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Australian Competition and Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

By email: unsolicitedsellingreview@accc.gov.au

Joint Energy and Water Ombudsman Submission: Unsolicited sales and lead generation

Thank you for the opportunity to comment on this consultation paper.

The comments contained in this submission reflect the feedback of the Energy and Water Ombudsman Queensland (EWOQ), Energy & Water Ombudsman South Australia (EWOSA), Energy and Water Ombudsman Victoria (EWOV) and Energy & Water Ombudsman New South Wales (EWON). We are the industry-based external dispute resolution schemes for the energy and water industries in our respective states.

Our responses to the consultation questions align with issues customers raise, or with each respective organisation's operations as they relate to the review.

If you require any further information regarding this letter, please contact Dr Rory Campbell, Manager Policy & Systemic Issues (EWON) at roryc@ewon.com.au, Ms Felicity Fast, Head of Public Affairs (EWOV) at felicity.fast@ewov.com.au, Mr Jeremy Inglis, Manager Policy and Research (EWOQ) at Jeremy.Inglis@ewoq.com.au or Mr Antony Clarke, Policy and Governance Manager (EWOSA) at antony.clarke@ewosa.com.au.

Yours sincerely



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Submission

The Energy and Water Ombudsman (EWOs) of NSW, South Australia, Victoria and Queensland strongly support the call from the Consumer Action Law Centre (CALC) for an outright ban on unsolicited selling, including door-to-door and telesales, and better regulation of lead generation.

Complaints from customers about the sales of energy products and services highlight the significant consumer detriment that can arise from poor industry practices. These complaints often involve misleading claims, high-pressure sales tactics and a lack of transparency. Recently, we are observing these practices in the context of sales of emerging energy technologies and products associated with the energy transition. As Australia moves toward its net-zero goals, building and maintaining public confidence and trust in the energy sector is critical. If left unchecked, poor sales and marketing practices will undermine consumer willingness to invest in the products and services that are essential to achieving a sustainable energy future.

Stronger safeguards, clearer standards and greater accountability for this market will help ensure that consumers are protected and that the transition to net-zero is fair and accessible.

Door to door marketing and telemarketing of energy products and services

EWOs receive complaints about marketing and sales of energy products and services through door-to-door and telesales, as well as other marketing channels including online promotions, utility connection services, energy brokers and switching companies offering bundled products. All of these channels should be included by the ACCC in the scope of this review.

Banning unsolicited door to door marketing and telesales, including by third party marketing entities, for energy products and services will stop a significant level of consumer detriment created by misleading information and pressure sales. It will also better protect energy consumers and help energy providers and solar/renewable businesses avoid high marketing complaint volumes.

Customers complain to us about diverse issues including:

- misleading or confusing information
- pressure tactics and being made to feel unsafe or uncomfortable
- unreasonably persistent contact
- energy accounts being established without explicit, informed consent from the customer
- marketing to non-account holders
- marketing to people who are vulnerable for reasons including age, health, language barriers and literacy
- third party marketers passing on incorrect customer details to energy providers
- third party marketers failing to advise energy providers that a customer is entitled to a concession rebate.

Until the early 2010s, we regularly received a high volume of complaints driven by widespread issues in door to door and telesales about the marketing of energy contracts ie switching. It wasn't until EWOs consistently highlighted the systemic issues and consumer detriment associated with these sales channels that we began to see strong regulatory focus on addressing the detriment arising from telesales and door to door sales.

Throughout 2012 and 2013, the Australian Competition and Consumer Commission (ACCC) brought multiple Federal Court proceedings against a number of energy retailers and marketing/sales companies for inappropriate and illegal door to door marketing conduct.

Origin Energy, AGL and EnergyAustralia subsequently withdrew from door-to-door marketing to residential customers. This had a significant impact on reducing consumer detriment and consumer complaints. For example, in the 2013/2014 financial year following the withdrawal, complaints to EWON about marketing issues decreased by 50% compared to the previous financial year. The other EWOs also reported large falls in these complaints.

We have seen an overall downward trend in our marketing complaints in the decade since then, but we continue to receive complaints about all marketing channels. Complaints indicate that some mid-size and smaller retailers still use door-to-door marketing, and retailers of all sizes use telemarketing. Given the withdrawal by the three largest retailers from door-to-door marketing was voluntary, there is always the possibility they may return to the practice. In Victoria, door-to-door sales of energy contracts were banned thus preventing this future risk.

Each state-based energy ombudsman already handles complaints involving new energy services and products. However, the external dispute resolution (EDR) journey for customers that purchase CER (consumer energy resources) products (like rooftop solar, batteries and residential EV charging infrastructure) is fragmented. Ombudsmen do not have jurisdiction to deal with many complaints relating to CER, including those relating to sales and marketing which leads to complex dispute pathways when things do go wrong.

