

31 January 2025

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Manager, Energy Consumer Policy  
Energy Consumer Policy Branch  
Consumer, Community and First Peoples' Energy Transition  
Department of Energy, Environment and Climate Action (Vic)

Dear Department of Energy, Environment and Climate Action,

## Consumer Energy Resources (CER) Consumer Protections Review

Consumer Action Law Centre (**Consumer Action**) welcomes the opportunity to provide our submission to the Department of Energy, Environment and Climate Action (**DEECA**) in response to the Consumer Energy Resources (**CER**) Consumer Protections Review.

In this submission, we draw from our casework experience, assisting consumers who have faced issues with products and services in the CER industry. While most of our casework has involved issues with rooftop solar systems, we have found consistent themes across other CER products and services, that have caused consumers financial and non-financial harm.

Victoria is leading the way in providing CER for consumers including through the Victorian Energy Upgrades (**VEU**) and Solar Homes programs and can further lead the charge in strengthening protections for Victorian consumers through the adoption of the proposed regulatory framework outlined in the Directions Paper<sup>1</sup>.

Consumer Action has an extensive history advocating for improved consumer protections within the CER industry. Throughout this submission, we refer to our previous reports and including our [submission to the Distributed Energy Resources \(DER\) Review](#) (2022); our [Sunny Side Up Report](#) (2019) which documents a deep dive into the new energy consumer protection regime; [Knock It Off!](#) (2017) our joint report with Westjustice and Loddon-Campaspe Legal Centres which highlights the need for a state-wide ban on unsolicited sales; and [The New Energy Tech Consumer Code: Representing the interests of consumers at the Australian Competition Tribunal](#) (2021) which documents the experience of Consumer Action representing consumers who had experienced harms from unsolicited sales of solar panels, and the need for regulatory reform.

We strongly support the proposed regulatory framework for CER activities as outlined in the Directions Paper and provide our responses to questions posed in the Directions Paper below.

A summary of recommendations is available at **Appendix A**.

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<sup>1</sup> DEECA, *Consumer energy resources (CER) consumer protections review Directions Paper*, November 2024, <https://engage.vic.gov.au/CER-consumer-protections-review>;

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### 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.

## Overview

The broad reach of the renewable energy transition necessitates regulation across a considerable remit. At a systemic level, the electricity and energy sector are one of the six key sectors core to strengthening the pathway to net zero in the Australian Government's Net Zero Plan<sup>2</sup>. All sectors must articulate how they will not only meet their transition to net zero, but also meet social, environmental and economic objectives contained in the Plan.

The renewable energy sector is shifting how we use energy, transforming consumers into participants in an evolving energy environment. The rapid evolution of our energy markets is motivated by our commitment to reaching net zero by 2050; as part of the international movement away from fossil fuels to address the increasing damage and risks associated with climate change.

Within the energy and electricity sector, the CER industry and its activities must be integrated with social, environmental and economic objectives of the Net Zero Plan<sup>3</sup>, and be regulated to ensure that these objectives are met. Regulation of the CER industry for consumers should refer to these overarching social, economic and environmental objectives.

To strengthen the pathway to net zero by 2030 and 2050, it is crucial that consumers can trust in the CER industry, if we are to achieve the mass uptake of renewable energy required. We draw from our casework experience in assisting consumers with issues regarding new energy products, to demonstrate some key areas for the government to consider when assessing the regulation of CER activities, with the aim of strengthening consumer protections, and building consumers' confidence that the transition to renewable energy is safe and reliable, to the benefit of all Victorians.

### Part 1: Monitoring, compliance and enforcement

**Question 1.** *In general, what is your response to DEECA's proposed approach to strengthening consumer protections for CER through a licensing and/or exemptions scheme for CER providers?*

We strongly support the proposed preferred approach to strengthening consumer protections for CER through a licensing scheme for CER providers, regulated by the existing Victorian energy regulator, the Essential Services Commission (ESC). We agree that this approach would most likely support consumer protections and customer needs. Some of the many reasons we support this approach are:

- A principles-based regulatory framework facilitates good consumer outcomes, through centring consumers in the CER environment, and building standardised best practices around a positive obligation for CER activities, such as a consumer duty.
- The proposed approach enables the expansion of an existing framework of energy regulation that encompasses new and existing energy products and services, which creates a simple and transparent model for energy providers, consumers and regulators. Integration with the existing framework also benefits consumers in standardising consumer protections across the whole energy provision and service environment, without the risk of duplication or unnecessary overlap with existing (or 'traditional') energy licensing schemes.
- Including CER activities within the scope of the ESC and the EWOV as the existing Victorian energy regulator and Ombudsman (respectively) will provide comprehensive regulatory

<sup>2</sup> DCCEEW, Net Zero. <https://www.dcceew.gov.au/climate-change/emissions-reduction/net-zero>

<sup>3</sup> DCCEEW, Sectoral emissions reduction plans and how they relate to the Net Zero Plan <https://www.dcceew.gov.au/climate-change/emissions-reduction/net-zero>

oversight over the CER environment, and strong governance over a licensing and reporting scheme that is appropriate for new energy products and services.

- Expanding the remit and jurisdiction of the ESC and EWOV will likely be the fastest option to implement, introducing much-needed consumer protections earlier.

*Do you have any further comments about the overall proposed approach?*

We agree with most elements of the proposed preferred approach; however, we highlight that the proposed scheme should not include exemptions from holding a license. In our previous submissions to the DER Review<sup>4</sup>, and the AER's Retailer Authorisation and Exemption Review<sup>5</sup>, Consumer Action provided our strongly held view that exemptions should be removed from regulatory frameworks.

A robust and comprehensive regulatory framework must ensure that the regulator has sufficient and comprehensive oversight over the actors engaged in the regulated environment. Allowing exemptions from holding a license allows loopholes for providers to engage in the market without the regulator having oversight of their practices, or consumers having clear information about the protections in place when engaging with an exempt provider. It can be a slippery slope on the fringes of the regulated market as new products and services emerge in the margins or the scope of exempted businesses expand.

The AER has also noted that exemptions limit regulatory oversight, stating in regard to a scheme that allows for exempt sellers that: 'the potential for consumer harm would likely be exacerbated in a transitioning energy market'<sup>6</sup>.

We support CER providers and activities having clear licensing obligations, that include provision of simple and accessible information to consumers about their products and services, obligations and responsibilities to consumers, in order for the consumer to be in the position to provide informed consent about the appropriateness of the product for their needs.

As part of the regulatory toolkit of the ESC, penalties should also apply for CER providers in cases where they have been found to breach license obligations. The current complex regulatory framework for solar companies has exemplified the issues that can arise if strong enforcement penalties are not enacted and implemented. We discuss these issues found through our casework further in part 2 of this submission.

For these reasons, we recommend that the regulatory framework for CER not include regulatory exemptions or exclusions from holding a relevant license for any CER providers.

**RECOMMENDATION 1.** Adopt the preferred approach of a licensing scheme for CER providers that empowers the ESC to regulate all CER providers, and requires all CER providers to hold a relevant license

**RECOMMENDATION 2.** Do not include any regulatory exemptions or exceptions for CER providers in the framework.

<sup>4</sup> Consumer Action, [Protecting consumers of distributed energy resources \(DER\)](#), November 2022, p.2 & pp.8-9

<sup>5</sup> Consumer Action, [Retailer authorization and exemption review](#) submission, May 2022, pp.5-7

<sup>6</sup> AER, [Retailer authorization and exemption review issues paper](#), April 2022, p.30

**Question 2.** Do you think DEECA's draft definition appropriately captures CER activities that require regulation to prevent consumer harms?

We support the proposed draft definition outlined in the Directions Paper<sup>7</sup> for the following reasons:

- It provides a comprehensive and general description of new energy products from a consumer-focused lens. This enables a whole-picture framework that is broad enough to capture new and innovative technologies, provided they meet these definitions.
- This overarching definition also lends itself to the regulatory framework being future-proofed as new technologies emerge; particularly when supported by a regular assessment of the risk of consumer harm as outlined in the Directions Paper<sup>8</sup>.

**Question 3.** To participate in Solar Victoria's Solar Homes program, retailers and installers of solar panels (PV), solar batteries, and hot water must meet requirements outlined in the Notice to Market 2024-25. **Should these obligations extend to all relevant solar, solar battery, and hot water retailers and installers, including those outside the Solar Homes program?**

We strongly support that the obligations outlined in the Notice to Market 2024-25<sup>9</sup> (NTM 2024-25) be expanded to all CER providers. Consumer Action has long held the view, drawn from our casework experience, that a strong consumer protection framework must include standardised obligations that protect people throughout the entire consumer journey, from sales and marketing, the purchase itself, and through until to the product end-of-life.

It is our view that the NTM 2024-25 includes crucial protections for consumers including the prohibition on unsolicited sales, and standardised requirements related to the sales, installation, connection and ongoing performance of new energy products.

Without extending these obligations to all CER providers, Victorians who purchase CER outside of the Solar Homes program will be placed at an unfair disadvantage. We expand on this point in our response to question 4 below.

**Question 4.** Do you think the Solar Homes program requirements should extend to other CER activities (with amendments reflecting these activities)? If so, which?

It is our view that the Solar Homes program requirements should be extended to all CER activities, provided that specific amendments are made respective to each product or service and their relevant activities.

