would shield consumers from the harm caused by these financing arrangements.

Finally, the ESB should ensure that people have improved access to dispute resolution for DER, so that problems can be resolved quickly and fairly. Given the well-functioning energy Ombudsman schemes already in place, the most straightforward solution is to expand their jurisdiction to cover all new energy technology products and services.

Should you wish to discuss these issues in more detail, please contact Luke Lovell, Policy Officer at Consumer Action Law Centre at luke@consumeraction.org.au or on 03 9670 5088 for more information or to arrange a meeting.

Yours sincerely

CONSUMER ACTION LAW CENTRE



Gerard Brody | Chief Executive Officer

¹ Consumer Action Law Centre (2016), [New research shows cooling off doesn't work](#)