



# Determination

Application for revocation of A91495 and A91496 and the substitution of  
authorisation AA1000514

lodged by

Clean Energy Council Limited

in respect of

the Solar Retailer Code of Conduct

Authorisation number: AA1000514

19 November 2020

Commissioners: Keogh  
Rickard  
Court  
Ridgeway

## Summary

**The ACCC has decided to grant re-authorisation to the Clean Energy Council Limited for the Solar Retailer Code of Conduct.**

**The Solar Retailer Code of Conduct has been previously authorised twice since 2013. The main changes in the current version are amendments to the application process, the privacy provisions and the sanction process used in considering breaches of the Solar Retailer Code of Conduct.**

**The ACCC has decided to grant re-authorisation until 31 July 2023.**

**The interim authorisation granted by the ACCC on 1 October 2020 remains in place until the final determination comes into force or is revoked.**

On 15 May 2020, the Clean Energy Council Limited (the **CEC**) lodged an application for re-authorisation in respect of an amended version of its Solar Retailer Code of Conduct dated 12 November 2020 (the **Solar Code**). The Solar Code sets minimum standards that retail businesses selling solar photovoltaic (**solar PV**) systems must comply with when interacting with customers, including in advertising, contract documentation, finance and payments, design and installation, operation, customer service, warranties, and complaints handling. The Solar Code operates alongside a range of existing legal and regulatory protections.

The Solar Code was authorised by the ACCC in 2013 and 2015. As the 2015 authorisation was due to expire on 15 October 2020, the ACCC suspended the operation of the 2015 authorisation and granted an interim authorisation on 1 October 2020. The interim authorisation remains in place until revoked or the date the ACCC's final determination comes into effect.

The CEC intends that the Solar Code will ultimately be replaced by the New Energy Tech Consumer Code (**NETCC**) and that retailers who are signatories of the Solar Code will become signatories of the NETCC. On 15 September 2020, the Australian Competition Tribunal (**Tribunal**) varied an earlier determination of the ACCC and granted authorisation to the NETCC for five years subject to conditions. The CEC has outlined a project plan for transitioning to the NETCC and forecasts the launch of the NETCC for January to July 2023.

The ACCC has undertaken extensive consultation in relation to CEC's application for re-authorisation of the Solar Code and received submissions from a range of stakeholders, including solar retailers, government agencies, peak bodies and consumer bodies.

### **The draft determination**

Prior to the draft determination, key issues raised by interested parties related to the effective administration of the Solar Code, including that the consequences if administration is ineffective are now greater than when the Solar Code was previously authorised. While the decision to become a signatory to the Solar Code is still voluntary, it has become virtually essential in order for a retailer to be viable in certain jurisdictions, because it is the only way to access significant government incentives. In this context, some interested parties were particularly concerned about the fact that retailers who have their application to become a signatory rejected by the CEC cannot appeal the decision and must wait three months (or longer for multiple rejections) before they can re-apply.

Parties also made submissions that provisions in the Solar Code should be amended to address specific issues, and that the period of authorisation should be as short as possible to achieve the timely transition to the NETCC.

In the draft determination, the ACCC considered that some public detriment was likely to arise if the Solar Code lacked an independent process for applicants to appeal their rejection, as this presented a risk that applicants who were incorrectly rejected had limited recourse to appeal the decision. This public detriment was compounded by the exclusion periods that the CEC implemented, as part of its administration of the Solar Code, before unsuccessful applicants could re-apply (at the time those periods were three, six and twelve months for the first, second and third rejections).

Consequently, the ACCC proposed to grant authorisation subject to a condition that provided:

- an independent appeals mechanism for retailers seeking to become signatories of the Solar Code, and
- the Code Administrator implement a waiting period for retailers who are unsuccessful applicants of no longer than one month (for first time rejection), two months (for second time rejection) and three months (for third time rejection).

In response to the draft determination and further feedback from interested parties, the CEC proposed amendments to the Solar Code to:

- introduce an appeals mechanism for unsuccessful applicants (section 4.2), which will be heard by the Code Review Panel or its appointed delegate for a non-refundable fee of \$750
- formalise exclusion periods in the Solar Code (clause 4.1.6) that unsuccessful applicants must wait before being able to re-apply of one, two and three months for the first, second and third rejections (this signified a reduction from the periods CEC previously implemented in practice)
- formalise the ability for the CEC to waive the requirement that applicant retailers must have been operating for at least 12 months, if they can provide further details to demonstrate relevant industry experience
- adopt the amendments to the Solar Code's privacy provisions (clauses 2.2.12 and 2.2.13) recommended by the Office of the Australian Information Commissioner, and
- mandate that the Code Administrator must consult with the Code Review Panel prior to invoking clause 3.6.4 to terminate a signatory (as has previously been its practice).

### **Final determination**

For the purposes of this final determination, the ACCC has assessed the 12 November 2020 version of the Solar Code, which includes the above amendments.

The ACCC considers that the Solar Code has resulted, and is likely to continue to result, in public benefits. In particular, for complex products such as solar PV systems, the obligations on retailers under the Solar Code (for example, regarding advertising, information disclosure and consumer education) help consumers make better and more informed purchasing decisions. The ACCC also considers that the Solar Code is likely to result in public benefits in the form of increased consumer protections from key commitments required by signatories which go beyond what is required by law, and is also likely to facilitate greater compliance by signatories with existing laws.

The ACCC considers that the Solar Code, in light of the above amendments, is likely to result in limited public detriment.

The costs incurred by retailers to comply with the Solar Code are necessary for it to be effective; and the disciplinary processes in place to deal with complaints and impose sanctions appear to be appropriate and being administered appropriately.

Where retailers seek to become signatories to the Solar Code, but are unsuccessful (i.e. applicants), there may be a reduction in competition in the supply of solar PV systems. To the extent that applicants are rejected for good reason, any loss of competition is outweighed by the benefit to consumers of maintaining high standards of retailer conduct. The ACCC considers that the new appeals mechanism provides sufficient protection against the risk that applicants might be incorrectly rejected, by allowing them to appeal the decision to an independent body (for a \$750 fee). Further, the reduced exclusion periods mean unsuccessful applicants who have considered and sought to address the reasons for the CEC's decision to reject their application can re-apply without undue delay.

The ACCC considers that the Solar Code is unlikely to misled or deceive consumers regarding alternative finance arrangements.

The ACCC has decided to grant re-authorisation until 31 July 2023. The ACCC considers that the Solar Code should be re-authorised for the minimum period necessary to enable the timely transition of signatories to the NETCC and that, as the NETCC authorisation is now in force, this period is likely to be sufficient to enable the transition.

## 1. The application for authorisation revocation and substitution

- 1.1. On 15 May 2020, the CEC lodged an application with the Australian Competition and Consumer Commission (the **ACCC**) to revoke authorisations A91495 and A91496 and substitute authorisation AA1000514 for the ones revoked (referred to as re-authorisation). The CEC is seeking re-authorisation of an amended version of the Solar Code, provided on 12 November 2020.<sup>1</sup> The Solar Code is a voluntary code for solar PV retailers (**retailers**) which was first authorised by the ACCC in October 2013 and re-authorised in October 2015 (the **previous Code**). Re-authorisation is sought for three years. This application for re-authorisation AA1000514 was made under subsection 91C(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).
- 1.2. The ACCC may grant authorisation which provides businesses with legal protection for arrangements that may otherwise risk breaching competition law but are not harmful to competition and/or are likely to result in overall public benefits.
- 1.3. The CEC also requested, and on 1 October 2020, the ACCC granted under subsection 91(2) of the Act, interim authorisation to enable the CEC and current and future retailer signatories to continue to make and give effect to the Solar Code on the same terms as authorised in A91495 & A91496 while the re-authorisation process continued. Interim authorisation commenced immediately and will remain in place until it is revoked or the date the ACCC's final determination comes into effect.

### The Applicant

- 1.4. The CEC is applying for re-authorisation on behalf of itself and current and future retailers who are signatories to the Solar Code.
- 1.5. The CEC is a not-for-profit, membership-based organisation for the clean energy industry in Australia. It represents over 800 businesses in the renewable energy

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<sup>1</sup> [Applicant to ACCC re final version of Code](#), 5 November 2020.

industry (such as solar, wind, hydro, bioenergy, geothermal and marine) and energy storage, and over 6,500 solar installers. The CEC:<sup>2</sup>

- provides an Approved Solar Retailer scheme in relation to the marketing and sale of solar PV systems, under which retailers of solar PV systems can become signatories to the Solar Code. Under the Solar Code, retailers agree to comply with best practice standards for the marketing and supply of solar PV systems to consumers. Some government solar programs require consumers to use Approved Solar Retailers to be eligible for financial incentives and rebates for their solar PV system
- provides an accreditation scheme under which individuals who are solar PV designers and/or installers can obtain a qualification that shows competence in the design and/or installation of solar PV systems. Solar PV systems designed and installed by 'CEC-accredited' individuals are eligible for federal government financial incentives.<sup>3</sup> The accreditation scheme for solar PV designers and/or installers is not part of this application for authorisation, and
- provides a membership program for companies who work in and support the clean energy sector, which provides members with opportunities to attend events and participate in policy meetings and forums.

## The Conduct

- 1.6. The CEC seeks re-authorisation to enable current and future retailer signatories to agree, sign up to and comply with provisions of the Solar Code (the **Conduct**). A copy of the Solar Code is at **Annexure A**.
- 1.7. The Solar Code is a voluntary code which aims to improve consumer protection and promote best practice for retail businesses selling solar PV systems, by setting standards in advertising, contract documentation, finance and payments, design and installation, operation, customer service, warranties, and complaints handling. Although the Solar Code is voluntary, in many cases it has become more important for retailers to become signatories in order to access customers who are eligible for government funding schemes.
- 1.8. The CEC submits that its intention is that the Solar Code will ultimately be replaced by the NETCC and that its signatories will transfer across to the NETCC in stages. The CEC initially sought re-authorisation for three years to cover the resolution of the current NETCC Tribunal proceedings and the transfer of signatories to the NETCC; however as noted in paragraphs 1.10–1.11 below, the Tribunal proceedings have now concluded and the NETCC authorisation is in force.
- 1.9. The Applicants have sought re-authorisation in relation to the following provisions of the Act which might apply to the Conduct: Division 1 of Part IV (cartel conduct), section 45 (contracts, arrangements or understandings, and concerted practices), and section 47 (exclusive dealing).

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<sup>2</sup> Clean Energy Council, [Who we are, what we do for your business](#).

