SOLAR naturally
"Working Towards A Cleaner Future"

Australian Head Office
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www.solarnaturally.com.au

EC: 010060
ABN. 86 150 373 390

Restriction of Publication of Part Claimed

2nd September 2019

Australian Competition and Consumer Commission
c/o Theo Kelly
23 Marcus Clarke Street
Canberra ACT 2601

Sent electronically to adjudication@accc.gov.au

Application for Authorisation AA1000439 ("Application") – New Energy Tech Consumer Code ("Consumer Code")

We refer to the draft determination for the Application be granted and the proposed Consumer Code be authorised.

[redacted]

We strongly believe there are aspects to the proposed Consumer Code that, if authorised, will likely result in substantial public detriment to the Australian community and hamper the overall sustainability of the solar industry. The increased adoption of renewable energy sources including solar energy is generally regarded as a net public benefit to the Australian community, and consequently any harm to the solar industry resulting in reduced adoption rates of solar power by Australian consumers will be a net public detriment to the community. Thus any proper consideration of any net public benefit from the adoption of the proposed Consumer Code must include a consideration of any harm caused to the solar industry and the net public detriment that could follow.

We are very concerned about any steps or measures that compel parties to become a signatory to the proposed Consumer Code, and the restriction in effect excluding the use of By Now Pay Later arrangements. We are also concerned about the requirement in the proposed Consumer Code that written quotations be provided, and the possibility that the Clean Energy Council (**CEC**) may be appointed the administrator of the Consumer Code.

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Point 1 - Consumer Code must remain effectively voluntary

In our view, as a minimum, the proposed Consumer Code as a supposedly voluntary and non-mandatory code must not be allowed to place any restrictions on those installers or solar vendors who do not sign onto the Consumer Code that prevent them from operating freely in the marketplace.

In particular, there must not be any link between being a signatory to the proposed Consumer Code and the eligibility requirements to obtain Small-scale Technology Certificates (**STCs**) under the Small-scale Renewable Energy Scheme. We welcome the clarification received from the ACCC last week that paragraph 2.10 of the draft determination of the Application was in error when it stated solar system installers had to be signed up to the Solar Code in order to be eligible for STCs. There is no requirement they are required to be a signatory to the solar code or consumer code in order to be eligible to create STCs. Such a requirement in relation to the current Solar Code or the proposed Consumer Code would essentially make signing up to those Codes mandatory, as the competitive disadvantage to non-signatories who would not be eligible for STCs would be too great (as STCs can account for up to 35% of the price of a solar system). Any aspects of the proposed Consumer Code that force it on the solar industry, other than any natural competitive pressures that might flow from any consumers who prefer doing business with signatories over non-signatories, are in our view anti-competitive against the legislation in the *Competition and Consumer Act 2010*. They would have a distortive and catastrophic financial impact on the market and those businesses that don't become signatories to the proposed Consumer Code, directly contributing to a decrease in business efficiencies and an increase in costs for training and labour, and result in a net public detriment to the Australian community.

Point 2 - Prohibition of Buy Now Pay Later ("BNPL") arrangements is not justified

We believe there will be substantial public detriment if the use of BNPL arrangements are excluded. The explosive growth in the use of BNPL arrangements by Australian consumers, and in the purchase of solar systems in particular, shows BNPL arrangements are well regarded by consumers and meet their needs.

BNPL arrangements assist consumers in the purchase of solar power systems and access to the net public benefits that follow, including reduced energy consumption and savings to household budgets over a long period of time. Removing access to BNPL arrangements in the

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solar industry, in the absence of hard evidence that the BNPL industry has systemic issues that are resulting in a net public detriment to the community, will unwarrantedly result in many consumers being denied relatively low cost finance arrangements which are convenient and suitable for their needs.

We submit the ACCC should carefully consider the impact that prohibiting BNPL arrangements will have. We note:

(a) BNPL arrangements are a valid and legal method of financing being used by millions of Australian consumers in the purchase of a diverse range of products. We are not aware of any reasons why the solar industry in particular should be denied access to BNPL arrangements when other industries are not subject to such restrictions.

[redacted]

(d) A large proportion of our customers would likely not be able to afford the outright purchase of a solar power system in an upfront lumpsum payment. The low-cost BNPL arrangements gives them access to the private benefits of having a solar power system (and the Australian community the public benefits) that they wouldn't otherwise be able to enjoy.

(e) BNPL arrangements provide us benefits as well. They help us to manage our cashflow by ensuring we are paid as soon as the installation is completed. Without this, we along with many other solar vendors would have real challenges in operating in-line with prudent business cashflow requirements, and we believe the exclusion of BNPL arrangements could cause many vendors to trade insolvently.

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[redacted]

(g) In light of the huge percentage of solar systems being purchased subject to a BNPL arrangement, we note there would most certainly be massive disruption to the solar industry if the use of the BNPL arrangements were prohibited. We question why such dislocation to the solar industry is necessary in the absence of empirical evidence of actual harm to consumers from the use of BNPL arrangements. The draft determination made references to the benefits consumers may enjoy from *National Consumer Credit Protection Act 2009* (**NCCPA**)-regulated financial arrangements, but provided no evidence that such benefits answered actual issues of detriment currently being suffered by consumers from the use of BNPL arrangements. It appears the restriction in the proposed Consumer Code (in relation to BNPL arrangements) is purely a theoretical exercise, where the theoretical benefits of increased credit regulation have simply been accepted as desirable and necessary by the ACCC, without any consideration of either the resultant harm and detriment that would be suffered by the solar industry from the exclusion of BNPL arrangements (and likely by the Australian public at large from the consequentially lower rate of adoption of solar power in the community), or that there are such problems in the first place from consumers' use of BNPL arrangements in the solar industry that warrant the use of those arrangements being banned altogether.