For example, when consumers raise complaints against businesses focused only on the sale of solar, storage or heat pumps, we refer the complaints about marketing and installation to other bodies. These bodies include the relevant regulator, state consumer affairs agencies, building commissioners, industry bodies and consumer tribunals, all of which provide different levels of accessibility and outcomes. In some cases, by the time the consumer identifies an issue and seeks to resolve it, those businesses have already closed down.

As CER becomes increasingly mainstream, driven by government subsidies and policies, EWOs expect to observe an upward trend in complaints, including those driven by door to door and telemarketing sales.

With marketing complaint volumes increasing over time, and expected to continually increase, the considerable consumer detriment occurring will also increase. Case Study 1 in the appendix provides an example of this while Case Studies 2 and 3 demonstrate the fact that EWOs do not have full visibility of the scale of harm.

This highlights the need to develop an effective, fit-for-purpose EDR jurisdiction for CER that reflects the realities of the current and future energy market.

Victoria's restrictions on door-to-door marketing and cold-calling of energy products and services

Victoria has advanced protections against unsolicited selling. From 1 September 2021, door-to-door sales were banned for solar businesses participating in Victoria's Solar Homes programs.

From 31 December 2021, the Victorian Government legislated a state-wide ban on electricity and gas retailers and their agents engaging in unsolicited high-pressure sales tactics such as door-to-door sales or cold-calling to sign up residential customers to energy offers. From 1 May 2024, accredited providers and program participants were no longer permitted to use telemarketing to market energy efficient products and services in the Victorian Energy Upgrades program. A further ban on door-to-door methods took effect on 1 August 2024.

Victoria has also banned unsolicited sales of Victorian Government subsidised CER. However, consumers may still be sold inappropriate CER outside of government programs or be sold inappropriate systems for their needs (see Case Study 4).

In this context, EWOFV observes only a small number of complaints about unsolicited selling each year, although the scope of consumer detriment is likely masked due to complaints falling outside of EWOFV's jurisdiction.

Consumer Action Law Centre identified a growth in solar companies outside the Solar Victoria program using high-pressure sales techniques and breaching consumer protections at every stage of the sales process, causing consumers to fall into debt and stress. CALC provided assistance for 11 solar sales cases with links to By Now Pay Later (BNPL) financing.

- In 9 of these 11 cases, the client was living in regional or remote Victoria.
- In 6 of the 11 cases, the client was subject to a physical, intellectual and or mental disability.
- In the remaining cases, the client was receiving the Age Pension, or no income of any type.
- In 10 of 11 cases, the client was not employed.

The Department of Environment, Energy and Climate Action (DEECA) in Victoria is currently progressing reforms that recommend the establishment of a fit for purpose consumer protection framework for CER. As part of this, DEECA has proposed to introduce limits on unsolicited sales of CER. In recent consultation on these reforms, the majority of stakeholders supported the introduction of limits on unsolicited sales of CER, with EWOFV and consumer advocacy organisations supporting a full ban on unsolicited sales.

NSW specific examples and upcoming changes

1. The Financial Rights Legal Centre has advised EWON of egregious examples of disadvantaged consumers in NSW, including First Nations people in rural communities, being pressured into buying solar panels and batteries using BNPL products.
2. As part of its wider energy program, the NSW Government operates a Peak Demand Reduction Scheme and an Energy Savings Scheme. It is working to ban door-knocking campaigns to promote and sell energy upgrades under both these schemes. This ban is expected to come into effect in August 2025.¹

Qld specific developments

Whilst there are no stipulations banning unsolicited sales in Queensland, the Do Not Knock program, which is managed by the Office of Fair Trading, has provided some extra protections to Queensland communities.

SA review and upcoming changes

The South Australian Government operates the Retailer Energy Productivity Scheme (REPS) and the Essential Services Commission of South Australia (ESCOSA) is responsible for developing a REPS Code and for monitoring retailer compliance with the REPS and the Code.

A recent review of the REPS Code by ESCOSA concluded that there were no serious issues with marketing of REPS activities. In ESCOSA's Final Decision document, the regulator noted that "between 2021 and 2024 the Commission received two complaints about door knocking, seven complaints about misleading sales practices, and two complaints about high-pressure selling. In

¹ [Peak Demand Reduction Scheme | NSW Climate and Energy Action](#)

relation to misleading sales practices, most of these complaints related to discounted products being marketed but then not being available.”