<sup>3</sup> The federal *Renewable Energy (Electricity) (Cth) Regulations 2001* require that only consumers who use a designer and installer accredited under the Clean Energy Council accreditation scheme are eligible for Small-scale technology certificates (**STCs**) – certificates which can be sold or traded to recoup a portion of the cost of their solar PV system.

## NETCC

1.10. On 30 December 2019, Flexigroup Limited lodged an application with the Tribunal for review of the determination by the ACCC to grant conditional authorisation to the NETCC. On 15 September 2020, the Tribunal made a determination varying the ACCC's determination and granting conditional authorisation for five years.<sup>4</sup>

1.11. The NETCC sets minimum standards that suppliers of 'new energy tech' products (for example, solar panels, energy storage systems and other emerging products and services) must comply with when interacting with customers, including from initial marketing and promotion through to installation and complaints handling.

## 2. Background

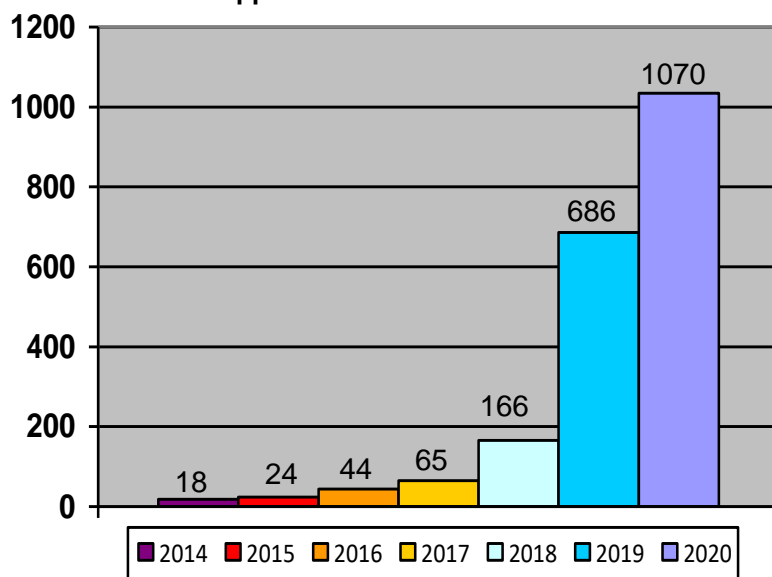
### Solar installation industry

2.1. Australia has the highest uptake of rooftop solar PV systems globally. As at 31 May 2020, 2.43 million rooftop solar power systems have been installed across Australia, representing 21% of homes.<sup>5</sup> The CEC notes that the solar PV retail industry continues to grow rapidly, with the number of solar installations on homes and small businesses increasing by 43% in the 2018-2019 year. The Clean Energy Regulator expects that growth is likely to continue for at least 10 years.<sup>6</sup>

2.2. The CEC submits that there is no precise record of the number of solar PV retailers operating in the Australian market. The CEC references a 2014 industry report that estimated there are between 4,000 and 5,000 retailers, with the majority being sole proprietors or small businesses employing four or less people.<sup>7</sup>

2.3. There were 1,070 signatories to the Solar Code as at 5 October 2020.

Chart 1: Growth in Approved Solar Retailers



<sup>4</sup> [Application by Flexigroup Limited \(No 2\) \[2020\] ACompT 2](#). On 30 December 2019, Flexigroup Limited lodged an application for review of the [ACCC's determination](#) (dated 5 December 2019) with the Tribunal.

<sup>5</sup> Australian Government: Department of Industry, Science, Energy and Resources, [Solar PV and batteries](#), accessed 12 November 2020.

<sup>6</sup> [Application for re-authorisation](#), 15 May 2020, page 10.

<sup>7</sup> [Application for re-authorisation](#), 15 May 2020, page 11.

- 2.4. The CEC notes that the current signatories of the Solar Code range in size from owner-operator businesses to large energy retailers. Some signatories exclusively install residential rooftop solar while others may also install medium and commercial scale systems. The CEC estimates that current signatories to the Solar Code account for around 50% to 60% of the solar PV industry by total installed capacity.<sup>8</sup>

## Rationale for the Solar Code

- 2.5. The CEC submits that the Solar Code seeks to enhance consumer protection and promote best practice for retail businesses selling solar PV systems to residential and small-scale commercial customers, and increase consumer confidence in the solar PV industry (see section 1.1 of the Solar Code).<sup>9</sup>
- 2.6. The retail purchase of PV solar systems is generally a once-off purchase that may be relatively complicated for consumers and may involve a number of different parties.
- 2.7. The primary entities involved in the sale and installation of solar PV systems are the installer, designer and retailer. These roles can be fulfilled by one individual or a number of different entities. The CEC submits that, typically, consumers purchase solar PV systems from a medium/large retailer who then sub-contracts with a system designer and installer.<sup>10</sup>
- 2.8. As noted in paragraph 1.5 above, the CEC accredits individual solar PV designers and installers in relation to the safety and technical aspects of systems. A CEC-accredited designer or installer is bound by (and can face action by the CEC for breach of) the CEC Accreditation Code of Conduct, CEC Accreditation Terms and Conditions and CEC Design and Install Guidelines, the relevant Australian Standards and all other relevant laws and regulations.<sup>11</sup>
- 2.9. In contrast, the Solar Code applies only to retailers and deals with the way in which they market and sell solar PV systems to consumers. It was developed because retailers who sub-contract design and/or installation are not covered by a standard, other than existing consumer protection legislation. This created concerns about retailers' lack of accountability in sale and post-sale activities (particularly their accountability for the actions of sub-contracted parties). Now, such retailers can choose to become signatories to the Solar Code and agree to be bound by its requirements, which include complying with existing relevant law and Australian Standards and additional obligations (such as being responsible for all actions of sub-contracted parties).<sup>12</sup>
- 2.10. There are numerous solar rebate government programs currently in operation. The vast majority of these government programs require consumers to use solar retailers who are Solar Code signatories, or individuals who are CEC-accredited designers/installers, to access financial incentives (see **Table 1** below). The CEC also advised that some governments have made it a requirement to access tenders for the installation of solar PV units that the solar retailer being used must be a Solar Code signatory.

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<sup>8</sup> [Application for re-authorisation](#), 6 May 2020, page 3, 11.

<sup>9</sup> [Application for re-authorisation](#), 6 May 2020, page 9.

<sup>10</sup> Solar Retailer Code of Conduct, 12 November 2020, section 1.1.

<sup>11</sup> Solar Retailer Code of Conduct, 12 November 2020, section 2.4.27.

<sup>12</sup> Solar Retailer Code of Conduct, 12 November 2020, section 1.1.

**Table 1: Government solar programs**

State / Federal	Program	Requirement	Financial Incentive
Federal	<a href="#">Small-scale Renewable Energy Scheme</a> <i>Ends 2030</i>	CEC accredited designer / installer <sup>13</sup>	Small-scale technology certificates (STCs) - can be sold or traded to recoup a portion of the cost
Victoria	<a href="#">Solar panel rebate</a> <i>Ends 2028</i>	CEC Approved Solar Retailer	\$1,850 off solar PV systems, plus an interest-free loan up to \$1,850 <sup>14</sup>
South Australia	<a href="#">Home battery scheme</a> <i>Target of 40,000 houses</i>	CEC Approved Solar Retailer <sup>15</sup>	Maximum \$4000 subsidy for home battery installation <sup>16</sup>
NSW (Hunter Region)	<a href="#">Solar PV and battery storage assistance</a> <i>Rolls out state-wide in 2021</i>	CEC-accredited installer	Interest-free loan up to \$14,000 for a solar PV and battery system or \$9000 for retrofitting a battery system
Queensland	<a href="#">Interest-free loans for solar and storage</a> <i>Now closed (2018)</i>	CEC Approved Solar Retailer <sup>17</sup>	Interest-free loans and grants for solar systems, standalone battery systems, or combined battery/solar systems
Northern Territory	<a href="#">Home and Business Battery Scheme</a>	CEC-accredited installer	\$6000 grants for home or business battery installations

### 3. ACCC Consultation and CEC amendments to the Solar Code

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Conduct.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including relevant industry associations or peak bodies, consumer groups, state and federal government and relevant regulatory bodies, and solar retailers.<sup>18</sup>
- 3.3. Prior to the draft determination, the ACCC received 29 public submissions from solar retailers and individuals, state government departments and ombudsman, the Smart

<sup>13</sup> The *Renewable Energy (Electricity) (Cth) Regulations 2001* require consumers to use CEC-accredited installers/designers, but do not require consumers to use Approved Solar Retailers. However, because the Solar Code mandates that Approved Solar Retailers can only use CEC-accredited installers/designers, the implication is that any consumer who chooses to use a CEC Approved Solar Retailer is automatically eligible to receive STCs.

<sup>14</sup> <https://www.solar.vic.gov.au/solar-battery-rebate>.

<sup>15</sup> Or commitment to an acceptable equivalent Solar Code of Conduct.

<sup>16</sup> <https://homebatteryscheme.sa.gov.au/about-the-scheme>.

<sup>17</sup> Or equivalent.

<sup>18</sup> A list of the parties consulted and the public submissions received is available from the ACCC's public register [www.accc.gov.au/authorisationsregister](http://www.accc.gov.au/authorisationsregister).



Energy Council, Consumer Action Law Centre, the Office of the Australian Information Commissioner and Flexigroup Limited (an alternative finance provider).

- 3.4. Of these submissions, 18 opposed re-authorisation of the Solar Code, nine supported re-authorisation (some subject to amendments), and two were neutral.
- 3.5. Broadly, interested parties in support of re-authorisation considered that the proposed amendments will improve consumer protections and strengthen competition. State government departments with solar programs (South Australia, Victoria and New South Wales) considered the Solar Code integral to their schemes.
- 3.6. The main issues raised by interested parties opposed to re-authorisation included:
  - concerns about whether the current provisions of the Solar Code, and the CEC's interests, are enabling the Solar Code to be administered in a fair and effective manner. In particular, submissions raised concerns with the requirements retailers must meet to become a signatory and the fact applicants have no appeals mechanism if unsuccessful; the process for investigation of complaints; the definitions and severity of certain breaches; and the CEC having a conflict of interest and not representing the industry
  - that the Solar Code is not voluntary in practice due to the increased numbers of government schemes requiring the use of a CEC Approved Solar Retailer. Parties noted that the concerns about effective administration are compounded by the fact that solar retailers in some states can essentially not compete unless they are signatories to the Solar Code
  - that certain proposed amendments be modified or that further amendments be made (such as the finance and alternative purchasing provisions), and
  - that the period of authorisation should be as short as possible to achieve the transition to the NETCC.
- 3.7. On 13 August 2020, the ACCC issued a draft determination proposing to grant re-authorisation for two years subject to a condition that provided:
  - an independent appeals mechanism for retailers seeking to become signatories of the Solar Code, and
  - the Code Administrator implement shorter waiting periods for retailers who are unsuccessful applicants to reapply, being no longer than one month (for first time rejection), two months (for second time rejection) and three months (for third time rejection). The previous exclusion periods that the CEC implemented, outside the scope of the Solar Code, were three, six and twelve months (respectively).
- 3.8. A pre-decision conference was not requested following the draft determination.

