



Ethnic Communities' Council of NSW Inc.

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Submission to the Australian Consumer Law Review Interim Report October 2016

The Ethnic Communities' Council of NSW (ECCNSW) welcomes the opportunity to provide further feedback on the review of the Australian Consumer Law, in particular to add to our comments made in response to the Australian Consumer Law Review – Issues Paper 2016.¹

Since its formation over 40 years ago ECCNSW has been the peak body for culturally and linguistically diverse (CALD) community members and representative organisations in NSW. ECCNSW main activities are advocacy, education and community development. It is a member of the Federation of Ethnic Communities Councils of Australia (FECCA) and the Energy Advocacy role represents FECCA in the National Energy Market (NEM).

ECCNSW is pleased to be able to provide a CALD perspective on several of the issues raised in the Interim Report.

In general: Communication and interaction (*Questions 20, 36, 54-56*)

Extrapolations from the 2011 Census indicate that approximately 28% of Australian residents were born overseas, an increase of about 24% over the decade 2003 – 2013. Within NSW and Victoria, those States with the majority of the CALD population, 2011 census figures give approximately 29% of the population as born overseas and 25% speaking a language other than English (LOTE) at home. These figures represent increases of approximately 3 – 4% over the 2006 Census statistics.

The figures for LOTE speakers at home can be unreliable. When respondents are asked what language is spoken at home they often reply English despite the fact that there remains a strong first language presence within the home. This is particularly the case with older members of the extended family network. Additionally, research shows that older CALD community members can lose their English language proficiency as they age, reverting to their first language for routine communication.

Australia wide, within the five-year changes in those figures, we find an over 250% increase in residents born in India and Sri Lanka, and a 22% increase in residents born in Asia.

A significant factor that needs to be considered is that approximately 40% of small to medium enterprises within Australia are owned/operated by members of CALD communities.

While there may have been attempts to make the language of the ACL as simple and clear as possible, it is generally not accessible to CALD community members generally. The content,

¹ ECCNSW, Submission in response to the ACL Review – Issues Paper, October 2016

scope and legal framework of the ACL are deemed to be complex in English and challenging for first language English speakers/readers. There does not appear to be any provision in the documents or the website material for assistance with language, translated materials or suggested access to an interpreter service.

It must be noted that the provision of material translated into those considered to be 'common or main languages' presents issues which need to be addressed:

- The question of which languages is perplexing. It may require being based on population size/location specific populations or other factors
- CALD communities, especially emerging, newly arrived and refugee communities are not necessarily literate and numerate in their first and subsequent languages
- Language translations specifically generated for helping consumers navigate a complex (English language) website, rather than full translations, more often than not result in the CALD consumer being even more confused and often lost in the website.

Research conducted by ECCNSW ² also points to several areas of difficulty with common methods of information provision, especially online and social media interactions. While there is some variation between community and language groups, it is generally recognised that on-line and social media use is low for information and consultation access by CALD communities. This means that programs that utilise these methods to disseminate information or for consultative processes (surveys, stakeholder forums, feedback etc) have very limited effectiveness.

Work done by ECC NSW over the course of the last 5 years has established a proven process for engaging CALD consumers effectively. Our recent publication, *Cultural Connections; Engaging CALD energy consumers*,³ highlights a range of techniques which have worked and details several case studies of effective engagement processes. The use of trained bilingual educators who are at the grass roots level in their own communities and who meet with consumers at venues and events where they gather as a group has proven undoubtedly to be the most effective.

Unsolicited sales (Questions 48-52)

While the 2011 ACL acknowledges unsolicited sales methods as a problem area, the level of protection expected from the addition of a 10 day cooling-off period does not appear to have materialised. Indeed, there are indications that salespeople have used the cooling-off process as a sales technique and less than ingenuous reassurance to consumers. ⁴ ECCNSW agrees with the range of arguments presented by Consumer Action Law Centre and others ⁵ that regulations and provisions around sales away from premises and unsolicited sales do not serve the interests of consumers and all attempts to regulate their use have largely

² ECCNSW, Business Energy Smart Tips project 2015, see <http://www.eccnsw.org.au/best.aspx> and Experiences of Energy Consumption for CALD communities, August 2016, and previous research March 2012, see <http://www.eccnsw.org.au/What-we-do/Advocacy/Consumer-Energy-Research.aspx>

³ ECCNSW, *Cultural Connections; Engaging CALD energy consumers*, 2015, digital version at www.eccnsw.org.au/what-we-do/Advocacy/Guidelines.aspx

⁴ Consumer Action Law Centre (CALC), response to the *ACL Review – Issues Paper*, May 2016 page 2

⁵ CALC op cit pages 3, 57-65, Clare Petre, ACL Review submission pages 1-3

failed. We indicated in our earlier submission that while it would be a step that should not be taken lightly, unsolicited door to door sales should be prohibited.

