

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Application for leave to intervene

File Number: ACT1 of 2019

File Title: Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code and the determination made by the ACCC on 5 December 2019

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



A handwritten signature in blue ink, consisting of a stylized 'A' followed by a 'U'.

DEPUTY REGISTRAR

Dated: 21/02/2020 3:44 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

Application for leave to intervene



IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 1 of 2019

Re: Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code and the determination made by the ACCC on 5 December 2019.

Proposed intervener: Consumer Action Law Centre

Address of proposed intervener: Level 6, 179 Queen Street, Melbourne VIC 3000

1. This application is filed in accordance with paragraph 2 of the Tribunal's orders dated 4 February 2020.
2. The Consumer Action Law Centre (**CALC**) applies to intervene in this review, pursuant to s 109(2) of the *Competition and Consumer Act 2010* (Cth).
3. In light of the matters at paragraphs [8] to [29] of the Affidavit of Gerard Brody dated 21 February 2020 (**Brody Affidavit**), CALC has a real and substantial interest in the subject matter of the proceeding. Among other things, CALC was closely involved in the development and authorisation of the New Energy Tech Consumer Code (**the Consumer Code**), and has conducted substantial legal, policy and advocacy work on the critical issue of Buy-Now-Pay-Later (**BNPL**) finance, both in the solar market and generally.
4. CALC intends to make submissions relating to the grounds of dissatisfaction articulated by Flexigroup in its Application for Review, but which are likely to be substantially different to those which it is anticipated will be put on behalf of the ACCC. In particular, CALC proposes to contend that:
 - (a) the Tribunal should apply different conditions to those imposed by the ACCC,

Filed on behalf of (name & role of party) Consumer Action Law Centre (applicant for permission to intervene)

Prepared by (name of person/lawyer) Ursula Noye / Rex Punshon

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(include state and postcode)

alternatively that the Tribunal should vary the amended draft code as submitted to the ACCC on 25 September 2019, so that signatories to the Consumer Code are permitted to offer a deferred payment arrangement only if the provider of those deferred payments arrangement is a credit provider licensed under the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**) and the deferred payment arrangement is regulated under the National Credit Code (**NCC**) – as was originally proposed by the proponents of the Consumer Code and was reflected in the ACCC's draft determination made on 1 August 2019 (cl 24 of the draft Consumer Code, as submitted by the proponents on 21 April 2019 and as annexed to the draft determination of 1 August 2019); and

- (b) further or alternatively, that the words '*and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph 3.n)*' should be deleted from the chapeau to cl 25 of the Consumer Code, in order to ensure that the clause operates unambiguously and effectively to secure the intended public benefit.
5. CALC intends to file evidence and make submissions to assist the Tribunal, principally going to the nature and extent of harm and risk caused to consumers through the widespread offering of unregulated BNPL finance in the New Energy Technology sector. CALC's evidence will include case studies and other data, based on CALC's direct involvement in legal assistance, investigations and advocacy in this sector.
 6. CALC's address for service for the purpose of reg 21 of the *Competition and Consumer Regulations 2010* is Level 6, 179 Queen Street, Melbourne VIC 3000 (ursula@consumeraction.org.au; rex@consumeraction.org.au).
 7. In support of this application, CALC relies on:
 - (a) the Brody Affidavit; and
 - (b) its written submissions dated 21 February 2020.

Dated: 21 February 2020



Signed on behalf of the Consumer Action Law Centre