### Consultation on the draft determination, ACCC's proposed conditions, and CEC's further amendments to the Solar Code

- 3.9. Following the draft determination, the CEC provided an amended version of the Solar Code to the ACCC on 3 September<sup>19</sup> which:

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<sup>19</sup> [Applicant to ACCC re Amendments to Code](#), 3 September 2020.

- introduced an appeals mechanism which allows a retailer to appeal the Code Administrator's decision to reject their application to become a signatory (section 4.2). The retailer has 30 days to lodge an appeal, for a \$750 fee, and the appeal will be heard by the Code Review Panel (or its appointed delegate) who will provide a written ruling as soon as reasonably practical, and
- amended clauses 2.2.12 and 2.2.13 of the privacy provisions. This followed feedback from the Office of the Australian Information Commissioner (**OAIC**) regarding the interaction between Australian Privacy Principle (**APP**) 7 and clauses 2.2.12 and 2.2.13 of the Code. The OAIC had expressed concern that the original clause 2.2.12(b) could include instances where the consumer has not opted-in for future marketing, and that clause 2.2.13 appeared to convey discretion in the need to seek a consumer's consent to receive marketing material. The CEC adopted the OAIC's recommendations and has:
  - amended clauses 2.2.12(b) and 2.2.13 in line with the OAIC's suggested wording, and
  - added a Note stating what APP 7 provides.<sup>20</sup>

In response, the OAIC stated that it does not have outstanding concerns with the amended Solar Code.

3.10. The CEC also proposed the following amendments, which it ultimately decided to formalise in the Solar Code itself (rather than in its online application form, as initially proposed):

- reduce the exclusion periods that unsuccessful applicants must wait before being able to re-apply to one, two and three months (after a first, second and third rejection respectively), and
- formalise the ability for the CEC to waive the requirement that applicant retailers must have been operating for at least 12 months, if they can provide further details to demonstrate relevant industry experience.<sup>21</sup>

3.11. In total, following the draft determination the ACCC received 12 public submissions from solar retailers and government departments (five of which were responding specifically to the revised Solar Code dated 3 September). Four submissions supported or did not have concerns with the re-authorisation, while eight submissions raised concerns about re-authorisation generally or the ACCC's proposed conditions. The main issues related to:<sup>22</sup>

- the CEC's effective administration of the Solar Code, including: the lack of natural justice in investigations of potential breaches, treating retailers inconsistently when administering and enforcing the Solar Code, concerns with the process used to apply sanctions and the severity of sanctions, and the Code Administrator's perceived conflict of interest

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<sup>20</sup> 'Note: Australian Privacy Principle 7 provides that an organisation must not use or disclose personal information it holds for the purpose of direct marketing unless an exception applies.'

<sup>21</sup> [Applicant to ACCC re final version of Code](#), 5 November 2020.

<sup>22</sup> Some interested parties also raised concerns with the CEC's proposals to:

- introduce a corresponding fee for existing signatories to appeal a Code Administrator decision and how this had been quantified
- only provide rejected applicants with 15 days to lodge an appeal, rather than the 30 days afforded to existing signatories.

In response, the CEC subsequently determined that it would not introduce a corresponding fee, and that the period for rejected applicants to lodge an appeal would be 30 days: [Applicant to ACCC re final version of Code](#), 5 November 2020.

- the proposed appeals mechanism for unsuccessful applicants. While interested parties generally supported the introduction of such an appeals mechanism, some raised concerns with the independence of the body proposed to hear appeals (the Code Review Panel), and
- the length of authorisation, with one party submitting that the Solar Code should be authorised for no longer than two years, which would allow sufficient time for signatories to transition to the NETCC.<sup>23</sup>

3.12. Following a further information request regarding the outstanding issues raised by interested parties or the ACCC, the CEC provided a final amended version of the Solar Code for the ACCC's assessment on 12 November 2020 (the **final version**).<sup>24</sup> The final version included an additional amendment mandating that the Code Administrator must consult with the Code Review Panel prior to invoking clause 3.6.4 to terminate a signatory.

3.13. The CEC's response and ACCC's assessment of these issues are discussed in more detail in section 4, below.

3.14. Public submissions by the CEC and interested parties are on the [Public Register](#) for this matter.

## The Solar Code

3.15. The CEC seeks authorisation for a version of the Solar Code which has been updated since last authorised in 2015. The final version is subject to some minor amendments noted below (which were included in the version of the Solar Code lodged with the CEC's application) and the more detailed amendments outlined in paragraphs 3.9–3.10 and 3.12 above (which were made in response to consultation on the application for re-authorisation).

3.16. The key provisions of the final version of the Solar Code (dated 12 November 2020) for which the CEC is seeking authorisation are outlined below.

### Consumer protection

3.17. The Solar Code seeks to enhance consumer protection by requiring retailers to (among other things):

- not engage in misleading or deceptive conduct in relation to the price, value or quality of goods and services (clause 2.1.1 (f)(ii))
- adhere to ethical sales and quoting practices, including avoiding high pressure sales tactics (clause 2.1.2 (a))
- provide a minimum retailer's warranty period of five years on the operation and performance of the whole PV system including workmanship and products (clause 2.2.10)
- clearly explain the process surrounding the payment and trade of Small Scale Technology Certificates (**STCs**), new electricity tariff rates, and the grid connection process

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<sup>23</sup> [Submission by Solar Service Group](#), 14 September 2020.

<sup>24</sup> All amendments made in the 12 November 2020 version of the Solar Code were made as a result of issues raised by interested parties or the ACCC and were subject to interested party consultation.

- provide consumers with greater clarity in contracts, with amendments that require all contractual terms and associated documents, as well as the process for paying STCs, be provided in writing
- comply with all local, state and federal legislation, the CEC Accreditation Guidelines and regulations (section 2.4.1). Minor amendments now require signatories' system designs to comply with the CEC Accreditation Guidelines, not merely that signatories employ CEC-accredited designers, and
- comply with privacy obligations and minimum standards for the use of consumer data (clauses 2.11-2.16).

## Monitoring and enforcement

3.18. Retailers are also subject to the following monitoring and enforcement arrangements:

- the Solar Code is administered by the Code Administrator (also known as the CEC Code of Conduct Team). Oversight and monitoring of the Code Administrator is provided by the independent Code Review Panel, which must include at least three participants that are all non-signatories<sup>25</sup> (sections 3.1 and 3.2)
- the Code Review Panel prepares annual reports on the Solar Code's operation including compliance (clause 3.8.1)
- potential breaches are investigated by the Code Administrator, with each breach assigned a severity rating which corresponds to relevant sanctions (clause 3.5.1). Minor amendments include an updated 'breach matrix' which reflects requirements already in the Solar Code; altered 'severity' levels for certain breaches (three increased, two decreased); and giving the Code Administrator discretion to lower a breach's severity level in an investigation
- sanctions for breaches range from the appointment of an auditor, the publication of the breach on the CEC's website, and the suspension or cancellation of signatories in certain circumstances (clause 3.6)
- appeals against determinations of the Code Administrator are heard by the Code Review Panel (clause 3.7), and
- minor amendments require signatories to notify the Code Administrator if the control/ownership of their entity changes. The Code Administrator has the discretion to revoke a signatory's status if this is not disclosed or they are not satisfied that the signatory has sufficient systems in place to ensure ongoing compliance (clause 2.4.7).

## Application process

3.19. The following process applies to retailers wishing to become signatories:

- retailers complete an online form and lodge examples of their standard documentation. The amendments now require retailers to make declarations<sup>26</sup> about their company history and key stakeholders. If a retailer has been operating for less than 12 months, the Code Administrator can request that they provide further details to demonstrate relevant experience in the industry (amended clause

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<sup>25</sup> The members must include a consumer representative with relevant experience and knowledge in, for example, consumer advocacy, protection and law; a PV representative with experience in the solar PV industry; and a Chair with relevant experience and knowledge in, for example, regulatory or government administration of consumer law, or a suitable background to ensure due process is followed at all times, particularly when dealing with any breach of the Code: clause 3.2.2(d).

<sup>26</sup> See [Attachment F - Declarations on Application Form](#) to the CEC's application for re-authorisation.

4.1.1(j)). Incorrect or incomplete information submitted by an applicant may lead to the delay or rejection of an application (clause 4.1.3)

- retailers must explain any adverse findings identified by the Code Administrator and may be required to attend an interview with, or provide referees to, the Code Administrator (clauses 4.1.1(g)-(i))
- the Code Administrator will assess the application based on information submitted by the retailer and further information gathered. Minor amendments make explicit that the Code Administrator can reject applications unable to demonstrate that a retailer complies with the Solar Code or whose response to adverse findings does not sufficiently demonstrate compliance (clause 4.1.2), and
- formal feedback on the application assessment will be provided to the applicant (clause 4.1.4).

3.20. Each application incurs a \$200 fee.<sup>27</sup>

3.21. In the version of the Solar Code the CEC lodged with its original application for re-authorisation, unsuccessful applicants did not have an avenue to appeal a decision. The CEC's practice was also to require unsuccessful applicants to wait three months before being able to reapply (or six months if rejected a second time, or 12 months if rejected a third time).

3.22. Following the ACCC's draft determination and proposed condition (outlined in paragraph 3.8), the CEC amended the Solar Code to introduce an appeals mechanism for unsuccessful applicants (section 4.2) and reduce the period of time for which unsuccessful applicants are excluded from re-applying (to one, two and three months after a first, second and third rejection respectively) (clause 4.1.6).

## Consumer finance

3.23. The Solar Code requires that retailers offering 'alternative finance arrangements' must (clauses 2.1.22–2.1.24):

- ensure that the consumer clearly and accurately receives certain information about the provider, arrangement and fees, and
- make reasonable enquiries about whether a finance arrangement offered to a consumer is regulated by the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**). If not regulated by the NCCPA, the retailer must ensure the contract includes a provision (which is substantially in the form set out in clause 2.1.24 of the Solar Code and signed by the consumer) stating that the consumer may not have access to a dispute resolution scheme approved by the Australian Securities and Investment Commission and/or the right to ask the provider for a hardship variation.