It is important to note though that ESCOSA added the following clause to the REPS Code:

6.2.2 Obligated retailers must ensure that any person directly contracted by the obliged retailer to undertake energy productivity activities on its behalf, has and maintains membership with the Energy and Water Ombudsman SA at all times during which that person undertakes activities that are intended to be lodged as energy productivity activities under the Retailer Energy Productivity Scheme.

This requirement applies from 1 January 2026 and will enable customers who experience unacceptable selling and marketing practices by energy activity providers under the REPS to complain to EWOSA. It also provides an avenue for EWOSA to identify any systemic issues that may arise with marketing activities under the REPS and inform ESCOSA as appropriate.

In summary, we strongly support the call from CALC for an outright ban on unsolicited selling. This will stop a significant level of consumer detriment created by misleading information and pressure sales.

Attachment – case studies

Case Study 1: Customer deals with incorrect account details and unmanageable debt following door to door marketing

A door to door marketing representative from an energy retailer attended a customer's property. As the customer spoke limited English, she asked her son to translate. The representative advised the customer and her son that all other residents in the apartment block had switched to the retailer and that she would save money if she switched as well. She agreed to establish an account in her name only and the representative put her through to the retailer over the phone to provide consent. However, she then started receiving bills in both her and her son's name. She also felt that the bills were higher than what the marketing representative had promised. She switched to another retailer as a result, but had difficulty managing the remaining debt of \$1,700 on the closed account as she was only able to make limited payments. The energy retailer then referred the debt to a collections agency in both her and her son's name, so they were concerned about both of their credit ratings.

EWON investigated the complaint in January 2024 after the retailer was unable to resolve it directly. To resolve the complaint, the retailer withdrew the debt from collections, removed the son's name from the account and waived the balance of \$1,700.

Case Study 2: Customer with limited fixed income unable to manage significant loan and energy bills following door to door marketing

An advocate contacted EWON on behalf of a customer. She advised EWON that the customer had accepted an offer to install a rooftop solar system from a door to door marketer working for a solar retailer (non-EWON member) 24 months earlier. The advocate advised that the customer has relied on a disability pension as his only source of income for most of his life. She noted that the system has not helped reduce the customer's energy bills and he was now committed to paying a \$12,000 loan for the installation. The advocate complained to EWON that the customer should never have been offered or approved for a loan for the rooftop solar system. She was seeking for the customer to be released from the contract.

EWON advised the advocate that any complaint about the sale of the rooftop solar system was not within our jurisdiction, as the solar retailer was not a member of our ombudsman scheme. EWON referred her to Fair Trading NSW to make a complaint about the service provided by the solar retailer. EWON also invited the advocate to return to EWON if he required a review of the billing provided by the customer's energy retailer.

Case Study 3: Customer with limited fixed income unable to manage significant loan and energy bills following door to door marketing

An advocate contacted EWON on behalf of a customer. The customer had arranged the installation of a rooftop solar system through a solar retailer 12 months earlier. The advocate said the customer was vulnerable at the time they purchased the system and has since passed away. The system was purchased through a third-party finance company and the advocate was concerned that the solar retailer took advantage of the situation. The customer's husband was now responsible for paying \$330 per month for a \$23,000 loan for the rooftop solar system. The advocate has sought advice from Legal Aid NSW, and it suggested he contact EWON in the first instance for help resolving the complaint.

EWON advised the advocate that any complaint about the sale of the rooftop solar system was not within our jurisdiction. EWON suggested the customer could speak to Legal Aid again, as they had already complained to NSW Fair Trading.

Case Study 4: Limited accountability and redress for faulty product

EWOV received a complaint from Andrew*, on behalf of Greg* and his wife Ethel*. Greg had borrowed money to purchase a solar PV and battery system to help reduce power bills and ensure ongoing supply in a power outage.

Both Greg and Ethel were in their late 70s and Ethel has a disability, requiring essential medical equipment and services powered by electricity. The system, costing \$15,000, was installed a year earlier, but never functioned. The unit had a fault light that has been on constantly and their power bills remained at around \$1,400 quarter. The unit did not provide power in an outage, so Greg and Ethel sometimes had to start a generator.

Andrew reported to EWOV that he believed Greg did not know what he was buying and that the company who supplied the unit organised the loan for the system, which had put Greg and Ethel in debt.

Andrew made repeated attempts to contact the solar retailer over a four-week period. The solar retailer eventually responded with a promise to have the installing contractor contact Greg and Ethel to resolve the issue, which Andrew reported did not occur.

Though the solar retailer outlines on its website that its workforce are accredited with a voluntary industry code and that it will provide support for any issues that arise, Andrew reported that no concrete action or resolution was provided by the installer. When Andrew contacted EWOV, he shared a formal complaint letter he had written to the solar retailer.

(*) Names have been changed.