The consultation paper proposes a definition of CER activities as the 'provision of a behind-the-meter energy activity that does one or more of the following:

- controls and/or constrains and/or interrupts the flow of electricity,
- impacts an electricity-related service, and/or
- generates and/or stores electricity.<sup>10</sup>

<sup>7</sup> DEECA, [Consumer Energy Resources \(CER\) consumer protections review](#) Directions Paper, December 2024, pp.29-30

<sup>8</sup> *Ibid* p.29

<sup>9</sup> Solar Victoria, *Notice to Market 2024-25*, May 2024 [https://www.solar.vic.gov.au/sites/default/files/2024-05/Notice-to-Market-2024-25\\_Solar-Victoria\\_v3.pdf](https://www.solar.vic.gov.au/sites/default/files/2024-05/Notice-to-Market-2024-25_Solar-Victoria_v3.pdf)

<sup>10</sup> DEECA, [Consumer Energy Resources \(CER\) consumer protections review](#) Directions Paper, December 2024, pp.29

We support this definition as sufficiently broad to capture the CER activities that the Solar Homes program requirements should be extended to. We consider that there are risks to consumers if certain standards of provision are not met. For example, the installation of behind-the-meter products related to the supply of electricity could cause serious damage to the property if not installed correctly; or cause electrical faults, risking injury to people in the household, and the installer themselves. Faulty installation or products could also unfairly disadvantage consumers if warranties are not required for a reasonable length of time.

We have found through our casework that Victorians continue to be doorknocked and cold-called about new energy products by non-VEU or Solar Victoria registered businesses. The people we hear from - most living in rural, regional and remote Victorian communities - are being misled and pressured into purchases that have caused them significant debt and stress. In a recent survey we commissioned from the Consumer Policy Research Centre (CPRC):

- 82% of Australians living regionally or remotely have experienced a form of unsolicited sales (in person or via phone)
- In the past 12 months
  - 44% of regional Australians have experienced an unsolicited sale at their door
  - 83% of regional Australians have received an unsolicited sale via telemarketing

According to the national survey conducted by CPRC, Victoria is still experiencing a high prevalence of unsolicited sales of solar and new energy technology, despite the ban on unsolicited selling in the VEU and Solar Homes programs.

We suspect that businesses not registered through these government programs are stepping into the 'opportunity' in the market for engaging customers through door to door and telemarketing practices because the many businesses taking part in the government programs are banned from these practices. This highlights that nothing short of a ban across the industry of unsolicited sales practices is needed to prevent substantial consumer harms associated with the selling of solar panels and new energy technology.

In addition to these harms, these sales practices are causing distrust in the new energy market. We are concerned that without a strong and consistent obligations framework, we will continue to see poor practices by CER providers benefitting from regulatory loopholes.

Any CER product or service being sold to consumers should be done so under a strong and comprehensive consumer protections framework, that is able to remain flexible as the CER environment evolves yet remains strong enough to protect consumers from harm. Extending the obligations contained in the NTM 2024-25 to all CER providers would support this outcome.

'IT REALLY PULLED ME DOWN MENTALLY. I WENT INTO DEBT, AND I'VE JUST GOT TO THE STAGE WHERE I THINK, THIS IS ALL TOO HARD.

IT'S GIVEN ME HUGE TRUST ISSUES, THIS WHOLE PROCESS'

'Sam' (name changed)

**RECOMMENDATION 3.** Extend the obligations under the Solar Homes program including those contained within the Notice to Market 2024-25 to all CER activities and products, with amendments to reflect these activities.



**Question 5.** *Do you have any further comments on the requirements of the Solar Homes program or how these requirements could be extended to other CER activities?*

### Public license directory

An additional strength of the Solar Homes and VEU programs are their license directories, accessible to the public via their websites<sup>31</sup>. This license directory enables consumers to inform themselves of whether a particular CER provider is accredited or authorised under the Solar Homes or VEU programs or has been deregistered. These directories are regularly updated, to account for newly accredited companies, or deregistered companies.

While a directory cannot comprehensively address consumers being pressured into purchasing products from unregistered providers, these directories do contribute to stronger transparency, accountability and oversight of CER providers, and the ability for consumers to stay informed and access information about CER providers they are considering purchasing products from. To this end, we recommend that the regulatory framework includes one publicly accessible and searchable license directory, administered by the ESC and / or DEECA, that includes all CER providers licensed under the scheme, and companies who have been deregistered.

**RECOMMENDATION 4.** Expand the existing VEU directory administered by the ESC to all CER providers, or establish a publicly accessible, searchable license-directory for all CER providers, including up to date information on the status of their license and historical license removal or deregistration information.

**Question 6.** *Which CER activities do you see as having the potential to cause the most consumer harm*

**Question 7.** *Which CER activities do you see as causing the least consumer harm?*

For the purposes of a strong consumer protections framework, rather than viewing CER activities as on a scale of more or less harm to consumers, we view that all new energy products are of equal, significant risk to consumers if they are not sold, installed and provided fairly, safely and transparently. For this reason, it is our strong position that all CER activities be captured within the regulatory framework. We have found through our casework that high-cost products often result in consumers being led into unaffordable credit arrangements. Solar products have been the most common case type brought by consumers to our legal frontlines, with product costs averaging \$12,000. This said, we have seen a number of cases where the product being sold could be considered unfairly priced, for example in air conditioning units over \$7,000.

**'THE PROBLEMS WE ARE SEEING WITH SOLAR PANELS WILL REPEAT AND MANIFEST THEMSELVES IN RELATION TO OTHER NEW AND EMERGING ENERGY TECHNOLOGY IN AUSTRALIA UNLESS WE TAKE THE OPPORTUNITY TO PREVENT THEIR SPREAD.'**

*Sunny Side Up report, Consumer Action, 2019, p.68*

<sup>31</sup> The Essential Services Commission operates the *Victorian Energy Upgrades* website where consumers can find an accredited provider <https://www.esc.vic.gov.au/victorian-energy-upgrades/energy-saving-information-consumers/find-accredited-provider>. Solar Victoria operates a directory for consumers to find an authorized retailer at <https://www.solar.vic.gov.au/retailers>

We submit that it is more likely for a consumer to experience financial detriment and exacerbated hardship where the product is of a higher price. This said, we believe this to be difficult to account for in a regulatory framework considering the prevalence of unfairly priced products.

### **Products sold through unsolicited sales**

We have found that unsolicited sales practices open the door for further consumer harms to occur. For this reason, we view unsolicited sales practices holding a high risk of consumer harm. These practices can occur regardless of the product itself, and we support the prohibition on these sales practices as an urgent and necessary step to preventing further consequential harms to consumers.

### **Emerging technologies**

The rooftop solar industry has exemplified the issues and harms that consumers face when a strong regulatory framework is not implemented before the technology and providers reach the consumer market. The harms that poor practices cause consumers have persisted for more than a decade, affecting consumers who are attempting to make the switch to renewable energy. In any future regulatory framework, it is important that we do not repeat this mistake by seeking to exempt products that are seen as more or less harmful.

Rather than expose consumers to further risk in new or emerging technologies, we support Victoria establishing licensing requirements for all CER activities, to be enacted on the same date, which would provide a preventative framework for consumers across all existing CER products and activities. Enacting this requirement on the same date would provide consumers, CER providers and the regulatory sector clear and comprehensive requirements and further strengthen the integration of all CER activities within the CER regulatory framework.

This said, we do recognise that in any market new harms may emerge as products and service offerings change, or old harms may reoccur as laws and regulations change. Therefore, to support this regulatory framework, we recommend that regular market studies be conducted by DEECA and regulators, to survey the existing and emerging market, in order to assess CER activities that need to be prioritised in regard to compliance and enforcement.

With this in mind, we support the inclusion of all CER activities in the regulatory framework, with specific licensing requirements relevant to the particular technology, product or service.

**RECOMMENDATION 5.** Include all CER activities in the regulatory framework, with specific licensing requirements relevant to the particular technology, product or service.

**RECOMMENDATION 6.** DEECA and regulatory bodies to conduct regular market studies survey the existing and emerging market, in order to assess CER activities that need to be prioritised in regards to compliance and enforcement

**Question 8.** *Are there specific criteria the government should consider when assessing regulation of CER activities? What are these and why are they important?*

As noted earlier, through our casework we have seen extensive instances of consumer harm in the CER sector. In the following tables we provide some examples drawn from our casework as factors that the government should consider when assessing regulation of CER activities. In Table 1, we provide a non-exhaustive list of some of the prevalent issues we have found in CER products and services, affecting consumers.



In Table 2, we provide an overview of the legislative framework, the key activities and consequential issues caused by CER providers we have found through our casework; the impacts that these activities have on consumers, and our recommendations for reform. Some of the recommendations provided in Table 2 are discussed in further detail in our *Sunny Side Up* report<sup>12</sup>.

With respect to both tables, government can use these as a list to ensure that regulatory settings have addressed the issues presented, and institute reforms to prevent the impacts on consumers currently observed.