## 4. ACCC assessment

4.1. The ACCC's assessment of the Conduct is carried out in accordance with the relevant authorisation test contained in the Act.

4.2. The Applicants have sought re-authorisation for Conduct that would or might constitute a cartel provision within the meaning of Division 1 of Part IV of the Act, may substantially lessen competition or be a concerted practice within the meaning of

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<sup>27</sup> Clean Energy Council, [Apply](#), accessed 22 July 2020.

section 45, or may constitute exclusive dealing within the meaning of section 47 of the Act. Consistent with subsection 90(7) and 90(8) of the Act,<sup>28</sup> the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).

## Relevant areas of Competition

- 4.3. To assess the likely effect of the Conduct, the ACCC identifies the relevant areas of competition likely to be impacted.
- 4.4. The ACCC considers that the relevant areas of competition are likely to be:
- competition for the retail sale and purchase of solar PV systems, and
  - competition for the sale and purchase of:
    - components of solar PV systems
    - design services of solar PV systems
    - installation services of solar PV systems, and
    - finance provided to consumers purchasing a solar PV system.

## Future with and without the Conduct

- 4.5. In applying the authorisation test, the ACCC compares the likely future with the Conduct that is the subject of the authorisation to the likely future in which the Conduct does not occur.
- 4.6. The ACCC considers that, without the Conduct, the current Solar Code authorised in 2015 would cease operating. Existing consumer protection legislation and other relevant legislation and regulations would continue to regulate the conduct of solar retailers at all times.
- 4.7. Given the NETCC is intended to replace the Solar Code and has now been authorised by the Tribunal, once it becomes operational, solar retailers would be able to choose whether to become signatories to the NETCC and be bound by its provisions. The ACCC notes, however, that the NETCC has not yet commenced operation and it is unclear precisely when this will occur.

## Public benefits

- 4.8. The Act does not define what constitutes a public benefit. The ACCC adopts a broad approach. This is consistent with the Australian Competition Tribunal (the **Tribunal**) which has stated that the term should be given its widest possible meaning, and includes:

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*<sup>29</sup>

- 4.9. The ACCC has considered the following public benefits:
- Reduced information asymmetry

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<sup>28</sup> See subsection 91C(7).

<sup>29</sup> Queensland Co-operative Milling Association Ltd (1976) ATPR 40-012 at 17,242; cited with approval in Re 7-Eleven Stores (1994) ATPR 41-357 at 42,677.

- Increased consumer protections
- Effective administration and enforcement of the Solar Code.

### **Reduced information asymmetry and enhanced consumer ability to make informed choices that better suit their needs**

- 4.10. Purchasing solar PV systems is a complex purchasing decision and inadequate information disclosure can make consumers' decisions more difficult. Consumers may purchase a solar PV system which is expensive and unsuitable to their needs. The CEC submits that the Solar Code aims to improve the provision of information to consumers to enable better and more confident purchasing decisions.
- 4.11. The Consumer Action Law Centre (**CALC**), while noting its view on how the Solar Code could be improved (discussed in paragraph 4.86), submits that the Solar Code has contributed to improved standards in areas such as advertising and promotions, sales and quoting practices and in responsibilities for connecting to the grid.<sup>30</sup> AGL agrees that the Solar Code plays an important role in improving consumer protections and promoting consumer trust for the purchase of PV systems.<sup>31</sup> Associate Professor Penelope Crossley submits that the requirement for certain information to be included in written contracts with consumers (clause 2.1.6) will ensure adequate consumer protections are available.<sup>32</sup>
- 4.12. The ACCC considers that the Solar Code is likely to result in better informed consumers, due to the various commitments agreed by signatories. These include commitments to provide detailed information disclosures, including:
- an itemised list of the goods to be supplied (clause 2.1.6(b))
  - full specifications of the system, including manufacture, model, quantity and power rating of the solar modules and the inverter/s (clause 2.1.6(e))
  - a site-specific design plan and performance estimate (clause 2.1.6(f))
  - disclosure of the method of all estimations made in relation to system outputs and financial benefits (clause 2.1.6(g))
  - any site conditions and special circumstances beyond the control of the Solar Code signatory which may result in extra chargeable work not covered by the quote (clause 2.1.6(h))
  - details about any after-sales services, guarantees and express warranties (clause 2.1.6(k))
  - the consumer's cooling-off and termination rights (clause 2.1.6(l))
  - clearly explaining the process surrounding the payment and trade of STCs, new electricity tariff rates, and the grid connection process (clause 2.1.14), and
  - explanations of how to maintain their system (clause 2.2.6).
- 4.13. Prior to the draft determination, AGL raised concerns that the proposed change to clause 2.1.6(f) will result in significant increased costs or involve structural and civil engineering considerations. The CEC responded noting that the intention of the proposed change was to provide clearer guidance on the site-specific site design and

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<sup>30</sup> [Submission by Consumer Action Law Centre](#), 26 June 2020.

<sup>31</sup> [Submission by AGL](#), 16 June 2020.

<sup>32</sup> [Submission by Associate Professor Penelope Crossley](#), 9 June 2020.

there is no requirement for visual representations of the inverter location, as the Code Administrator will accept written representations.

- 4.14. The ACCC accepts that for complex products, such as solar PV systems, the commitments under the Solar Code requiring additional information disclosures are likely to result in a public benefit from consumers being able to make better and more informed purchasing decisions about a solar system that best meets their needs.

### **Increased consumer protections from key commitments by signatories beyond what is currently explicitly required by the law**

- 4.15. The CEC submits that the Solar Code provides an important self-regulatory mechanism that brings about increased accountability in the solar industry.
- 4.16. Solar Victoria (a portfolio within the Victorian Department of Environment, Water, Land and Planning) and the South Australian Department for Energy and Mining consider the Solar Code to be the only code with consumer protections appropriate for their respective schemes. Solar Victoria observes that mandating that retailers become signatories to the Solar Code via its program has raised industry standards.
- 4.17. The NSW Department of Planning, Industry and Environment submits that it has several programs which are dependent on the interaction between solar retailers and consumers, and that the Solar Code provides a level of assurance that standards will be adhered to, along with an agreed method to address breaches of these protections. It also considers that an extension of the Solar Code is important in maintaining oversight and quality in the industry while the transition to the NETCC occurs.
- 4.18. The ACCC considers that the Solar Code is likely to result in greater consumer protections, as a result of the commitments adopted by signatories that go beyond those explicitly required under current consumer protection laws. These include:
- Commitments around warranties and contracts, including:
    - providing a minimum retailer's warranty period of five years on the operation and performance of the PV system, including workmanship (section 2.2.10), and
    - providing consumers with greater clarity in contracts by requiring any document which forms part of the contract, as well as the process for paying STCs, be provided in writing (clause 2.1.10 and 2.1.14)
  - Commitments to take positive actions with respect to advertising and promotion, including:
    - clearly attributing any claims relating to performance and savings to a reputable source (clause 2.1.1(c))
    - advertising the total price as prominently as any components of the price (clause 2.1.1(d))
    - providing information that is specific to the state or region of advertisement (clause 2.1.1(e))
  - Commitments to educate consumers of their existing rights under Australian Consumer Law when undertaking direct marketing, including:
    - advising consumers they can ask a sales person to leave at any time and explaining their right to terminate the agreement within 10 business days for unsolicited sales (clause 2.1.2(b)), and further



- avoiding high-pressure sales tactics (clause 2.1.2(a)).
- 4.19. The ACCC also notes the CEC's submission that its administration of the advertising provisions under the Solar Code is consistent with the ACCC's existing ACL guides.<sup>33</sup>
- 4.20. As noted in paragraph 3.10 above, the Solar Code also includes provisions concerning signatories' privacy obligations about the collection, use and disclosure of consumers' personal information. As suggested by the OAIC, these provisions have been amended to be consistent with (but do not necessarily go beyond) privacy legislation and Australian Privacy Principle 7.
- 4.21. The ACCC considers that the commitments by signatories under the Solar Code are likely to result in public benefits by providing protections that extend beyond what is currently required by the law to reduce the likelihood and degree of consumer harm that can arise from the kinds of practices addressed by these provisions. The Solar Code also results in a public benefit to the extent that there is likely to be greater compliance by signatories with existing laws, such as signatories' obligations under privacy legislation.

### **Effective administration and enforcement of the Solar Code**

- 4.22. Effective administration and enforcement of a code are crucial to the realisation of the claimed public benefits under the code.
- 4.23. Both prior to and following the draft determination, a number of interested parties raised issues with the CEC's administration of the Solar Code, particularly in relation to its investigation of breaches and imposition (and severity of) sanctions, and the application process for new signatories (as detailed below in paragraphs 4.36–4.79).
- 4.24. The ACCC considers that, taking into account the CEC's amendments to the Solar Code, there are sufficient mechanisms in place to ensure the Solar Code is effectively administered and enforced, including:
- for existing signatories, there is a complaints process in place for investigations and sanctions can be appealed to the Code Review Panel
  - for new applicants, the CEC has amended the Solar Code to: include an appeals mechanism for unsuccessful applicants to appeal to the Code Review Panel, reduce the exclusion periods that unsuccessful applicants must wait before re-applying, and enable the CEC to waive the minimum 12-month operating requirement for applicant retailers who can demonstrate sufficient experience
  - the Code Review Panel must publish annual reports on the Solar Code's operation (including compliance activity) to enable assessment of its effectiveness, ensure its standards meet the identified objectives, and identify systemic issues and areas for improvement. This also promotes transparency as these reports are published publicly, and
  - the Code Review Panel's members are independent of both the CEC and of signatories and retailers; and although recruited from within the solar PV industry, this provides the members with the level of industry knowledge necessary to provide appropriate oversight or arbitrate matters.
- 4.25. The ACCC also notes the positive findings of the independent review of the Solar Code that was conducted in 2016, which found:

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<sup>33</sup> [Applicant's response to interested party submissions](#), 5 October 2020.