A compromise position is to replace the cooling-off period with an 'opt in' process for unsolicited sales. The provision of an opt in mechanism would go some way to addressing the uncompetitive nature of this sales technique, giving consumers a space to assess the relative value of the offer and seek further information if they chose. It would reinstate at least some of the choice that an individual consumer's decision (ie not under the pressure of an unsolicited cold call) allows for time to decide whether they want or need a product or service, to search for, investigate and purchase a product or service provides currently. ECCNSW maintains that a ban on unsolicited sales is the best option, as the considerable pressures on consumers to agree could remain and be exerted by salespeople at the end of the opt in period.

In particular: The emerging and changing energy market:

New energy products and services are experiencing exponential growth, and the pace of change is about to shift markedly with the rapid uptake of battery storage and energy management systems. As storage costs decrease (the recently cut the price of storage in half and is now 30% lower per kW delivered than all other battery systems ⁶ in the Australian market) the need for adequate and energy specific consumer protections grows.

The major, current energy consumer protection framework is regulated under the National Electricity Law (NEL) and the National Gas Law (NGL) and provided by the National Energy Customer Framework (NECF) and its jurisdictional counterparts in non-NEM states. NECF was established in an environment of one-directional flow of electrons from generator to end-user, and is now showing considerable protection 'gaps' with new energy products and services, most of which are predicated on bi- or multi-directional energy flows. The rapid increase in AER retailer exemptions points to compounding consumer issues, a considerable proportion of which lie outside the protections of NECF and fall heavily into the ACL process.

The ramifications of emerging new energy products and services, and the new business models that inspire and are inspired by them are subject to consideration by the COAG Energy Council in their ongoing review of storage, consumer protections and stand-alone systems. ⁷ There are undoubtedly a range of issues that the COAG EC reviews and the Review of the ACL share, yet there appears to be little consideration and collaboration on shared energy issues around consumer protection. ECCNSW has raised this issue in a range of forums, ⁸ and is yet to receive a response which reflect a suitable level of engagement and concern by the parties involved.

Within current consumer protections frameworks it is entirely possible for two consumers to have the same or similar energy products and services, with one covered by the NECF and another by the ACL, one to be offered the protections and advice of an energy ombudsman network, the other to have to pursue complaints through Fair Trading or its jurisdictional equivalent. The potential for this scenario, while real at present, is growing

⁶ Peacock, F, November 30 2016, <https://onestepofthegrid.com.au/author/finn-peacock/>

⁷ COAG EC, 2016, Energy Market Transformation Project Team (EMTPT) on Stand-Alone Energy Systems, Energy Storage Registration and Consumer Protections

⁸ Treasury officers pre-ACL Review, Sydney March 2015, ACL Review Forum, Sydney November 2016, AEMC Consumer Priorities Forum February 2016 and November 2016 among others

exponentially with the rapid expansion of new (mostly unregulated) energy market products and services, including the rapid increase in exempt retailer approvals. The range of protections available to consumers, then, would be very much dependent on the mechanisms for protection within each of those systems; a coordinated, energy specific set of protections across the NEM would be by far the more preferable approach. (**Question 11**)

Given the general acceptance of the 'essential' nature of energy provision to consumers, we need an appropriate mechanism for the delivery of consumer protections around the supply of energy and energy products and services. (**Question 2**) Such a mechanism will need to involve energy specific protections within one framework or the other or both. Such protections will also need to be robust enough to manage the fundamental and extensive disruptions that will be provided by innovative energy products and services and the new business models that support and engender those products and services.

New energy products and services present a range of issues with respect to safety and recall provisions. For those products and services which are not covered by NECF provisions (a large proportion at this stage) consumers will be accessing assistance under the ACL. The rapid take-up of household battery storage by consumers wanting to maximise their utilisation of solar PV in the wake of the removal of generous solar feed-in tariffs, for example, could present a very serious problem if events such as the Samsung top-loader washing machine or Samsung Note 7 or the hoverboard battery fire issues present themselves with storage systems. COAG Energy Council are only recently deliberating about whether it is **necessary** to know, and the mechanisms by which the energy industry and its regulators would ascertain where such systems were located and by who.⁹

Discussion of 'lemon laws' needs to consider issues pertinent to battery storage and energy management systems as well as motor vehicles. Because energy supply (and including supply through new storage and energy management systems) can be seen as an essential service, the decision on when a string of non-major failures becomes a major failure is an important one. How many interruptions, how often and how long an interruption to supply lasts are very important areas of concern and under current protections will largely fall within the remit of the ACL and its dispute resolution mechanisms. (**Questions 14, 16, 25-27, 36**)

We would like to thank CAANZ for the opportunity to present a CALD perspective on the ACL Review. If you require additional information please contact Iain Maitland, Energy Advocate on (02) 9319 0288 or email iain.maitland@eccnsw.org.au .

Sincerely yours,
Mary Karras



Chief Executive Officer
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⁹ COAG EC 2016 op cit