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<sup>12</sup> Consumer Action, [Sunny Side Up: Strengthening the consumer protection regime for solar panels in Victoria](#), April 2019

**Table 1:**

Retail	Unsolicited sales	Unfairly misleading consumers into products that may be faulty, unaffordable or not fit for purpose or their needs
	Unclear and misleading information provision	<ul style="list-style-type: none"> <li>• Lack of standardised and comparative information about a product or service, causing complexity for consumers</li> <li>• Unclear or misleading information about access to government rebate, resulting in eligible consumers not receiving rebates</li> <li>• Lead-generation advertising, causing consumers to be misled into inappropriate or unaffordable products</li> </ul>
Contracts	Linked credit products with long loan terms, and/or hidden surcharges and fees	Signing consumers to unaffordable credit products without conducting appropriate suitability assessments
	Long lock-in contracts	Causing consumers to be tied to 10–15-year contracts with tied financial arrangements
Product	Connection or interrelation to multiple products and services	<ul style="list-style-type: none"> <li>• Companies benefitting from the complex relationship of a product or service, where consumers are at greater risk of misinformation or a lack of understanding of the product</li> <li>• Consumers are at higher risk of exposure to poor practice where multiple parties are involved in the delivery of the product or service</li> <li>• Consumers have reduced access to clear resolutions in disputes where multiple parties are involved, and multiple dispute resolution processes are required</li> </ul>
	Complex or new and emerging products	<ul style="list-style-type: none"> <li>• Consumers not being able to compare product performance, costs, or benefits across the market</li> </ul>
	Emerging or new products and activities	Lack of licensing and regulatory scheme that preventatively protects consumers
Installation	Connection to essentiality of electricity	Risk of disruption or impact of service delivery of electricity causing personal injury or financial impact on consumer

**Table 2: (next page)**



**Question 10.** *Further comments on considerations for appropriate enforcement*

### Company phoenixing

The current regulatory framework for CER activities is regulated by the Clean Energy Regulator (**Australian CER**) nationally. Within Victoria, solar companies can be accredited with Solar Victoria, if they are registered with the Solar Homes program. If the company is not registered with this program, they are regulated by the CER.

Under the *Small-scale Renewable Energy Scheme*, the Australian CER monitors compliance with the requirements of the *Renewable Energy (Electricity) Act 2000 (Cth)*. Where a solar company has been found to breach protections in the ACL such as misleading or deceptive conduct, the solar company can be deregistered by the Australian CER, and in some cases, have their license suspended for up to 3 months<sup>13</sup>. We have found in some cases, that solar companies have liquidated or become insolvent during the course of a matter. In these cases, the solar company may have had their license suspended, however they have re-registered under a different name – otherwise known as phoenixing – and has continued selling products under a new business name and registration.

For these reasons, we support stronger penalties to be established for CER providers under a Victorian regulatory framework. We propose that if a CER provider has been found breaching their license obligations, that they should have their license permanently deregistered. In cases of egregious conduct, long-term bans on Directors should be available and implemented.

In addition to strong penalties, we recommend that continued information sharing between regulators, including the ESC and the CER would also help prevent companies trading across multiple jurisdictions, in order to retain up-to-date information about particular providers found breaching their obligations, preventing companies found in breach finding loopholes or avoidance conduct.

**RECOMMENDATION 7.** For the ESC and DEECA to consider permanently deregistering CER companies and enacting long-term bans on Directors whose companies are found to have engaged in unfair sales practices, or serious breaches of license obligations

<sup>13</sup> Australian Government, Clean Energy Regulator <https://cer.gov.au/schemes/renewable-energy-target/renewable-energy-target-participants-and-industry/registered-agents>

## Part 2: Intended outcomes and directions for specific obligations

### General customer duty

Under a principles-based general customer duty, providers could be required to act efficiently, honestly and fairly to deliver positive customer outcomes.

**Question 11.** *What do you think a general customer duty would need to include to ensure a focus on achieving positive consumer outcomes?*

We strongly support the adoption of a consumer duty for CER activities, that would facilitate consumers to equitably and safely transition to renewable energy. We consider that the proposed outline of 'efficient, honest and fair' adopted from the UK Financial Conduct Authority<sup>14</sup> provides a strong model that addresses a range of conduct required for CER providers to ensure they are acting with the aims of delivering positive consumer outcomes. We submit that this model be expanded upon for the renewable energy sector by adding that CER providers must act ethically and equitably. We propose that in addition to a positive obligation to consumers, CER providers' participation in the transition to renewables should be tied to positive conduct obligations in the broader spheres in which they operate in, such as the environment, First Nations communities, and local and international workforces.

Below are some examples of activities that could relate to these obligations:

### **Ethical**

- The design, development, manufacture and provision of CER products are conducted ethically, with consideration to the impacts on environment, trade, social and economic factors, including employment.
- First Nations communities drive the transition to renewables in their communities and on their Country, and their right to self-determination and free and prior-informed consent to CER activities in their communities and on their Country is respected and upheld<sup>15</sup>.

### **Equitable**

- Products are accessible equitably to the diverse profiles of consumers and needs of communities
- Benefits of the renewable energy market are shared across whole communities
- Equitable opportunity to participate in the renewable energy market is provided to First Nations communities; including outside of their community

### **Efficient**

- CER is designed for long-term and efficiently functional use where obsolescence is limited
- Efficient processes in the delivery of CER are designed to have a minimal environmental footprint
- The provision and service of CER resources to consumers

<sup>14</sup> Financial Conduct Authority, *Supplier Code of Conduct* April 2024, <https://www.fca.org.uk/publication/corporate/supplier-code-of-conduct.pdf>

<sup>15</sup> First Nations Clean Energy Network, *Submission to the Environment and Communications Legislation Committee – Future Made in Australia (Guarantee of Origin) Bill 2024*, September 2024, p.2  
[https://assets.nationbuilder.com/fncen/pages/3616/attachments/original/1727422878/Submission\\_to\\_the\\_Environment\\_and\\_Communications\\_Legislation\\_Committee\\_-\\_Future\\_Made\\_in\\_Australia\\_%28Guarantee\\_of\\_Origin%29\\_Bill\\_2024\\_.pdf?1727422878](https://assets.nationbuilder.com/fncen/pages/3616/attachments/original/1727422878/Submission_to_the_Environment_and_Communications_Legislation_Committee_-_Future_Made_in_Australia_%28Guarantee_of_Origin%29_Bill_2024_.pdf?1727422878) & First Nations Clean Energy Network, *What we stand for* [https://www.firstnationscleanenergy.org.au/what\\_we\\_stand\\_for](https://www.firstnationscleanenergy.org.au/what_we_stand_for)

## Honest

- Consumers receive clear, accessible, comparable and comprehensive information about products and services

## Fair

- Products and services are of fair value, fit for purpose; and meet consumers' needs
- Customer assistance and consumer guarantees are fair and accessible to consumers

**Question 12.** *Are there specific consumer outcomes that you think a general customer duty should be tied to?*

In response to Part 2 of the Directions Paper, we refer to existing protections found in the Australian Consumer Law (ACL)<sup>16</sup> and the National Credit Code (NCC)<sup>17</sup>. We consider that a strong customer duty should be underpinned by specific consumer outcomes to facilitate efficient regulation, consumer engagement and trust in the CER market. As identified in the Directions Paper, there are a number of poor practices leading to consumer harm being used by some CER providers<sup>18</sup>. A general customer duty for the CER industry would provide an overarching objective, which could be supported by specific and measurable outcomes.

Consumer Action's *Power Transformed* report provided key regulatory considerations for the new energy market, through consultation and research by the Demand-side Energy Reference Group. The report proposed that good consumer outcomes include:

- *Ensuring safe and fair products and services;*
- *Providing simple, clear and consistent information;*
- *Providing easy and equitable access to services;*
- *Providing free and simple dispute resolution processes; and*
- *Ensuring that the efficiency from innovation benefits consumers<sup>19</sup>.*

In addition to the above, we support integrating a customer duty with the proposed unfair trading prohibition (still the subject of federal government consultation)<sup>20</sup>. A general customer duty would act as a strong principle, that would complement an outcomes-based regulatory framework. While this would provide the positive and preventative framing; the unfair trading prohibition would provide additional protection where other protections in the ACL have proven vague or have resulted in inconsistent caselaw<sup>21</sup>.

We submit the following examples of the consumer outcomes that a general customer duty could be tied to:

<sup>16</sup> Competition and Consumer Act 2010 (Cth), Australian Consumer Law (ACL) Schedule 2; <https://www.legislation.gov.au/C2004A00109/latest/text/4>

<sup>17</sup> National Consumer Credit Protection Act 2009 (Cth), National Credit Code (NCC) Schedule 1; <https://www.legislation.gov.au/C2009A00134/latest/text/2>

<sup>18</sup> DEECA, *Consumer Energy Resources (CER) Consumer Protections Review Directions Paper*, December 2024, p.14 <https://engage.vic.gov.au/project/CER-consumer-protections-review/timeline>

<sup>19</sup> Consumer Action, *Power Transformed: Unlocking effective competition and trust in the transforming energy market*, July 2016, p.11 <https://consumeraction.org.au/wp-content/uploads/2016/07/Power-Transformed-Consumer-Action-Law-Centre-July-2016.pdf>

<sup>20</sup> Australian Government Treasury *Consultation on Unfair trading practices* <https://treasury.gov.au/consultation/c2024-602157> November to December 2024

<sup>21</sup> Consumer Policy Research Centre, *Make unfair illegal: Submission from consumer advocates on Treasury's Consultation Regulatory Impact Statement, Protecting consumers from unfair trade practices*, November 2023, <https://cprc.org.au/wp-content/uploads/2024/02/Submission-Unfair-trade-practices-Treasury-November-2023.pdf>, p.18



Consumers have a clear and confident understanding of the product, its purpose, and are provided a transparent and fair process to make an informed decision about its appropriateness for them.