*Our Review of these complaints satisfied us that the new complaints procedure is being appropriately applied and the Code Administrator is handling complaints efficiently and fairly. The Code Review Panel's role provides an independent oversight to the process and clear mechanism where there is dissatisfaction with the Code Administrator's complaints handling.*<sup>34</sup>

4.26. Although the Solar Code requires an independent review must be conducted every three years, the CEC advised that it did not undertake an independent review in 2019 because of the work which began on the NETCC. The CEC stated that once it became clear that there would be a need to extend the Solar Code, it undertook an internal review of the Solar Code, which identified the amendments outlined in the application for re-authorisation. An independent consultant was engaged to consider the merits of these proposed amendments. Whilst acknowledging that this process does not fully meet the review requirements of the Solar Code, the CEC considered that the costs of a full independent review would not have been justified given the imminent replacement of the Solar Code.<sup>35</sup>

### **ACCC conclusion on public benefit**

4.27. The ACCC considers that the Conduct is likely to result in public benefits from:

- reduced information asymmetry (due to Solar Code signatories committing to provide greater information to consumers), and
- increased consumer protections (due to Solar Code signatories committing to consumer protections beyond the legal minimum or provisions of the Solar Code increasing the likelihood of greater compliance with existing laws).

4.28. The ACCC considers that in general, the provisions in the Solar Code provide mechanisms to ensure its effective administration and enforcement. Specifically, the complaints process for investigations and ability to appeal sanctions or unsuccessful applications to the independent Code Review Panel, and the requirement that the Code Review Panel publish annual reports on the Solar Code's effectiveness.

### **Public detriments**

4.29. The Act does not define what constitutes a public detriment. The ACCC adopts a broad approach. This is consistent with the Tribunal which has defined it as:

*...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.*<sup>36</sup>

4.30. The ACCC has considered the following public detriments:

- Reduced competition in the retail supply of solar PV systems
- Potential to misled/deceive consumers regarding alterative finance.

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<sup>34</sup> [Application for Authorisation](#), 15 May 2020, page 17

<sup>35</sup> [Application for Authorisation](#), 15 May 2020, page 17.

<sup>36</sup> Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

## Reduced competition in the retail supply of solar PV systems

### *Increased costs for retailers*

- 4.31. The CEC submits that some of the costs of providing a minimum five-year warranty and the fees charged to applicants and signatories are likely to be passed on to consumers in the form of higher prices. It also submits that there is an increased cost in terms of compliance and reporting requirements under the Solar Code which may increase the regulatory burden for retailers.
- 4.32. Prior to the draft determination, some interested parties raised concerns that small businesses, many of whom are owner-operators, lacked the adequate resources to comply with the obligations of the Solar Code. The CEC submitted in response that Solar Code fees have not increased since 2015. Further, the only mandatory fees are the application fee (which contributes to the costs of undertaking credit checks and assessing each applicant's documentation) and the annual fee (which is based on a sliding scale so that in most instances smaller businesses pay less than larger retailers, and contributes to compliance, promotion and administration costs).<sup>37</sup>
- 4.33. Following the draft determination, the CEC advised that it is considering a fee increase (pursuant to clause 4.3.4), to reflect that the costs associated with administering the Solar Code have increased substantially over the past five years. The CEC advised that this fee increase will be considered with appropriate stakeholder consultation (as required by clause 2.4.26).<sup>38</sup>
- 4.34. The ACCC acknowledges that signatories incur costs in order to comply with the Solar Code. However, it considers that:
- for the Solar Code to be effectively enforced, there are costs to the CEC that appropriately need to be covered. The method for calculating annual fees is published on the CEC's website and outlined at **Table 2** below. The ACCC considers that the fees are proportionate to a business' output. Any future fee increase proposals made by CEC should only seek to cover the costs of administering the Solar Code
  - cost increases arising from the additional support supplied to consumers or higher-quality products or services (such as the minimum five-year warranty or additional disclosure requirements) likely reflect a corresponding increase in the quality of those goods/services, and
  - in relation to compliance costs incurred by signatories resulting directly from the Solar Code's implementation, the ACCC considers the compliance requirements are necessary for the Solar Code to be effective.
- 4.35. The ACCC therefore considers that minimal detriment is likely to result from an increased cost of supply for retailers who are signatories to the Solar Code.

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<sup>37</sup> [Applicant's response to interested party submissions](#), 22 July 2020.

<sup>38</sup> [Applicant to ACCC re final version of Code](#), 5 November 2020, page 3.

**Table 2: Fees under the Solar Code**<sup>39</sup>

Application fees		Annual fee for Approved Solar Retailers	
Application fee	\$200 + GST	\$0.80 per kW of solar or battery capacity installed in past 12 months:	
Franchisee application fee	\$100 + GST per franchisee	Minimum fee	\$600
Review fee (if being reviewed for third or subsequent time)	\$200 + GST	Maximum fee	\$6000

### ***Investigations/sanctions or denied applications as a barrier to entry***

- 4.36. Being a signatory to the Solar Code (a ‘CEC Approved Solar Retailer’) may provide an advantage over non-signatory retailers because consumers may perceive that signatories uphold better business practices and offer greater consumer protections than non-signatories, making them more attractive. This advantage may be further increased where governments link signatory status to access to consumer rebates or incentive schemes, or offer certain government tenders exclusively to signatories (as further discussed in paragraph 2.10 above). The CEC submits that because government programs are increasingly mandating that retailers be signatories to the Solar Code, sanctions like suspension could reduce competition by preventing their participation in such programs and causing loss of income.
- 4.37. If existing signatories are inappropriately sanctioned (including having their signatory status suspended or cancelled), or potential signatories have their applications rejected due to deficiencies in the application process or its administration (rather than the application itself), this may reduce their ability to compete to provide solar PV systems.
- 4.38. While the ACCC considers it is important that appropriate sanctions are applied for non-compliance with the Solar Code and that applications are rejected where they are deficient, the ACCC considers such decisions by the CEC must be made in a transparent and consistent manner, and be reviewable by an independent body. Such checks and balances are necessary to ensure that the CEC and the Solar Code are operating effectively and fairly and do not result in anti-competitive outcomes, for example by inappropriately excluding retailers and reducing competition between retailers.

### **Investigations and sanctions imposed on existing signatories as a barrier to competing in the market**

#### Breach matrix and severity of sanctions

- 4.39. Both prior to and following the draft determination, some interested parties raised concerns with the breach matrix in the Solar Code (clause 3.5.3).
- 4.40. A number of interested parties submitted that the ‘severity’ levels allocated to some breaches are too high or outweigh the infringement, or that certain breaches are ambiguous or subjective.<sup>40</sup> One party raised particular concerns that signatories acting in a way that ‘brings the Code into disrepute’ (clause 2.4.23) was increased to a

<sup>39</sup> See Clean Energy Council, [Fees](#), accessed 12 November 2020.

<sup>40</sup> [Submissions by Bell Solar Pty Ltd](#), 16 June 2020; [Submission by Kuga Electrical](#), 16 June 2020; [Submission by United Solar Energy](#), 4 September 2020.

'severe' breach, and submitted that the Solar Code should clarify what types of conduct would breach this clause.<sup>41</sup> United Solar Energy had particular concerns that the current sanctions of suspension and termination are excessive, and in contrast to other codes that impose sanctions but do not result in the livelihood of the business operator being taken away.<sup>42</sup>

4.41. However another interested party, Associate Professor Penelope Crossley, considered the changes to the breach matrix to be appropriate and fair.<sup>43</sup>

4.42. In response, the CEC submitted that it remained of the view that the breach levels and associated sanctions are proportionate to, and reflective of, the harm (or potential harm) to consumers and the industry. The CEC cited an example, that given the potential harm that can result from misleading advertising to consumers and the impact this conduct has on the reputation of the industry as a whole, this breach is rated as 'severe'; whereas failure to appoint a 'primary contact' with the CEC is rated as 'medium' because the potential harm is more limited.<sup>44</sup>

4.43. In respect of suspensions and cancellations, the CEC submits that:

- a suspension may occur automatically where a signatory has committed three severe and/or major breaches in a 12-month period, in respect of which sanctions have been issued (clause 3.6.5). The CEC advises that the Code Administrator also assembles an internal panel of CEC staff to assess the alleged breaches and recommended course of action (per clause 2.4 of the Complaints Procedure)
- a suspension may occur where, following a determined breach, a signatory has failed to provide evidence that they have performed the required rectification within a reasonable timeframe (clause 3.6.5(b)). The suspension would usually be lifted when evidence of remediation is provided, but if a signatory fails to provide this evidence within a reasonable timeframe their status may be cancelled
- a cancellation may occur with immediate effect in cases of serious, wilful or systematic non-compliance that is detrimental to consumers (clause 3.6.4). The CEC has amended this clause to require the Code Administrator to consult with the Code Review Panel before invoking this clause, which the CEC submits is something that already occurs in practice.<sup>45</sup>

4.44. Regarding clause 2.4.23, the CEC submits that behaviours that would bring the Solar Code into disrepute would include practices such as not ceasing unsolicited door to door sales during active state government restrictions, repeated instances of lying to the Code Administrator, or causing reputational damage to the Approved Solar Retailer program; and that the CEC will consider further consultation on this clause in due course.<sup>46</sup>

4.45. The CEC also submits that the discretion afforded to the Code Review Panel to alter breach levels in clause 3.5.3 is appropriately balanced with the Code Administrator's discretion to lower breach levels. The CEC advises that in exercising this discretion it considers if the circumstances are of low impact to consumers, the impact of the

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<sup>41</sup> [Submissions by Bell Solar Pty Ltd](#), 16 June 2020;

<sup>42</sup> [Submission by United Solar Energy](#), 4 September 2020.

<sup>43</sup> [Submission by Associate Professor Penelope Crossley](#), 9 June 2020.

<sup>44</sup> [Applicant to ACCC re final version of Code](#), 5 November 2020.

<sup>45</sup> [Applicant's response to ACCC's information request](#), 5 October 2020.

<sup>46</sup> [Applicant's response to interested party submissions](#), 5 October 2020. Clause 2.4.25 requires that any major changes to the Solar Code be undertaken in consultation with the key stakeholders including signatories, industry, ACL regulators and consumer protection agencies.

breach on the Solar Code's integrity, the extent to which evidence showed this was an isolated event, and any corrective action already taken by the signatory. The CEC also submits that it adopts a 'support to comply' approach for minor or medium non-compliances where the signatory acknowledges a breach and is proactive in rectifying the program, provided there is no substantial consumer harm and the breach does not reflect blatant non-compliance.<sup>47</sup>

4.46. The ACCC considers that the amendments to the breach matrix assign 'severity' levels to requirements that already existed in the Solar Code and that these are likely to help ensure it is applied transparently and consistently. Further, the amendments increasing 'severity' levels (and therefore sanctions) for certain breaches are, to some degree, balanced by the addition of a new power enabling the Code Administrator to lower a breach's severity level during an investigation<sup>48</sup> and the CEC's 'support to comply' approach. Finally, it notes that signatories have the ability to appeal a decision by the Code Administrator to impose a sanction.

