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**From:** Wang, David  
**Sent:** Friday, 5 July 2019 5:30 PM  
**To:** MARD Admin  
**Subject:** HPE CM: AA1000439 - New Energy Tech - PR entry [SEC=UNCLASSIFIED]

**Record Number:** D2019/00101022  
**Security Classification:** UNCLASSIFIED

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**From:** Gerard Brody <[gerard@consumeraction.org.au](mailto:gerard@consumeraction.org.au)>  
**Sent:** Friday, 21 June 2019 6:58 AM  
**To:** Mindy Lim <[MLim@cleanenergycouncil.org.au](mailto:MLim@cleanenergycouncil.org.au)>;

**Subject:** RE: Request for further information (ACCC)

Hi Mindy

In response to the exclusion of BNPL providers, the argument should be that this exclusion is pro-competitive, does not impact competition, and/or any impact on competition is outweighed by a public benefit in terms of consumer protection:

- First, there are hundreds of licensed lenders, so there is still much consumer choice when it comes to choosing credit products and providers to purchase solar and like products. In this way, there is still significant competition and choice of credit providers that benefit consumers. I also understand that some of the BNPL providers are changing their product and business model to become licensed credit providers, and therefore will not be disadvantaged by the requirement in the New Energy Tech Consumer Code;
- Second, the availability of BNPL providers has an anti-competitive effect impacting licensed lenders, given licensed lenders must satisfy significant regulated standards while BNPL does not. These standards include requirements to conduct themselves efficiently, honestly and fairly; requirements to lend responsibly; requirements to offer assistance in instances of financial hardship; requirement to be part of an external dispute resolution scheme. The fact that BNPL providers do not have to comply with these requirements creates an uneven playing field impacting fair competition;
- Third, the credit laws have the effect that any vendor of goods (such as a solar retailer) that engages in unsolicited sales and which is offering credit to sell those goods is required to be licensed. This is the effect of regulation 23(4) of the National Consumer Credit Protection Regulations which says that there is an exclusion from the general rule that vendors that introduce credit are not required to be licensed, when that vendor supplies goods as a result of an unsolicited contact. This requirement has a pro-competitive impact as it enables consumers to be protected in the context of an unsolicited sale, by retaining their freedom to choose among a variety of providers, rather than be provided the limited choice of one provider that is common in the context of an unsolicited sale. The clause in the New Energy Tech Consumer Code which prevents signatories from using BNPL providers similarly supports competition and choice for consumers.
- Fourth, it should be noted that recommendation 1.7 of the Royal Commission into Misconduct in the Banking, Superannuation and Finance Industry recommended the removal of the point-of-sale recommendation (regulation 23 above which generally states that vendors of goods which offer credit do not require the licence). The Federal Government has supported this recommendation. Should this

amendment proceed, then vendors (such as solar retailers) that offer credit will either have to be licensed, or change their business model such as that they are only referring to a licensed credit provider and are playing no active part in the application for credit. This recommendation recognised the significant consumer harm that occurs because of the misaligned incentives in these sorts of transactions – in particular, the vendor has a strong incentive to portray the loan applicant’s financial position in a way that warrants approval and facilitates the sale. The case studies considered by the Royal Commission (and our experience at Consumer Action across the market, including car yards, in-store finance, and solar retail BNPL) shows that vendors do not always record the true position of the applicant. This demonstrates the significant public benefit associated with the proposed exclusion from BNPL providers from the New Energy Tech Consumer Code.

Finally, separately from the impact on competition, I would think that the new energy tech industry would benefit significantly from removing the use of unregulated BNPL providers from the marketplace in terms of improving reputation of the industry at a time of transition and growth. While individual retailers may want access to the valuable distribution channel that BNPL operates (including facilitating door-to-door sales) because it provides quick revenue, the industry overall suffers as consumer complaints and stories of high pressure sales & unaffordable finance will continue. More ethical retailers that do not adopt these sales practices will also suffer while these practices remain in the market.

I hope this is helpful to the working group and further engagement with the ACCC.

Gerard

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From: Mindy Lim <[MLim@cleanenergycouncil.org.au](mailto:MLim@cleanenergycouncil.org.au)>

Sent: Tuesday, 18 June 2019 11:14 AM

To: [REDACTED] Gerard  
Brody <[gerard@consumeraction.org.au](mailto:gerard@consumeraction.org.au)> [REDACTED]  
[REDACTED]

Subject: Request for further information (ACCC)

Dear Working Group members,

I refer to the Application for Authorisation by the Applicants (collectively- the CEC, SEC, AEC and ECA) lodged with the ACCC on 30 April 2019. Full copies of the correspondence and the submissions can be viewed online at the ACCC [page](#).

The ACCC has requested further clarification regarding the stewardship and administrator of the proposed NET CC, including a shortlist of likely candidates for the position of steward and administrator if it is available, along with their credentials. Further comment on the exclusion of buy now pay later (BNPL) arrangements has also been requested by the ACCC.

If you'd like to make a submission on either of the two issues raised by the ACCC, could you please send to me by **cob 27 June 2019** as I am happy to collate, and this will be sent to the ACCC on behalf of the Working Group.

In the interests of disclosure, the CEC intends to provide further details on complaints received by the CEC's Code Administrator as requested by the ACCC.

Thank you.

Regards  
Mindy



**MINDY LIM, CODE OF CONDUCT MANAGER**

Level 15, 222 Exhibition Street, Melbourne, VIC 3000

T +61 03 9929 4153

[mlim@cleanenergycouncil.org.au](mailto:mlim@cleanenergycouncil.org.au)

[www.cleanenergycouncil.org.au](http://www.cleanenergycouncil.org.au)

[www.solaraccreditation.com.au](http://www.solaraccreditation.com.au)



A promotional banner for the Australian Clean Energy Summit 2019. The banner has a dark blue background with white and orange text. On the left, it says 'AUSTRALIAN CLEAN ENERGY SUMMIT 2019' with a small logo. The main text reads 'AUSTRALIAN CLEAN ENERGY SUMMIT 2019' in large white letters, followed by '30 - 31 JULY / ICC SYDNEY' in orange. To the right, there is a circular orange button that says 'BOOK NOW'. Further right, it says 'MAJOR SPONSOR' above the 'GOLDWIND' logo (a blue winged 'G') and the 'CLEAN ENERGY COUNCIL' logo (the orange 'C' logo).

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