- Accurate and accessible information
- Affordable and appropriate product or service
- A fair and honest sales process
- That the product or service is safe, of fair value, and is fit for purpose

Consumers are provided equitable access, are aware and confident of their rights and protections, and are appropriately supported

- Consumers have trust and confidence in CER scheme and have equitable access to transition to renewable energy resources
- Consumers are aware of their ability to access a fair and efficient dispute resolution process
- Consumers are provided appropriate support and service providers are comprehensively trained and implementing best practice to consumers facing any form of hardship or vulnerability, including financial stress, family violence, barriers to digital literacy; or are disabled, or older aged
- Consumers are provided culturally aware and appropriate support if they are Aboriginal or Torres Strait Islander, or from a culturally or linguistically diverse background, including but not limited to culturally aware service delivery (in the case of First Nations consumers) and access to translation and interpreter services (in the case of culturally and linguistically diverse consumers).

Appropriate information provision, sales and marketing

Victoria has banned energy retailers engaging in unsolicited high-pressure sales tactics such as door-to-door sales or cold-calling. Victoria has also banned unsolicited sales of CER via government programs. However, consumers may be sold inappropriate CER outside of government programs.

**Question 14. Do you support prohibiting all unsolicited sales for CER in Victoria?**

We remain strongly supportive of the prohibition of doorknocking and telemarketing in both the Solar Homes and VEU programs. We hold the view that the unsolicited sales ban across both programs has been largely successful in preventing predatory sales practices. Since the enactment of the ban, we have seen a decrease in cases involving a CER provider accredited under the Solar Homes program, as compared to our case numbers in 2019 before the ban was put in place. However, as outlined above in Part 1 this reform has not solved the problem because the ban is not outright.

From our casework experience, unsolicited sales practices can lead to a range of further unfair conduct in the sale of new energy products that continue to harm Victorians. For this reason, we strongly support prohibiting all unsolicited sales for CER in Victoria, and we submit that Victoria could lead Australia in banning unsolicited sales, protecting Australian consumers and the transition to renewable energy.

To further support this position, below we provide a detailed overview of the significant consumer harms linked to the unsolicited sales of CER that we have encountered through our casework.

## Our findings

Since at least 2017, Consumer Action has assisted and represented hundreds of Victorians who have contacted our helpline due to unsolicited sales of new energy products, predominantly solar panels. Some of these cases are detailed in the *Sunny Side Up* report<sup>22</sup> (2019) which outlines the harms caused to consumers, including being misled and or pressured into purchasing products unfit or unsuitable for their needs, experiencing issues with faulty installation or connection to the grid resulting in higher energy bills, and being signed up for unaffordable or unsuitable credit products, in some cases without the consumers' prior knowledge or consent.

In 2017, Consumer Action released '*Knock it Off!*'; a joint report with Westjustice and Loddon-Campaspe Legal Centre, which draws on the 'collective experience of practitioners who have dealt with the harm done by unsolicited sales over the past few decades'<sup>23</sup>. This report concluded that 'consumer detriment caused by harmful unsolicited sales is significant and persistent'<sup>24</sup>. More than eight years after this report was published, the pervasive harms to consumers caused by unsolicited sales are continuing.

Consumer Action strongly welcomes the recent ban on unsolicited sales in the Solar Homes and VEU programs implemented in 2024, however – counterintuitively – we have seen an increase in cases on our frontlines of unsolicited sales by companies outside registered government programs.

Since February 2024, Consumer Action's legal cases of new energy products have doubled, returning to 2019 levels. Our casework shows that companies are not providing consumers full information about the government rebates during their sales, and in some cases could be fraudulently signing people up to Buy Now Pay Later (BNPL) products that are unaffordable or unsuitable for them.

Out of our legal cases from 2023-24, we have found that

- 81% of people are unemployed (of cases where employment status was disclosed)
- 90% of people are living in regional Victoria
- The median household income is \$28,000 per annum
- 71.5% of people were receiving Age Pension, Disability Support Carer's payment or Newstart
- 65% of people have some kind of disability, (of cases where disability status was disclosed)

Out of these cases, only 1 case out of 25 related to a solar company registered with the Solar Homes program engaging in unsolicited sales. In this case, the company was deregistered from the Solar Homes program. This demonstrates the strength of the Solar Homes regulatory scheme, however it highlights that in order for all consumers to be protected from predatory sales practices, the unsolicited sales ban needs to be expanded to all CER providers, to prevent consumers being exposed to unfair practices in the first place. Further, this raises the importance that a licensing scheme must be integrated with strong monitoring and compliance that ensures licensed CER providers are continuing to meet their obligations.

**'EXPERIENCE HAS SHOWN THAT  
CONSUMER HARM FROM UNSOLICITED  
SALES COMES IN WAVES AND OFTEN  
MIGRATES FROM PRODUCT TO PRODUCT'**

*Knock it off! Door-to-door sales and consumer harm  
in Victoria - Consumer Action Law Centre, 2017*

<sup>22</sup> Consumer Action, [Sunny Side Up: Strengthening the consumer protection regime for solar panels in Victoria](#), April 2019, p29-33

<sup>23</sup> Consumer Action, *Knock it Off! Door to door sales and consumer harm in Victoria*, November, 2017 <https://consumeraction.org.au/knock-it-off/> p.4

<sup>24</sup> *Ibid* p.68

Outlined below are some of the key issues that cause consumer harm we have observed from our casework, arising from unsolicited sales of new energy products. While many of the examples we include are drawn from rooftop solar products, we note that similar risks of consumer harm occurring in other new energy products remains high and continues to occur in a wide range of products, both in CER products such as hot water pumps and air-conditioning units, and non-CER household products and appliances.

### **Misleading and deceptive conduct**

- Consumers being told they can receive “free” solar panels, and “not having to pay anything”.
- Consumers being led to believe they will receive the Solar Victoria rebate, when they are only receiving a limited federal government rebate (paid direct to the solar business).
- Salespersons failing to inform consumers that they are being signed up to a BNPL loan, often greater than \$10,000.
- We have sighted BNPL contracts with incorrect or fraudulent bank account details in credit schedules, provided by the solar company to our clients.

### **High-pressure sales tactics**

- Inaccurate claims that the program won't be continued the following month, or that consumers will miss out on the rebate if they don't sign up immediately.

### **Unfair contract terms**

- Providing contracts without stipulation of total costs
- Denying termination or cooling off periods, including contracts with pre-written sections that state “installation ASAP”.
- Stating that consumers remain liable for the contract price even if the contract is terminated

### **Inadequate installation**

- Solar panels being installed incorrectly and without due care and skill, resulting in property damage.
- Solar panels being installed that were not fit for purpose for the consumer, including where the number of panels or kilowatts do not meet the needs or usage of the consumer.

### **Unaffordable and unregulated finance**

- Solar companies signing consumers up to BNPL finance for their products, with costs often over \$10,000
- Solar companies not undertaking any suitability assessment, resulting in financial hardship for people on low incomes already struggling to meet their bills.

**Question 15.** *Please provide any other comments about information provision, sales and marketing, and explain why you hold these views.*

### **Information provision**

The likelihood of incorrect, misleading or deceptive information being provided to consumers is significantly heightened through unsolicited sales practices. In many cases, our clients have reported being told by a door-to-door salesperson that they would ‘receive free solar panels’ or that they ‘would never have to pay a cent’.

The ability for salespersons to make these claims without accountability or oversight is heightened by a lack of standardised record-keeping such as phone call recordings, email correspondence or online records of sales interactions (such as through company websites).

We support the standardisation of information that is required to be provided to consumers, through the adoption of a standardised schedule of information, which could be built upon the existing retailer terms and conditions required by the Solar Homes and Victorian Energy Upgrades schemes.

### Lead generation marketing and sales

In addition to unsolicited sales such as telemarketing and doorknocking, we have found an increase in 'lead-generation' marketing practices in the last 12 months. We have observed lead generation acting as a loophole to the unsolicited selling protections in the ACL, and the harms that this can cause consumers.

Since June 2024, we have received a number of cases where our clients have seen an advertisement on social media platforms that poses to be a government sponsored ad; in some cases, using images with the likeness of the Federal Government seal. These ads request consumers to enter their postcode, in order to check if they're eligible to receive 'free' solar panels. Once the consumer has entered their information, the CER company may be able to argue that the consumer has 'opted in' or has solicited the sale.

It is reasonable to think that the use of government-seal likeness for a marketing ad is misleading consumers into thinking that the company is somehow sponsored or linked to an official government program or rebate scheme. Additionally, entering personal details for the purpose of checking your eligibility for a rebate does not follow that the consumer has solicited for the purchase of a product from a specific company.

To adequately assess the impacts that lead-generation marketing and sales can cause, DEECA and the ESC should further investigate lead-generation marketing of CER products, with the view to extending the unsolicited sales ban to include lead-generation.

**RECOMMENDATION 8.** DEECA and ESC to investigate lead-generation marketing practices of CER providers with the view to extending the ban to these sales practices.

#### Clear and fair quotes, contracts, and payment terms

**Question 16.** *Should quotes and contracts for CER be required to include specific standard terms and conditions?*

*If yes: Which elements of quotes and contracts should be standardised to protect customers, and to which types of CER activities should they apply?*

We support the requirement of standard terms and conditions in CER contracts and strongly support the proposed information to be included as outlined in the Directions Paper<sup>25</sup>. This requirement would provide standardisation and consistency across the CER sector and strengthen consumer protections by providing clear and accessible information to consumers about the respective responsibilities of CER providers and the consumer. It would also provide clarity of responsibilities and liability in cases of complex arrangements with multiple parties in a product or service, which would facilitate easier and more efficient dispute resolution processes.