#### Enforcement procedure and conflicts of interest

4.47. Both prior to and following the draft determination, multiple interested parties, including solar retailers and the Smart Energy Council, raised concerns that the Solar Code is poorly administered and applied by the CEC, including the following:

- Some interested parties expressed concerns that there is an arbitrary nature to adverse rulings and that inconsistent or stricter rules are being applied to some industry participants (particularly mavericks) or certain retailers are being 'fixated' on; and that there is a lack of natural justice during the application process, during the investigation of potential breaches, and when signatories appeal CEC decisions.<sup>49</sup>
- One interested party was concerned that suspension or cancellation takes effect immediately, prior to an appeal to the Code Review Panel being heard, as this can cause significant financial detriment to a signatory.<sup>50</sup> Some interested parties also expressed concerns that the CEC has a conflict of interest. For example, due to the fact the CEC is responsible for both accrediting installers/designers and also for approving retailers, or that the CEC both investigates complaints and makes binding determinations<sup>51</sup> (with one interested party suggesting the Code Review Panel should do the latter instead<sup>52</sup>). Some interested parties also submitted that the CEC is not representative of the solar PV industry.<sup>53</sup>
- Multiple interested parties also raised concerns that the Code Review Panel is not independent, including for reasons that its members have not been recruited from outside the industry and/or hold preconceived views about the industry.<sup>54</sup> Under the CEC's amendments, the Code Review Panel would hear appeals from unsuccessful applicants (as well as from existing signatories appealing against a decision of the Code Administrator, as it did previously).

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<sup>47</sup> [Applicant's response to interested party submissions](#), 5 October 2020.

<sup>48</sup> Amended clause 3.5.3.

<sup>49</sup> Submission by Bell Solar [16 June 2020](#) and [4 September 2020](#); [Submission by United Solar Energy](#), 4 September 2020; [Submission by Solar Service Group](#), 4 September 2020; [Submission by B.Solar](#), 4 September 2020.

<sup>50</sup> [Submission by United Solar Energy](#), 4 September 2020.

<sup>51</sup> [Submission by Sungreen Solar](#), 16 June 2020; [Submission by An Interested Party](#), 16 June 2020; [Submission by Adrian Luke](#), 16 June 2020.

<sup>52</sup> [Submission by Bell Solar Pty Ltd](#), 16 June 2020.

<sup>53</sup> [Submission by Smart Energy Council](#), 19 June 2020; [Submission by Solar Quotes](#), 15 June 2020; [Submission by Ian Cargill](#), 16 June 2020; [Submission by Arise Solar](#), 16 June 2020.

<sup>54</sup> [Submission by Bell Solar](#), 4 September 2020; [Submission by United Solar Energy](#), 4 September 2020.

- 4.48. In relation to the compliance process, the CEC maintains that it administers the Solar Code in a manner compliant with the principles of natural justice, fairness and the provisions of the Solar Code itself. The CEC submits that its Complaints Procedure (see paragraph 4.55 below) is robust and methodically places facts and evidence to the signatory for a response, before reaching any conclusion. It submits that the Code Administrator continues to take a prudent and practical approach in basing its findings on allegations and facts, and only finding breaches when the objective evidence is clear. It also notes that extensions of all deadlines during the compliance process are usually granted in the first instance, provided they are sought before the due date.<sup>55</sup>
- 4.49. The CEC also firmly rejects any allegations it ‘fixates’ on any particular signatory or retailer. The CEC acknowledges that parties may have differences of opinion and on occasion, feel aggrieved with the manner in which the CEC administers the Solar Code (particularly where a sanction is imposed) and notes that it is continuously refining and improving its processes to reduce this risk. It notes the vast majority of interactions it has with signatories do not involve complaints, with the CEC having received 233 complaints over the life of the Solar Code (since 17 October 2013).<sup>56</sup>
- 4.50. In relation to concerns about suspension or cancellation, the CEC considers that it is appropriate in the circumstances for suspension or cancellation to take effect prior to an appeal being heard where there is failure to rectify a breach or systematic failure, and that this is not inconsistent with the appeal processes in courts (where generally there is no default ‘stay’ of the effect of a judgment).<sup>57</sup>
- 4.51. In relation to concerns regarding conflicts of interest, the CEC does not agree that it has a conflict of interest and submits that the Solar Code requires the CEC to manage applications, monitor compliance and enforce sanctions. It considers that it has robust internal mechanisms in place to guard against any conflict of interest arising and, further, its power to make binding determinations is appropriately balanced by the ability of signatories to appeal.
- 4.52. The CEC also submits that its Board is elected via an Annual General Meeting of CEC members; that the CEC contributes to a range of standard committees for solar and other relevant technologies; and that independent reviews of the Solar Code have not raised concerns about the CEC’s objectivity in administering the Solar Code.<sup>58</sup>
- 4.53. Additionally, the CEC rejects any claims that it is not representative of the industry. It submits that its commitment to advocating on behalf of the industry is demonstrated by the policy forums it participates in, industry events it organises, and by undertaking educational initiatives to help consumers make informed purchasing decisions.<sup>59</sup>
- 4.54. In relation to concerns regarding the independence of the Code Review Panel, the CEC submits that members of the Code Review Panel are independent from both the CEC (whether operating as Code Administrator or otherwise) and from signatories and retailers, and therefore provide crucial oversight and monitoring to ensure impartiality in hearing appeals. It submits that if the members of the Code Review Panel were recruited from outside the solar PV industry, they would likely not have sufficient knowledge of the relevant industry, technology and consumer issues to provide

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<sup>55</sup> [Applicant's response to ACCC's information request](#), 22 July 2020.

<sup>56</sup> [Applicant's response to interested party submissions](#), 22 July 2020; [Applicant's response to interested party submissions](#), 5 October 2020.

<sup>57</sup> [Applicant's response to interested party submissions](#), 5 October 2020.

<sup>58</sup> [Applicant's response to interested party submissions](#), 22 July 2020; [Applicant's response to interested party submissions](#), 5 October 2020.

<sup>59</sup> [Applicant's response to interested party submissions](#), 22 July 2020.

appropriate oversight or arbitrate cases. It also notes that previous independent reviews have not raised concerns about the Code Review Panel's objectivity or independence.<sup>60</sup>

4.55. The ACCC considers that where the compliance process is not enforced appropriately or transparently, this may reduce competition between solar PV retailers by, for example, leading to certain retailers having their signatory status inappropriately cancelled or suspended and potentially preventing them from accessing consumers who are seeking to obtain financial incentives under government schemes. While the ACCC acknowledges the concerns of some signatories about the CEC's administration of the Solar Code or particular decisions, it is not the ACCC's role to arbitrate or make findings about these cases. The ACCC considers that overall, the Solar Code has sufficient rules, checks and balances in place to help ensure that the CEC appropriately monitors compliance with the Solar Code, enforces breaches and minimises any potential for conflicts of interest. In particular:

- the CEC's Complaints Procedure, which was recently updated following consultation with signatories and approved by the Code Review Panel, requires:<sup>61</sup>
  - signatories to be provided with details of the alleged breach as soon as practicable and given 21 days to respond (or if they do not dispute the breach, to provide evidence of the actions taken to address it)
  - the CEC must investigate and assess the issue as soon as reasonably practicable, and if a breach is found, allocate a sanction or refer it to the Code Review Panel. The CEC also submits that it advises retailers whether each allegation has been substantiated and explains the reasoning for these decisions
  - sanctions imposed for medium-severe breaches provide the signatory with an opportunity to detail their strategy to rectify the issue (in addition to other actions, depending on the breach level). Where a major breach has occurred, signatories have a reasonable period to remediate the breach as requested by the CEC, and will only be named on the CEC website and annual report if they fail to do so
  - if the CEC imposes a sanction requiring a signatory to rectify the issue, the signatory has 30 days to appeal this decision to the Code Review Panel, who will provide a ruling and reasons as soon as reasonably practical, and
  - while a suspension or cancellation may take effect immediately (i.e. the following day) and prior to an appeal being heard, this appears to be proportionate to the level of potential harm described in clauses 3.6.4 and 3.6.5 (outlined in paragraph 4.43 above). The ACCC has reviewed the data published on the CEC's website<sup>62</sup> as well as information provided confidentially and considers it does not suggest a pattern of the CEC imposing suspensions or cancellations in circumstances where it is unreasonable to do so. Further, the fact that, in certain circumstances, the Code Administrator must consult with an internal panel of staff or with the Code Review Panel before imposing such sanctions acts as an additional check (with the Solar Code having been amended to make the latter an explicit requirement prior to invoking clause 3.6.4.)

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<sup>60</sup> [Applicant's response to interested party submissions](#), 5 October 2020.

<sup>61</sup> Clean Energy Council, [Solar Retailer Code of Conduct Complaints Procedure](#), accessed 13 November 2020.

<sup>62</sup> Clean Energy Council, [Compliance Activity](#), accessed 10 November 2020.



- the Code Review Panel must publish an annual report that includes all breaches and sanctions imposed, which provides transparency and accountability over how sanctions are being applied. The ACCC understands that the CEC now provides signatories with an additional Quarterly Report containing this information.

4.56. The ACCC also notes the CEC’s submission that the Code Administrator (particularly the Conduct of Conduct Team), tasked with investigating complaints, includes a number of staff with experience in compliance, inspections and dispute resolution. Staff are provided with specific training from experienced staff regarding the Complaints Procedure and steps of an investigation; and attend presentations from regulators and government agencies (such as consumer protection agencies).<sup>63</sup>

4.57. The ACCC therefore considers that the Solar Code is unlikely to result in public detriment in the form of investigations or sanctions inappropriately preventing or excluding retailers from operating in the supply of solar PV systems.

### Denied membership to the Solar Code as a barrier to entry

4.58. Many interested parties expressed concerns about the Solar Code’s connection to government schemes which only offer financial incentives for installations performed by retailers who are signatories to the Solar Code.<sup>64</sup> They submitted that such linkages undermine the voluntary nature of the Solar Code and make signatory status a prerequisite to remaining in the solar retail business in states that have such schemes (as outlined in **Table 1** above, but particularly in Victoria).<sup>65</sup> Some submitted that this has reduced business opportunities for non-signatories and contributed to them being driven out of business through no fault of their own.<sup>66</sup> Others noted that while originally a voluntary scheme that retailers could use to add value to their business, the Solar Code now offers no tangible value and retailers would not be adopting it but for the financial incentives.<sup>67</sup> One interested party also raised concerns about it being compulsory for retailers to be signatories to access certain government tenders.<sup>68</sup>

4.59. The ACCC notes that when it last considered re-authorisation of the Solar Code in 2015, there were only 24 signatories and only one federal government scheme that linked financial incentives to the Solar Code. As at 5 October 2020, the Solar Code has 1,070 signatories and the Victorian, South Australian, New South Wales and Northern Territory governments now also offer such financial incentives, with more schemes possible in the future. A retailer’s decision (and ability) to become an Approved Solar Retailer has therefore become much more important in determining their ability to compete in the solar PV retail market. The increased prevalence of government schemes or tenders requiring retailers be a signatory to the Solar Code makes ensuring that the Solar Code is properly administered and enforced important to minimising any potential competitive harm.