(h) BNPL arrangements are regarded a "*credit facility*" and thus a "*financial product*" under the *Australian Securities and Investments Commission Act 2001*, and consequently are subject to ASIC's purview in relation to misleading, deceptive or unconscionable conduct. BNPL arrangements are also subject to ASIC's new product intervention power in part 7.9A of the *Corporations Act 2001* as an "*ASIC Act financial product*".

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(i) BNPL arrangements have already received specific attention by ASIC, which has investigated the use of BNPL arrangements by Australian consumers and whether there were any negative aspects to that use, and published a report on its findings. We especially note in that report ASIC indicated it will continue to monitor the use of BNPL arrangements by Australian consumers, and has put the BNPL industry on notice that if necessary will use its product intervention power to address any issues identified (including by mandating BNPL arrangements be subject to the NCCPA). Further, ASIC in the process of its investigation already brought about voluntary changes in practice by BNPL providers that addressed a number of issues. ASIC forshadowing to the BNPL industry its willingness to use its powers to address any issues if necessary seriously weakens any argument that any claimed harm from the use of BNPL arrangements in the solar industry can only be solved by their outright ban altogether. Clearly BNPL arrangements are being subject to oversight by ASIC, and the ACCC should take that into account in weighing up the necessity of prohibiting the use of BNPL arrangements under the proposed Consumer Code.

(j) It is not reasonable and is not proportionate to any perceived consumer detriment to remove access to financial arrangements which underpin up to 77% of the solar industry. Rather than decimating the current solar industry, a more proportionate and reasonable response to any perceived consumer detriment from the use of BNPL arrangements would be to first allow the ASIC overview to run its course, and only exclude their use if it is established there is actual consumer detriment which would be avoided if BNPL arrangements were subject to NCCPA requirements, and ASIC nevertheless declines to use its product intervention power to require that. The ACCC must test actual public benefits from the exclusion of BNPL arrangements against the expected negative effects on the solar industry and Australian public at large. In the absence of empirical evidence that there is an actual issue with the use of BNPL arrangements in the solar industry that warrants their outright exclusion, their effective exclusion in the proposed Consumer Code is a premature, non-proportional and non-justified measure that will result in severe harm to the solar industry and a net public detriment to the community at large.

(k) While there are other NCCPA-regulated credit products available to consumers to finance the purchase of solar power systems, that does not in itself answer any complaints of detriment to the solar industry from the exclusion of BNPL arrangements. Those other credit products likely existed before the use of BNPL arrangements in the solar industry became as systemic as they have. BNPL arrangements would not have become as popular as they have with Australian consumers in general and in the solar industry in particular if they were not answering a need that the existing credit products were not providing.

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The ACCC should not authorise the Application and the proposed Consumer Code in its current form with the effective restriction against the use of BNPL arrangements unless the ACCC is reasonably certain the resultant harm to the solar industry is a worthwhile cost and proportional from the expected benefits of that restriction.

Point 3 - Requirement for written quotation

We question the necessity and benefits in any requirement to provide a written quotation to consumers on top of the normal written contract which would provide a much longer process. Such a requirement when a written contract will in any event be necessary is an inefficient and time consuming process with little added benefit to the consumer, which will likely add significant time and process costs to our business, and will result in a more expensive products when these costs are inevitably passed on to the consumer. We question the benefits of the consumer being inundated with information and unnecessary paperwork, when instead of only considering the written contract would also need to consider the terms of a written quote.

[redacted]

Point 4 - Administration of proposed Consumer Code

We note the previous submissions from the solar industry raising concerns about any involvement of the CEC as the administrator of the Consumer Code. We share those concerns. The CEC has proved to be an ineffectual and weak administrator of the current Solar Code, despite drawing large fees from the solar industry funding its operations, and we have no confidence that the CEC would do any better a job in administering the proposed Consumer Code. If the CEC is appointed the administrator of the Consumer Code, we believe any hoped-for increase in standards across the solar industry from the adoption of the Consumer Code will fail to eventuate as the Consumer Code will only be as strong as its enforcement, and the CEC has proven time and time again to be particularly weak in that regard. We strongly urge the ACCC to not appoint the CEC as the administrator of the Consumer Code.

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In Conclusion, a combined result of the above points will have significant public detriment and furthermore by reducing the uptake of solar power will substantially affect the ability of Australia to achieve its requirement in reducing emissions by 26-28% on 2005 levels by 2030 bringing on environmental impacts through climate change, global warming and increased electricity bills for consumers. It also imposes a boycott on solar vendors who do not sign on to the Consumer Code. Resulting in a significant restriction on how we can operate in a free market. I urge the ACCC to re-evaluate the draft along these lines in order to avoid detrimental consequences.

Please contact us if you require any clarification with the above. Thank you for considering this submission.

Kind regards,

Heuson Bak

Director