<sup>25</sup> DEECA, *Consumer Energy Resources (CER) Consumer Protections Review Directions Paper*, December 2024, pp.33-34 <https://engage.vic.gov.au/project/CER-consumer-protections-review/timeline>

We focus on two predominant issues related to CER contracts, drawn from our casework experience in solar product sales.

### Unfair contract terms

Consumer Action has seen multiple examples of contracts for CER products with unfair terms, including contracts that don't stipulate total costs; denying termination or cooling off periods; and including pre-written conditions that state 'installation ASAP'.

In some cases we have seen, the contract states that consumers remain liable for the contract price even if the contract is terminated. These examples are breaches of protections against unfair contract terms<sup>26</sup> in the ACL. While there are clear provisions in this legislation, CER providers outside of government programs and licensing schemes have been found providing these contracts to consumers, who may not be aware of their protections. When this issue is combined with a lack of clear dispute resolution process, consumers are left with very few options to seek remedy when something goes wrong.

For these reasons, we support including a requirement for all CER providers to use a standard form contract, drafted and administered by the ESC.

**RECOMMENDATION 9.** Adopt a standard form sales contract for all CER providers, to be drafted and administered by the ESC

### Responsibility of parties

There are multiple parties involved in the sale, installation, connection and ongoing warranty of solar system products. This causes significant complexity in the provision of solar panel systems and creates barriers for consumers to access simple and efficient dispute resolution if something goes wrong.

In our *Sunny Side Up* report, we document multiple cases where a consumer was left with a faulty product without resolution, due to unclear conditions specifying which party was responsible for the paperwork involved in the approval process to ensure the products are installed and connected to the grid<sup>27</sup>. Since publishing this report, we continue to find cases where the lack of clear responsibilities has benefitted CER companies, at the detriment of consumers who are left confused or misled about the process, and who is responsible.

We reaffirm our recommendation from our *Sunny Side Up* report to include a standardised clause in terms and conditions that states the CER provider is responsible for the installation and connection of the CER product, and all related necessary paperwork is completed and submitted to the relevant recipient, unless the consumer elects otherwise<sup>28</sup>.

**RECOMMENDATION 10.** Include a standardised terms and conditions schedule for all CER providers that includes explicit responsibilities for CER providers and third parties acting on their behalf

- Such as, the CER provider is to complete and submit all necessary paperwork involved in the process of installation and connection of CER products

<sup>26</sup> *Competition and Consumer Act* (Cth) 2010, Vol. 4, Schedule 2, Chapter 2, Sections 23-25 <https://www.legislation.gov.au/C2004A00109/latest/text/4>

<sup>27</sup> Consumer Action, *Sunny Side Up: Strengthening the consumer protection regime for solar panels in Victoria*, pp.31-33 [https://consumeraction.org.au/wp-content/uploads/2019/06/1904\\_Sunny-Side-Up-Report\\_FINAL\\_WEB\\_NEW-1.pdf](https://consumeraction.org.au/wp-content/uploads/2019/06/1904_Sunny-Side-Up-Report_FINAL_WEB_NEW-1.pdf)

<sup>28</sup> *Ibid* p.34

## Financial arrangements

One of the most pervasive issues we have found in the sale of new energy products has been the prevalence of linked BNPL credit products. In many cases, consumers have been signed up to a BNPL product without their prior knowledge. The repayments are typically unaffordable for our clients, which often results in financial hardship, as people struggle to meet BNPL repayments for the cost of the system, in addition to their ongoing energy bill costs.

In many cases seen by Consumer Action, consumers have stated they were not asked about their income, or ability to meet payments. Rather, the solar company salesperson purported that they wouldn't have to pay anything.

Consumer Action has long supported expanding the *National Consumer Credit Protection Act 2010 (NCCPA)* and *National Credit Code (NCC)* to include BNPL products as a form of credit. Therefore BNPL providers would have responsible lending obligations including suitability assessments when issuing credit.

In our *Sunny Side Up* report we referred to a drafted clause in the terms and conditions to be included in the National Energy Technology Code (**NET Code**) that stated:

*We may offer you New Energy Tech with a deferred payment arrangement as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph 1.m), we will ensure that:*

- a. *this payment arrangement is offered through a credit provider (whether ourselves or a third party) licenced under the National Consumer Credit Protection Act (2009) (Cth "NCCPA");*
- b. *the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC");*
- c. *the term of the deferred payment contract or lease is no longer than the expected life of the product or system; and*
- d. *ensure that you receive the following clear and accurate information...*<sup>29</sup>

As the NET Code is voluntary, we further recommended that regulatory obligations are necessary to ensure consumers are protected from predatory or unregulated credit arrangements in new energy products<sup>30</sup>.

'THE LADY ON THE PHONE SAID "YOU OWE US \$12,000". IT COULD HAVE BROUGHT ME TO THE FLOOR.

I THOUGHT I'M NEVER GOING TO BE ABLE TO PAY THIS BACK. I TRIED TO MAKE PAYMENTS, BUT I REALISED I JUST CAN'T DO IT. IT WAS ABOUT \$1,000 THAT I JUST KEPT ADDING TO MY CREDIT CARD.

THEN MY ENERGY COMPANY CALLED ME SAYING I OWED THEM \$1,000 WHICH I HAD TO ADD TO MY CREDIT CARD TOO."

"Dianne" (name changed)

'EXTENDING THE NCCPA LAWS TO ALL OF THESE FINANCE PRODUCTS WILL FUTURE PROOF THE REGULATION AGAINST OTHER GAPS AND LOOPHOLES THAT MAY BE EXPLOITED BY NEW ENERGY PRODUCT RETAILERS.'

*Sunny Side Up* report, Consumer Action, 2019, p.39

<sup>29</sup> Consumer Action, *Sunny Side Up: Strengthening the consumer protection regime for solar panels in Victoria*, p.37 [https://consumeraction.org.au/wp-content/uploads/2019/06/1904\\_Sunny-Side-Up-Report\\_FINAL\\_WEB\\_NEW-1.pdf](https://consumeraction.org.au/wp-content/uploads/2019/06/1904_Sunny-Side-Up-Report_FINAL_WEB_NEW-1.pdf)

<sup>30</sup> *Ibid* p.37



Positively, the federal Government has introduced the *Treasury Laws Amendment Bill 2024* which outlines regulatory reform to include a level of responsible lending obligations for BNPL finance<sup>31</sup>. This important reform should provide some greater protection to consumers purchasing new energy products through BNPL credit contracts.

The adoption of specific clauses in CER product terms and conditions must reflect these new obligations and provide clear and explicit information to consumers about government rebate schemes, responsibilities of CER providers on behalf of third-party credit providers, and outline clear obligations in the provision of credit, including suitability assessment requirements.

**RECOMMENDATION 11.** Include a requirement for unsuitability assessment to be completed and documented as part of the purchase of CER products and include this requirement within all CER product terms and conditions.

While we acknowledge it may be out of scope for this review, we believe it important to note that even with strong protections regarding responsible lending in the provision of credit for CER products, there remains a significant cohort of consumers with low incomes who may not be able to access credit due to their financial circumstances.

For people in these circumstances, they are more likely to be placed at a further disadvantage in accessing the benefits of the renewable energy transition, unless they are provided targeted financial measures that support them with the upfront costs of CER products.

Government rebate programs are a crucial part of ensuring the renewable energy transition is equitable and accessible to households who need it most. We submit that the Federal Department of Climate Change, Energy, the Environment and Water (DCCEEW) invest additional funding to deliver no-interest Government subsidies for low-income households for household energy upgrades.

**RECOMMENDATION 12.** DCCEEW to invest additional funding to deliver no-interest Government subsidies for low-income households for household energy upgrades.

'THERE ARE PROBABLY A NUMBER OF PEOPLE WHO WANT TO TRANSITION TO RENEWABLES, BUT IT HASN'T BEEN AFFORDABLE TO THEM. IF WE WANT LOW INCOME PEOPLE TO BE ABLE TO TRANSITION, THERE NEEDS TO BE MORE FINANCIAL SUPPORT TO DO SO, BECAUSE THE CURRENT SYSTEM IS NOT HELPING THEM. WE WANT PEOPLE TO HAVE AFFORDABLE AND RENEWABLE ENERGY, BUT PRIVATE FINANCE IS NOT THE SOLUTION FOR PEOPLE WHO CAN'T AFFORD IT. IT HAS CAUSED DISTRUST ABOUT RENEWABLE ENERGY, AND CONFUSION ABOUT REBATES AND GOVERNMENT SUPPORT.'

Catherine Miller, Managing Lawyer, Consumer Action

<sup>31</sup> Parliament of Australia, *Treasury Laws Amendment (Responsible Buy Now Pay Later and Other Measures) Bill 2024*, June 2024, [https://www.aph.gov.au/Parliamentary\\_Business/Bills\\_LEGislation/Bills\\_Search\\_Results/Result?bld=r7199](https://www.aph.gov.au/Parliamentary_Business/Bills_LEGislation/Bills_Search_Results/Result?bld=r7199)

**Question 17.** *Should customers be able to withdraw from CER contracts or agreements (e.g. exit an aggregation agreement)?*

*If yes: Should limits be placed on when customers can withdraw from a contract? If yes, what should those limits be?*

The ACL includes provisions for the retail and supply of goods and services, and the consumer guarantees related to these activities. The NCC provides protections with regard to credit contracts, including hardship provisions, and the winding up of a financial arrangement or contract.