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<sup>63</sup> [Applicant’s response to the ACCC’s information request](#), 5 October 2020.

<sup>64</sup> [Submission by Fred Torgovnikov](#), 15 June 2020; [Submission by Smart Energy Council](#), 19 June 2020; [Submission by Sungreen Solar](#), 16 June 2020; [Submission by Solar Quotes](#), 15 June 2020; [Submission by Ian Cargill](#), 16 June 2020; [Submission by Arise Solar](#), 16 June 2020. Additionally, the Smart Energy Council submits that some state government programs make the Solar Code a mandatory requirement for their solar battery support programs, when the Solar Code makes no reference to batteries, only PV installations. The ACCC understands that such schemes – such as the South Australian Department for Energy and Mining’s Home Battery Scheme – operate based on the assumption that when consumers purchase a solar battery, they are purchasing from retailers who also install solar PV systems (as opposed to batteries only), generally in the context of purchasing the solar PV system.

<sup>65</sup> [Submission by Sungreen Solar](#), 16 June 2020.

<sup>66</sup> [Submission by An Interested Party](#), 15 June 2020.

<sup>67</sup> [Submission by Andrew Sada](#), 10 July 2020; [Submission by Adrian Luke](#), 16 June 2020.

<sup>68</sup> [Submission by Smart Energy Council](#), 19 June 2020.

## Application process

- 4.60. The application process is outlined in paragraphs 3.20 above. The CEC notes that an application consists of an assessment of a retailer's online presence, consumer feedback, an integrity and financial check, and any adverse findings from a tribunal, court or fair trading agency; and a comprehensive review of the applicant's documentation. It submits that it provides ample opportunity to applicants to discuss the Code Administrator's findings. The CEC also advises that the amendments to the Solar Code have been made to more firmly embed the Code Administrator's current application assessment process.
- 4.61. Multiple interested parties raised concerns that the application process reduced retailers' ability to compete to provide solar PV systems in the ways outlined below (at paragraphs 4.63–4.79), particularly prior to the draft determination. Conversely, Associate Professor Penelope Crossley supported the application process (in its pre-draft determination form) on the basis that it enables consideration of the history of conduct of the party applying, which will enable an assessment of the likelihood of future breaches of the Solar Code (and potentially, undertakings that quality improvement measures have been implemented to prevent repeats).<sup>69</sup>
- 4.62. The CEC's final version of the Solar Code sought to address these concerns by introducing an independent appeals mechanism for unsuccessful applicants, formalising (and reducing) the exclusion periods that unsuccessful applicants must wait before re-applying, and formalising the substantiation requirement for applicants with less than 12 months' experience. As discussed below, the ACCC considers that in light of these amendments and the CEC's further clarifications, it is unlikely that the application process will result in a public detriment in the form of reduced competition by inappropriately excluding or delaying retailers in becoming signatories.

### *New appeals mechanism and reduced periods for re-applying*

- 4.63. Prior to the draft determination, interested parties expressed concern that when the Code Administrator rejected a retailer's application to become a signatory, that retailer had no avenue to appeal the decision and had to wait three months before being able to re-apply (or six months if rejected a second time, or 12 months if rejected a third time).<sup>70</sup> They claimed that this gave the CEC unfettered power to decide which companies become signatories and therefore compete in various markets.
- 4.64. The ACCC notes that the number of unsuccessful applicants to the Solar Code, as at 30 June 2020, is per **Table 3** below. This results in a rejection rate of approximately 25 per cent (which the CEC advises is not fixed and can fluctuate over time). However, the ACCC also notes the CEC's submission that 80 per cent of unsuccessful applicants who have reapplied have successfully become signatories.

**Table 3: Statistics on applications received and rejected from 1 January 2015 to 30 June 2020**

<b>Total applications received</b>	<b>1426</b>
Total applications approved	998
Number still under assessment	74
Number of unsuccessful applicants	354

<sup>69</sup> [Submission by Associate Professor Penelope Crossley](#), 9 June 2020.

<sup>70</sup> Clean Energy Council, [Apply](#), accessed 22 July 2020.

Number of unsuccessful applicants who re-applied	151
Of the unsuccessful applicants who re-applied, how many become signatories to the Code	120
Number of unsuccessful applicants who have an application under assessment	15
Of the unsuccessful applicants who re-applied, how many were rejected again	16

4.65. In its draft determination, the ACCC considered that to the extent that applicants are rejected for good reason, any loss of competition is outweighed by the benefit to consumers of maintaining high standards of retailer conduct. It noted that current mechanisms in the Solar Code, which give applicants the opportunity to explain any adverse findings detected during the application phase and provide them with formal feedback on the application, go some way to ensuring the application process is appropriately and consistently administered. However, there was potential for the application process to result in public detriments by reducing the ability of new applicants to compete in the supply of solar PV systems, primarily because not providing the applicants the ability to appeal meant there was no independent oversight of the application process to assess whether retailers were being inappropriately denied signatory status. This public detriment would be compounded by the three, six or 12-month exclusion periods before unsuccessful applicant retailers were able to re-apply.

4.66. The ACCC concluded that the lack of transparency in the application process and the exclusion periods resulted in a public detriment, particularly for retailers in those states where it is a requirement to become a signatory to the Solar Code to access financial incentives. Consequently, it proposed to grant authorisation subject to a condition that provided:

- an independent appeals mechanism for retailers seeking to become signatories of the Solar Code, and
- for the Code Administrator to implement a waiting period for retailers who are unsuccessful applicants of no longer than one month (for first time rejection), two months (for second time rejection) and three months (for third time rejection).

4.67. Following the draft determination, the CEC amended the Solar Code to:

- introduce an appeals mechanism which allows a retailer to appeal the Code Administrator's decision to reject their application to become a signatory (section 3.7). Retailers have 30 days to lodge an appeal,<sup>71</sup> for a \$750 fee,<sup>72</sup> if they believe the Code Administrator did not exercise reasonable discretion, that they were denied natural justice, or that new evidence has come to light that was not available at the time of original determination. The appeal will be heard by the Code Review Panel (or its appointed delegate) who will provide a written ruling as soon as reasonably practical. An applicant is allowed one appeal in respect of each application it may choose to submit; and

<sup>71</sup> This period runs from, if the applicant elects not to appeal, the date of the Code Administrator's rejection; or if the applicant elects to appeal and the Code Review Panel rejects the appeal, from the date the applicant receives notice of the Code Review Panel's decision: [Applicant's response to the ACCC's request for information](#), 5 October 2020

<sup>72</sup> This CEC submits that this fee is intended to cover at least part of the costs of the appeal, including remuneration to the CRP members to review the appeal brief, the Code Administrator's costs in compiling and indexing the brief, and preparing the appeal more generally: [Applicant's response to interested party submissions](#), 5 October 2020.

- formalise reduced exclusion periods as required by the condition (clause 4.1.6). An unsuccessful retailer must wait one, two or three months after a first, second or third rejection respectively; though a third application can be declined if the retailer's behaviour or actions are considered inconsistent with the Solar Code. Before re-applying, applicants must sufficiently demonstrate (in writing) that they can comply with the requirements and have systems and procedures in place to ensure ongoing compliance.
- 4.68. The ACCC considers that the CEC's amendments to the Solar Code are sufficient to address the concerns raised in draft determination that the lack of transparency in the application process and exclusion periods would result in a public detriment. In relation to the Code Review Panel's independence, the ACCC's accepts the CEC's submission (per paragraph 4.54 above) that the members are independent of both the CEC and of signatories and retailers; and that being recruited from within the solar PV industry provides them with the level of industry knowledge necessary to provide appropriate oversight or arbitrate matters.
- 4.69. Further, the CEC's amendments have clarified that if the Code Review Panel chooses to appoint a delegate to hear an appeal, that delegate must meet the selection criteria required of the Code Review Panel itself: namely that it be independent, have no representative of the Code Administrator, be suitably qualified to arbitrate cases, and consist of at least three participants that are all non-signatories (clauses 3.2.1 and 3.2.2).
- 4.70. The ACCC accepts that an appeal would be more costly for the CEC than an initial consideration. It notes the CEC's submission that a \$750 fee would cover at least part of the costs of the appeal and considers that the imposition of this fee appears appropriate to enable the CEC to administer the Solar Code effectively.

*Inconsistent or unilateral standards in assessing applications*

- 4.71. Two interested parties raised concerns that inconsistent standards and a lack of natural justice are being applied in assessing applications. Bell Solar Pty Ltd cite examples of applicants being rejected based on their terms and conditions, which were in fact identical to those of existing signatories; or based on the CEC's erroneous understanding of the Australian Consumer Law or on alleged complaints that were not disclosed to the applicant.<sup>73</sup> Tru Solar submits that the CEC stated it did not have sufficient resources to explain every requirement that Tru Solar's application did not meet; whereas Tru Solar argues that it is reasonable to expect such an explanation so that it can address any shortcomings and re-apply.<sup>74</sup>
- 4.72. In response, the CEC submitted that the onus is on the applicant to demonstrate that it can meet the requirements of the Solar Code. It notes that feedback on the assessment of an application is provided to each applicant (clause 4.1.4). The CEC advises that after it assesses an applicant's terms and conditions, quotes, invoices and advertisements, it will highlight areas of concern and relate those to clauses of the Solar Code. It will then determine the extent of the applicant's non-compliance with the Solar Code and provide the applicant with either:
- a letter of amendments (for minor non-compliance), which seeks amendments to bring the documentation within the requirements of the Solar Code and requests further clarification

<sup>73</sup> [Submission by Bell Solar Pty Ltd](#), 16 June 2020; [Submission by Bell Solar Pty Ltd](#), 4 September 2020.

<sup>74</sup> [Submission by Tru Solar Pty Ltd](#), 16 June 2020.