Consumers can withdraw from a CER contract or agreement as per standard terms and protections in the ACL. Further, consumers can withdraw from a credit contract tied to product or service, as provided in the NCC. We submit that these protections must be reflected and upheld in the CER framework. We discuss these protections further below.

The ACL includes protections for consumers who wish to withdraw from a contract under a few reasons. These include termination following a breach; by agreement; or by frustration<sup>32</sup>. Consumers can also choose to rescind the contract during a cooling off period.

The ACL contains provisions for consumer guarantees that relate to the supply of goods, including guarantees that the products were sold without pressure, or misleading or deceptive information, that the products or services are of acceptable quality; fit for purpose; that there is reasonable facility and availability for repair for a reasonable period after the supply of the product; and that the supply of services are rendered with due care and skill, among other guarantees<sup>33</sup>. The ACL includes remedies for consumers if these guarantees are found to not have been met. These remedies include repair, replacement, refund and compensation<sup>34</sup>. Consumers also retain protections to seek compensation for loss or damage, including in cases where there is a linked credit contract<sup>35</sup>.

We submit that in cases where a breach of contract has not occurred, that the remedies provided in both the ACL and NCC are adequate options in terms of remedies for a consumer, and limit the consumer from withdrawing from the contract, provided that the remedy is appropriate and sufficient.

The additional proposal included in the consultation paper to include CER activities within EWOV's jurisdiction would also provide significant clarity and efficiency in handling these types of claims between CER providers, consumers and third parties. In cases where there is a dispute, and the consumer is seeking to withdraw from the contract, the EWOV would have consideration to what is fair and reasonable in the circumstances of the case. We discuss this further below in Part 3 of this submission.

It is our strong position that the rights of consumers to withdraw from a contract or arrangement must be protected, provided that the grounds for their withdrawal are reasonable, and provided in existing consumer law protections.

**RECOMMENDATION 13.** Consumers must retain the protections available in consumer law to receive an appropriate remedy, including the right to withdraw from a contract related to CER activities, products or services

<sup>32</sup> ACL s 267-270

<sup>33</sup> ACL, ss.51-62 <https://www.legislation.gov.au/C2004A00109/latest/text/4>

<sup>34</sup> Commonwealth of Australia, *Consumer guarantees: A guide for businesses and legal practitioners*, March 2016, p.26 <https://www.accc.gov.au/system/files/Consumer%20guarantees%20-%20A%20guide%20for%20businesses%20and%20legal%20practitioners.pdf>

<sup>35</sup> ACL 278-280

## CASE STUDY:

Clancy\* lives in regional Victoria and has an acquired brain injury. The Disability Support Pension is his sole income. A solar company sales representative attended his home uninvited and told Clancy he could make big savings if he had solar panels. The representative stated there would be a rebate that would be organised for him, and the total cost after the rebate was applied, would be around \$3,500.

In reliance on these representations and sales pressure, Clancy agreed to purchase the solar system and signed the agreement with the solar company. The contract did not include the total cost of the solar product, or a clear notice outlining his right to terminate the contract within the 10-day cooling off period. Instead, it outlined a 3-day period, and states the customer is still liable for the full balance of the contract despite the termination.

The actual cost of the solar panels came to over \$11,000. Clancy was signed up to a BNPL loan arranged by the solar company, despite him not having any direct contact with the BNPL company. The BNPL loan is causing Clancy financial hardship and affecting his ability to pay everyday living costs.

The solar contract states that the Federal government rebate is included, however the relevant contract section is blank and the amount of any federal rebates obtained to reduce the purchase price is unclear. Clancy's energy provider provided notice that he has not received any rebate for the solar panels because his electricity meter has not been configured to show what solar is being fed back to the grid.

*\*name changed.*

**Question 18.** *Should there be any penalties or consequences for customers if they withdraw from a CER contract?*

*If yes: What should those penalties or consequences be?*

We don't support establishing penalties or consequences for consumers if they withdraw from a CER contract, provided they have done so in accordance with reasons provided in the ACL and NCC. Establishing penalties for consumers withdrawing from a CER contract could result in unfair contract terms. The Australian Competition and Consumer Commission (ACCC) outlines that unfair contract terms include:

- *those that cause a significant imbalance in the rights and obligations of the parties under the contract,*
- *are not reasonably necessary to protect the legitimate interests of the party who gets an advantage from the term,*
- *and would cause financial or other harm to the other party if enforced<sup>36</sup>.*

Consumer Action has identified through our casework of CER products, that there is a significant power and information imbalance between CER providers and consumers. This is discussed in the consultation paper with regard to general licensing obligations existing for energy businesses<sup>37</sup>.

<sup>36</sup> ACCC, *Unfair contract terms* <https://www.accc.gov.au/business/selling-products-and-services/contracts#toc-unfair-contract-terms>

<sup>37</sup> DEECA, *Consumer Energy Resources (CER) Consumer Protections Review Directions Paper*, December 2024, p.18 <https://engage.vic.gov.au/project/CER-consumer-protections-review/timeline>

**Question 19.** Please provide any other comments about quotes, contracts and payment terms, and explain why you hold these views.

## Our findings

Consumer Action has provided assistance to countless Victorians who have faced issues with a product or service that has been sold unfairly, including cars, credit cards, 'junk insurance' and 'rubbish warranties'.

We support our clients to understand their rights to remedy, including through our *Demand a Refund* resource<sup>38</sup>. We provide some further insights drawn from our casework dealing with solar rooftop products. We have found a number of recurrent problems that bear consideration in a future regulatory framework for CER.

In our experience, we have found when dealing with a solar company and BNPL financier, there has been few (if any) cases where the consumer received compensation, refund or return of the solar panel product by the solar company. We have supported consumers to receive a waiver and/or cancellation of the BNPL finance, however in most cases, the solar panels have remained installed on the roof, without repair, refund or removal, even in cases where the panels have been installed incorrectly or not connected to the grid. This has raised many concerns and issues for consumers, and we highlight two common issues below.

### Property damage

Consumer Action lawyers have heard from consumers who reported damage to their roof due to the installation of solar panels, air conditioning units and other home-energy-upgrade systems requiring structural installation.

In these cases, consumers are able to make a claim at the Victorian Civil and Administrative Tribunal (VCAT) to seek a resolution regarding property damage as a result of faulty installation conducted by the CER provider. Our lawyers commonly report that it can take up to 12-24 months before a client's case would be heard at VCAT, while the process can be confusing, technically complex and inaccessible for many consumers.

### Barriers to a fair resolution for consumers

In one case example seen by Consumer Action, the BNPL company provided a waiver and refund of the payments made by the consumer, however stated that this agreement didn't cancel any agreement in place with the CER company, and further that the consumer would be required to organise an alternative payment method with the CER company. This example demonstrates the limitations of waivers provided by BNPL companies in CER sales, because they don't indemnify the consumer against loss from the CER provider.

'WE HAVE HAD SOME ISSUES WHERE WE HAVE MADE COMPLAINTS TO THE BNPL AND SOLAR COMPANY, AND WE'VE ONLY RECEIVED A RESPONSE FROM THE BNPL CANCELLING THE ARRANGEMENT BECAUSE THERE WAS NO RESPONSE FROM THE SOLAR COMPANY.'

Catherine Miller, Managing Lawyer, Consumer Action

'WHEN YOU'RE DEALING WITH THE RETAILER, IF CONSUMERS CAN'T RESOLVE THROUGH AGREEMENT THEY NEED TO APPLY TO VCAT. ARGUMENTS CAN BE LEGALLY COMPLEX, AND TECHNICAL UNDER ACL. THE CONSUMERS WE SPEAK TO WOULD HAVE DIFFICULTY REPRESENTING THEMSELVES IN THAT FORUM. VCAT DELAYS ARE VERY LONG, SOMETIMES UP TO TWO YEARS.'

Catherine Miller, Managing Lawyer, Consumer Action

<sup>38</sup> Consumer Action, *Demand a Refund* <https://demandarefund.consumeraction.org.au/about/>

In addition to retaining existing protections in the ACL regarding rewinding of contracts<sup>39</sup>, we wish to highlight the need for stronger compliance and enforcement regarding the handling of remedy and resolution for consumers by CER providers. Including CER activities within the ESC's jurisdiction would significantly strengthen the regulatory framework by ensuring strong monitoring of CER providers' compliance of consumer protections.

#### Reliable energy supply and supports for hardship and vulnerability

*Under the proposed scheme, CER providers could be restricted to disconnecting, disabling or removing customers' CER only under certain allowed circumstances. They could be expected to meet additional requirements should they become aware that a customer is experiencing payment difficulty or is affected by family violence or other vulnerability.*

**Question 24.** *What types of CER activities need specific protections to protect vulnerable customers?*

**Question 25.** *What types of supports should CER providers be required to offer to vulnerable customers?*

**Question 26.** *Do you think any particular supports should apply where payment occurs over a period of time?*

**Question 27.** *How do you think support could be shared between providers for customers, especially those who are experiencing vulnerability or payment difficulties?*

We support including requirements for all CER providers to meet particular provisions of service and support for consumers experiencing financial hardship or payment difficulties, and/or are experiencing vulnerability, including family violence. We provide the following examples of protections for customers experiencing vulnerability or hardship:

#### **Financial hardship or payment difficulty**

The Energy Retail Code of Practice (ERCoP) outlines specific provisions available to consumers who are experiencing payment difficulties, including payment pauses, reduced payment arrangements, accessing government concessions, rebates and grants, among other measures<sup>40</sup>. We support the inclusion of CER activities and products within the ERCoP, to streamline financial hardship protections, and minimise regulatory complexity.

#### **Prevention from disconnection of essential service**

Access to an essential service such as electricity should be protected. We refer to our submission to the National Energy Customer Framework (NECF)

'THE LADY ON THE PHONE SAID "YOU OWE US \$12,000". IT COULD HAVE BROUGHT ME TO THE FLOOR. I THOUGHT I'M NEVER GOING TO BE ABLE TO PAY THIS BACK. I TRIED TO MAKE PAYMENTS, BUT I REALISED I JUST CAN'T DO IT. IT WAS ABOUT \$1,000 THAT I JUST KEPT ADDING TO MY CREDIT CARD. THEN MY ENERGY COMPANY CALLED ME SAYING I OWED THEM \$1,000 WHICH I HAD TO ADD TO MY CREDIT CARD TOO.'

'Bridget' (name changed)

<sup>39</sup> ACL s 267

<sup>40</sup> Essential Services Commission, *Energy Retail Code of Practice* part 6, <https://www.esc.vic.gov.au/electricity-and-gas/codes-guidelines-and-policies/energy-retail-code-practice>

review<sup>41</sup>, in which we provided a proposal of a 'constantly connected customer class'<sup>42</sup>. This category of consumers would be protected from disconnection, due to being in 'energy poverty' or experiencing vulnerability.

Generally, we support strengthening the protection of access to electricity as an essential service, by banning disconnection for non-payment, for vulnerable consumers. Similarly, we consider that CER providers should be prohibited from disconnecting, disabling or removing a customer's CER where it will interfere with that person's essential supply of electricity.

### Family violence protections

In addition to the above protections, we support the expansion of the ERCoP to include CER activities and providers, to ensure that assistance and provisions with regard to family violence are available to consumers with CER. We note that the ESC is currently conducting the *Safety By Design Partnership* best practice review of family violence provisions included in essential services<sup>43</sup>. We support the inclusion of CER activities within the scope of this review and including CER providers to meet family violence and consumer vulnerability requirements.

**RECOMMENDATION 14.** Expand the Energy Retail Code of Practice to include CER activities

**RECOMMENDATION 15.** Ban disconnection of CER for non-payment, for consumers experiencing vulnerability

**RECOMMENDATION 16.** Include CER activities within the scope of the *Safety by Design partnership* and extend obligations for CER providers with regard to consumers experiencing family violence

### Clear responsibility for issues

**Question 29.** *Where multiple parties are involved, how do you think their responsibilities should be made clear to the customer?*

As outlined above in Part 1, in response to questions 16-18, we support the establishment of standardised terms and conditions that are accessible and required to be provided to potential CER customers. This information should be in plain and simple language and include information outlining the responsibilities of CER providers. We submit that this should include information about the CER provider's responsibilities and liabilities in the case of

- third parties acting on their behalf in the sale, financing, installation and maintenance of the product or service.
- The provision of credit including BNPL / low-cost credit contracts, and all related required information as prescribed in the NCC.

<sup>41</sup> Australian Energy Regulator, *Review of payment difficulty protections in the NECF issues paper*, May 2024 <https://www.aer.gov.au/system/files/2024-05/AER%20-%20Review%20of%20payment%20difficulty%20protections%20in%20the%20NECF%20-%20issues%20paper%20-%20May%202024.pdf>

<sup>42</sup> Consumer Action, *Affording Energy: Submission to the AER NECF review* July, 2024, p.12, [https://consumeraction.org.au/wp-content/uploads/2024/06/2024\\_0628-CALC-AER-NECF-Payment-Difficulty-Review-Submission.pdf](https://consumeraction.org.au/wp-content/uploads/2024/06/2024_0628-CALC-AER-NECF-Payment-Difficulty-Review-Submission.pdf)

<sup>43</sup> Essential Services Commission, *Safety By Design Partnership to support energy and water consumers experiencing family violence*, May 2024, <https://www.esc.vic.gov.au/media-centre/safety-design-partnership-support-energy-and-water-consumers-experiencing-family-violence>



**Question 30.** How do you think responsibility should be apportioned between different parties for issues?

### Goods or services

The ACL outlines provisions with regard to suppliers of goods and services, including the provision of information in connection with the supply or possible supply of goods or services or activities, including protections against false or misleading information or advertising, including misrepresentations of the price, quality or purpose of a product<sup>44</sup>; and protections regarding consumer guarantees relating to the supply, quality, fitness and purpose of goods and services<sup>45</sup>.

It follows that CER providers are responsible for the provision of goods and services to consumers, as outlined in the ACL, including installation and ensuring all relevant paperwork is accurate and submitted in relation to the CER product or service.

### Credit provision

The NCC outlines provisions regarding the apportionment of liability between credit providers and merchants regarding financial arrangements or credit contracts provided to consumers<sup>46</sup>. In most circumstances, the credit provider and supplier (that is for example, a CER provider) are jointly and severally liable. There are some exceptions to this, for example if the credit provider can establish certain conditions are met, including

*...after becoming a linked credit provider of the supplier, but before the tied loan contract was entered into, the linked credit provider had not had cause to suspect that the debtor might, if the contract was entered into, be entitled to recover an amount of loss or damage suffered as a result of misrepresentation, breach of contract or failure of consideration in relation to the contract<sup>47</sup>*

Under the new *Responsible Buy Now Pay Later reforms Treasury Laws Amendment Bill 2024*, (the **BNPL reforms**) an arrangement can exist between a merchant (for example, a CER provider) and a BNPL provider for the supply of goods or services to a consumer, where the BNPL provider directly or indirectly pays the merchant some or all of the price for the supply of that goods or service<sup>48</sup>.

Merchants may elect to be a licensee of the credit provider, during the sale of goods or services to consumers. The BNPL reforms retain the existing derogation of responsibilities between licensees and credit providers in the NCC, which include the obligation for the licensee to conduct an unsuitability assessment with the consumer, to assess if the low-cost credit contract (or BNPL product) is suitable for them<sup>49</sup>. The credit provider is still responsible for ensuring that this assessment meets responsible lending obligations.

In this sense, we submit that in general, the responsibility regarding the provision of credit remains jointly and severally with both the credit provider, and the licensee (that is the CER provider).

We reserve providing a specific response to particular apportionment of responsibilities for the following reasons. We note that due to the complexity of cases that may arise; the particulars of each matter resulting in a dispute; and the case-by-case nature of these matters, it remains crucial that an independent body is able to assess the dispute and issues fairly, and with regard to all relevant laws, licensing requirements and industry codes. For these

<sup>44</sup> ACL ss29-38

<sup>45</sup> ACL ss51-62

<sup>46</sup> NCC Div 2, ss.127-133

<sup>47</sup> NCC s 129 (2) (b) (iii)

<sup>48</sup> Parliament of Australia, *Treasury Laws Amendment Bill (Responsible Buy Now Pay Later and Other Measures) Bill 2024*, Schedule 2, Part 1A, 13D to be added to the *National Consumer Credit Protections Act 2010*

[https://parlinfo.aph.gov.au/parllnfo/search/display/display.w3p;db=LEGISLATION;id=legislation%2Fbills%2F7199\\_aspassed%2F0002;query=ld%3A%22legislation%2Fbills%2F7199\\_aspassed%2F0000%22](https://parlinfo.aph.gov.au/parllnfo/search/display/display.w3p;db=LEGISLATION;id=legislation%2Fbills%2F7199_aspassed%2F0002;query=ld%3A%22legislation%2Fbills%2F7199_aspassed%2F0000%22)

<sup>49</sup> *ibid.* Division 2, ss. 133BXB – 133BXC

reasons, we strongly support the holistic and comprehensive inclusion of CER activities within EWOV's jurisdiction. We hold the view that expanding EWOV's jurisdiction to CER activities would also uphold the principle of ensuring that the regulatory framework is consumer-centred in its approach.

**Question 31.** *How prescriptive or extensive do you think requirements for internal processes for managing claims and complaints should be?*

We support the approach outlined in the consultation paper, in including an overarching principles-based approach, in combination with prescriptive measures where required. We support the outcome-based measure that CER providers should ensure that consumers are provided an honest, efficient and fair internal complaint process.

Regarding prescriptive measures, we support the development of a standard schedule of information that CER providers must provide to consumers, that includes specific information regarding responsibilities of CER providers as discussed above. This would include standardised information relating to how CER providers manage claims and complaints and it can be updated as needed.

We recommend referring to existing requirements for essential service providers (such as traditional energy services) in the development of complaint process obligations for CER providers, which would be regulated by the ESC. One requirement would be that CER providers must be members of the EWOV, which we discuss further below in Part 3.

**RECOMMENDATION 17.** To refer to existing obligations for essential service providers (such as electricity and gas) in the development of requirements for complaint processes.

**Question 32.** *Please provide any other comments about responsibility for issues and explain why you hold these views.*

Based on our casework of the last ten years in new energy products, we expect that the predominance of third-party finance (predominantly in BNPL products) will continue to be a common theme in the sale of CER products and services. For this reason, we recommend high priority be given to CER activities across relevant regulatory bodies including ASIC, ACCC, AER nationally, and for continued investigation and monitoring of CER activities to be prioritised by state-based regulators, to ensure that the risks identified are prevented, as the regulatory framework comes into place.

**RECOMMENDATION 18.** For continued investigation and monitoring of CER activities to be prioritised by state-based regulators, and shared across national regulatory bodies including ACCC, ASIC and AER

### Part 3: Customer access to free and independent dispute resolution

**Question 33.** *As an established specialist EDR body with existing policies, processes and expertise, DEECA considers that the Energy and Water Ombudsman (Victoria) (EWOV) would be the most efficient and effective EDR body for CER matters. Do you agree?*

We strongly agree with the proposal identified in the Directions Paper for the EWOV to be the EDR body for CER matters and provide three key reasons.

#### Access to a simple, fair and accessible Dispute Resolution scheme for consumers

Importantly, the integration of new and traditional energy providers within the one ombudsman scheme will benefit consumers being able to access, participate and understand their entitlements to protections in engaging with new and existing energy products.

As identified in this submission, we have found through our casework that there have been significant barriers to consumers in accessing complaints processes regarding CER products and services. In many cases, the only avenue for access to a resolution is to take a matter to court, which can be a cost-prohibitive, complex and protracted process for many consumers contacting our services.

A 'one-stop-shop' dispute resolution scheme through EWOV that governs all elements of new and existing energy products provides a holistic, clear and straightforward process for consumers to engage in external dispute resolution. This would enable a whole picture dispute resolution for consumers who have, for example, received higher energy bills from their traditional energy provider due to issues with new energy products; or vice versa. In cases where the new energy and traditional energy product is being provided by the same provider, this scheme would enable consumers to engage in dispute resolution holistically with the provider.

We consider that it would be efficient and effective for an Ombudsman for CER activities (in this case, EWOV) to have a whole-picture view of the consumer energy sector. As CER activities are intrinsically linked with the existing provision and supply of electricity, it follows that the EWOV should hold jurisdiction over the CER environment, particularly as it continues to merge with existing energy services.

#### Promotes efficiency in the CER environment

Secondly, we support the rationale provided in the Directions Paper that the EWOV would be the most efficient EDR body for CER matters, as compared to establishing a new ombudsman body. In addition to the above reasons that it would provide consumers, industry and regulators an effective EDR scheme, we submit that it would be the most cost-efficient and expedient option from the proposals discussed in the Directions Paper.

**'AS AN OMBUDSMAN SERVICE, EWOV IS MUCH MORE CONSUMER FRIENDLY AND MUCH MORE ACCESSIBLE FOR PEOPLE TO RAISE THEIR DISPUTE. IF THERE ARE ISSUES WHERE CONSUMERS ARE NOT GETTING THE REBATES, THE BNPL COMPANY AND THE SOLAR RETAILER WOULD BE IN THE SAME EXTERNAL DISPUTE FORUM. WHERE THE COMPANY ARRANGEMENT IS UNCLEAR FOR THE CONSUMER, IT CAN BE SORTED OUT BY EWOV, WHO WOULD BE FAMILIAR WITH THOSE ARRANGEMENTS.'**

Catherine Miller, Managing Lawyer, Consumer Action

## Principles-based Ombudsman scheme

Lastly, we highlight that the benchmarks required of an Ombudsman outlined in the *Benchmarks for Industry-based customer dispute resolution* complement the proposed outcomes-based CER regulatory framework outlined in the Directions Paper, discussed in Part 2 of this submission. These benchmarks are accessibility, independence, fairness, accountability, efficiency and effectiveness<sup>50</sup>, and they are supported by underlying principles undertaken by each Ombudsman.

**Question 34.** *Membership categories for CER providers could be similar to EWOV's categories for embedded networks, with membership fees reflecting a business' number of customers. What do you see as the key considerations for effectively incorporating CER providers as EWOV members?*

We support the proposed arrangement to set membership fees based on the business' number of customers, or their annual turnover. The key consideration we raise is that the regulatory framework should support innovation and competition in the CER market, to the benefit of consumers.

Scaling membership fees by market share assists smaller CER providers to compete in the market and prevent monopolisation of the industry. This should in turn promote consumer choice, provided that the regulatory framework ensures strong standardised conduct, for consumers to have balanced information and confidence in the industry.

**Question 35.** *Which types of CER activities do you think should be covered by external dispute resolution (EDR)?*

**Question 36.** *Please provide any other comments about EDR and explain why you hold these views.*

We support the inclusion of all CER activities within the EDR framework. As CER rapidly evolves, ensuring consumers can access a simple and accessible dispute resolution scheme remains crucial. Having one EDR scheme for CER activities will also support a better understanding of the industry through monitoring complaints. This would provide regulatory oversight of new and emerging products, and areas of CER activities that may have gaps in best practise for consumers.

**RECOMMENDATION 19.** For the EWOV to be the external dispute resolution Ombudsman for CER matters

**RECOMMENDATION 20.** Include an obligation in the regulatory framework for CER providers to be members of the EWOV

**RECOMMENDATION 21.** For industry membership fees to the EWOV to be tied to the CER providers' annual turnover, or number of customers

**RECOMMENDATION 22.** Include all CER activities within EWOV's external dispute resolution scheme

<sup>50</sup> Commonwealth of Australia, *Benchmarks for Industry-based Customer Dispute Resolution*, 2015 [https://treasury.gov.au/sites/default/files/2019-03/benchmarks\\_ind\\_cust\\_dispute\\_reso.pdf](https://treasury.gov.au/sites/default/files/2019-03/benchmarks_ind_cust_dispute_reso.pdf)

## APPENDIX A - SUMMARY OF RECOMMENDATIONS

**RECOMMENDATION 1.** Adopt the preferred approach of a licensing scheme for CER providers that empowers the ESC to regulate all CER providers, and requires all CER providers to hold a relevant license

**RECOMMENDATION 2.** Do not include any regulatory exemptions or exceptions for CER providers in the framework.

**RECOMMENDATION 3.** Extend the obligations under the Solar Homes program including those contained within the Notice to Market 2024-25 to all CER activities and products, with amendments to reflect these activities.

**RECOMMENDATION 4.** Expand the existing VEU directory administered by the ESC to all CER providers, or establish a publicly accessible, searchable license-directory for all CER providers, including up to date information on the status of their license and historical license removal or deregistration information.

**RECOMMENDATION 5.** Include all CER activities in the regulatory framework, with specific licensing requirements relevant to the particular technology, product or service.

**RECOMMENDATION 6.** DEECA and regulatory bodies to conduct regular market studies survey the existing and emerging market, in order to assess CER activities that need to be prioritised in regards to compliance and enforcement

**RECOMMENDATION 7.** For the ESC and DEECA to consider permanently deregistering CER companies and enacting long-term bans on Directors whose companies are found to have engaged in unfair sales practices, or serious breaches of license obligations

**RECOMMENDATION 8.** DEECA and ESC to investigate lead-generation marketing practices of CER providers with the view to extending the ban to these sales practices.

**RECOMMENDATION 9.** Adopt a standard form sales contract for all CER providers, to be drafted and administered by the ESC

**RECOMMENDATION 10.** Include a standardised terms and conditions schedule for all CER providers that includes explicit responsibilities for CER providers and third parties acting on their behalf

### Financial arrangements

**RECOMMENDATION 11.** Include a requirement for unsuitability assessment to be completed and documented as part of the purchase of CER products and include this requirement within all CER product terms and conditions.

**RECOMMENDATION 12.** DCCEEW to invest additional funding to deliver no-interest Government subsidies for low-income households for household energy upgrades.

**RECOMMENDATION 13.** Consumers must retain the protections available in consumer law to receive an appropriate remedy, including the right to withdraw from a contract related to CER activities, products or services

**RECOMMENDATION 14.** Expand the Energy Retail Code of Practice to include CER activities

**RECOMMENDATION 15.** Ban disconnection of CER for non-payment, for consumers experiencing vulnerability

**RECOMMENDATION 16.** Include CER activities within the scope of the *Safety by Design partnership* and extend obligations for CER providers with regard to consumers experiencing family violence

**RECOMMENDATION 17.** To refer to existing obligations for essential service providers (such as electricity and gas) in the development of requirements for complaint processes.

**RECOMMENDATION 18.** For continued investigation and monitoring of CER activities to be prioritised by state-based regulators, and shared across national regulatory bodies including ACCC, ASIC and AER

**RECOMMENDATION 19.** For the EWOV to be the external dispute resolution Ombudsman for CER matters

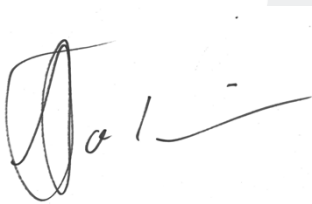
**RECOMMENDATION 20.** Include an obligation in the regulatory framework for CER providers to be members of the EWOV

**RECOMMENDATION 21.** For industry membership fees to the EWOV to be tied to the CER providers' annual turnover, or number of customers

**RECOMMENDATION 22.** Include all CER activities within EWOVs external dispute resolution scheme

Please contact Senior Policy Officer **Eirene Tsolidis Noyce** at **Consumer Action Law Centre** on 03 9670 5088 or at [eirene@consumeraction.org.au](mailto:eirene@consumeraction.org.au) if you have any questions about this submission.

Yours Sincerely,



**Stephanie Tonkin** | Chief Executive Officer  
**CONSUMER ACTION LAW CENTRE**