- a first review letter (for major non-compliance) which highlights areas of focus and allows applicants to amend and re-submit their documentation, or
- a rejection letter (for extensive non-compliance), which formally rejects the application, but still allows the applicant to re-apply after the exclusion period.

4.73. The ACCC considers that the processes in place for considering applications appear appropriate for giving feedback to applicants and that the addition of an independent appeals mechanism provides transparency over whether the standards are being applied appropriately and with procedural fairness.

#### *Difficulties satisfying pre-requisites*

4.74. Prior to the draft determination some retailers expressed difficulties in meeting certain standards to become a signatory, which retailers are required to 'declare' they meet when lodging an application. A few parties noted the barrier of requiring retailers to have been operational for at least 12 months to qualify, regardless of how experienced their individual director/manager may be.<sup>75</sup> Bell Solar Pty Ltd raised concerns with the requirement that during the past five years, no directors, managers, partners or shareholders of a retailer, or any of their close family members, can have been involved in a business that has (among other things) gone into liquidation, received a court judgment, or engaged in activity which would cause the Code to fall into disrepute. It submitted that this does not appear to be relevant to determining an application, and that presumably, some large existing signatories (such as AGL and Origin) who have thousands of shareholders, would be unlikely to satisfy this.<sup>76</sup>

4.75. The CEC notes that the 'declarations' were developed by the Code Administrator and approved by the Code Review Panel, and have been in place since 2015 (although they do not need to be renewed by existing signatories each year). The CEC checks compliance with the declarations via financial and integrity checks for directors and shareholders. The CEC advises that if a retailer cannot meet the criteria, they normally contact the Code Administrator who may request further information (for example, as to why their company was deregistered) and give them an opportunity to respond. That retailer can still go on to become a signatory.<sup>77</sup>

4.76. The CEC submits that the minimum 12-month operating requirement is necessary to protect consumers by ensuring that businesses have sufficient experience and expertise, particularly as the CEC's experience has been that operators who enter the solar industry without it have been less inclined to comply with the Code.<sup>78</sup> However, considering that the Code Administrator has in practice granted requests to waive the 12-month requirement where potential applicants provide further details or substantiate their relevant industry experience, the CEC has formalised this option in the Solar Code (clause 4.1.1(j)<sup>79</sup>).

4.77. The ACCC considers that in most instances, the minimum 12-month operating requirement is appropriate for the reasons outlined by the CEC. However, it considers that this requirement may act as a barrier for new retailers who are seeking to enter markets within which signatory status has become virtually essential in order to be

<sup>75</sup> [Submission by Sungreen Solar](#), 16 June 2020; [Submission by An interested Party](#), 24 June 2020.

<sup>76</sup> [Submission by Bell Solar Pty Ltd](#), 16 June 2020.

<sup>77</sup> [Applicant's response to ACCC request for information](#), 22 July 2020

<sup>78</sup> [Applicant's response to interested party submissions](#), 22 July 2020.

<sup>79</sup> Clause 4.1.1(j) provides that 'where the applicant has not been in operation for 12 months, the Code Administrator may request that the applicant provide further details, including supporting documentation, to demonstrate relevant experience in the industry.'

viable, because it is the only way to access government incentives. It therefore considers that the CEC's decision to formalise the waiver for the 12-month operating requirement where potential applicants can substantiate their experience mitigates this potential harm.

- 4.78. In relation to declarations regarding 'close family members', the CEC submits that this requirement relies on some of the indicators of illegal phoenix activity (as identified by relevant regulators<sup>80</sup>) to ensure as much as possible that only reputable businesses become signatories. This includes, for example, where a director of a new company is a family member or close associate of the director of a former company. The ACCC considers that this requirement appears appropriate in the context of preventing illegal phoenix industry. The ACCC particularly notes the CEC's submission that this restriction only applies to liquidations, court judgements, expulsions from the Code etc. from the previous five years, which recognises that directors and businesses can improve their practices and behaviours.
- 4.79. Overall, the ACCC does not consider it likely that the Solar Code will result in a public detriment in the form of reduced competition due to either the increased cost of supply for retailers who are signatories, or from the sanction process being inappropriately imposed on retailers. In light of the CEC's proposed amendments, it also considers there is unlikely to be public detriment resulting from the potential for the application process to unfairly prevent or restrict retailers from supplying solar PV systems.

#### **Potential to misled/deceive consumers regarding alternative finance**

- 4.80. The Solar Code requires retailers offering finance and alternative purchasing arrangements to meet the following standards (clauses 2.1.20–2.1.24):
- ensure that the consumer clearly and accurately receives certain information about the provider, arrangement and fees
  - must make reasonable enquiries about whether a finance arrangement offered to a consumer is regulated by the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**). If not regulated by the NCCPA, the retailer must ensure the relevant contract includes a provision substantially in the form of 2.1.24(a) and (b) and are signed by the consumer i.e. that the consumer may not have access to a dispute resolution scheme approved by the Australian Securities and Investment Commission and or the right to ask the provider for a hardship variation.
- 4.81. The CEC also offers to signatories the use of an optional pro forma to assist retailers in satisfying the provisions of the Solar Code which relate to finance and alternative purchasing arrangements.
- 4.82. Prior to the draft determination, Flexigroup submitted that these clauses are confusing and unnecessary, and it is not beneficial to consumers to disclose that a finance product is not regulated by the NCCPA. It considered that these clauses are illusory and mislead consumers. Flexigroup submitted that all BNPL providers who finance solar PV systems are members of the Australian Financial Complaints Authority (**AFCA**) and BNPL providers do offer hardship arrangements to their consumers. Flexigroup proposed that these clauses in the Solar Code be replaced with a clause informing consumers that they can access external dispute resolution provided by the AFCA or hardship support.

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<sup>80</sup> Australian Securities & Investments Commission, [illegal phoenix activity](#), updated 13 July 2020; Australian Taxation Office, [Phoenix factsheet](#), updated 2 July 2019.

- 4.83. The ACCC understands that some finance products, including BNPL products, are exempt from or not regulated by the NCCPA and National Credit Code, meaning they are not required to comply with certain requirements, including those relating to dispute resolution and hardship arrangements. However, some BNPL providers have chosen to be members of AFCA and implement dispute resolution and hardship policies.
- 4.84. Prior to the draft determination, the CEC submitted that it was actively reviewing the arrangements offered by BNPL providers and that if a BNPL provider has an arrangement in place that is in line with requirements under clause 2.1.24, then Solar Code signatories are not be required to use the pro forma in relation to that finance provider. Since the draft determination, the CEC has provided further clarification regarding the steps it takes to review the sales and finance documentation offered to consumers by retailers applying to become signatories of the Solar Code. In the event that the retailer or finance provider's contract meets the requirements in clauses 2.1.22–2.1.24, the pro forma is redundant and so is not offered to the retailer. The CEC further states that if the finance provider has implemented dispute resolution procedures, hardship variation provisions and default payment arrangements, and this is evidenced in the documents provided, then statements to the effect of clause 2.1.24 (a) and (b) are not required to be signed by the consumer.<sup>81</sup>
- 4.85. The ACCC considers the provisions are unlikely to result in public detriment by misleading or deceiving consumers.
- 4.86. Prior to the draft determination, CALC submitted that to avoid consumer harm and embody best practice conduct, the Solar Code should be re-authorised subject to the same conditions that CALC recommended during the ACCC's review of the NETCC application for authorisation, namely:
- prohibiting unsolicited offers of unregulated finance for the purchase of new energy tech (which includes solar PV systems), and
  - requiring signatories to only offer finance regulated by the NCCPA.
- 4.87. The ACCC notes that the Tribunal has since released its determination in the NETCC matter and the Tribunal did not adopt CALC's suggested conditions in respect of the NETCC. Amongst other things, the Tribunal:
- imposed a condition removing the prohibition on BNPL finance being offered in unsolicited sales of new energy tech, and
  - did not require signatories to only offer finance regulated by the NCCPA, but imposed conditions relating to the requirements that BNPL finance providers must meet in order for signatories to offer such finance under the NETCC.<sup>82</sup>
- 4.88. Taking into account the Tribunal's consideration of similar issues in relation to BNPL products in the NETCC matter, the ACCC does not consider it appropriate to impose the conditions proposed by CALC in this matter.
- 4.89. The CEC has further submitted that it considers the BNPL provisions of the Solar Code are consistent with the conditions imposed in the Tribunal's determination in

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<sup>82</sup> [Application by Flexigroup Limited \(No 2\)](#) [2020] ACompT 2 [397].

respect of the NETCC, and that no amendments to these clauses in the Solar Code are required in light of the NETCC determination.<sup>83</sup>

- 4.90. The ACCC considers that the terms of the finance and alternative purchasing arrangement provisions of the Solar Code differ from the provisions in the NETCC in some respects. For instance, the NETCC requires signatory retailers to ensure that finance products that are not regulated by the NCCPA and National Credit Code are offered through a credit provider that has had its finance contract and internal policies formally approved by the NETCC code administrator, meaning that it has been certified as providing dispute resolution, alternative and flexible payment options and hardship processes. The Solar Code does not impose this formal approval requirement; it requires retailers to make reasonable enquiries as to whether the finance arrangement is regulated by the NCCPA, and to provide some information about the potential risks if it is not.
- 4.91. However, the ACCC accepts that the finance and purchasing arrangement provisions of the Solar Code give consumers some relevant information about the financing arrangements they are using to purchase a solar PV system. It also considers that the Solar Code does not generate a public detriment through inappropriately restricting the supply of the finance products (including BNPL products) to consumers, which the Tribunal considered constituted a public detriment in the context of the NETCC.

### **ACCC conclusion on public detriment**

- 4.92. The ACCC considers that minimal detriment is likely to result from increased costs imposed on retailers who are signatories to the Solar Code. This is because the compliance costs incurred by signatories are necessary for the Solar Code to be effective, the fees the CEC imposes on signatories are proportionate to a business' output and the cost increases arising from the additional support supplied to consumers is reflected in a corresponding increase in the quality of goods and services supplied by retailers.
- 4.93. While the ACCC considers that it is a matter for governments to determine the appropriate eligibility criteria for their programs, the increased prevalence of government schemes or tenders requiring retailers be a signatory to the Solar Code makes it more important that the Solar Code is properly administered and enforced to minimise any potential competitive harm.
- 4.94. There may be a reduction in competition in the supply of solar PV systems from retailers who are excluded because their signatory status is cancelled or suspended as a result of a compliance activity. However, the ACCC does not consider that this results in significant public detriment because there are sufficient processes in place in the CEC's complaints process to ensure that retailers are not inappropriately sanctioned or excluded from being a signatory. That is, it is appropriate for the CEC, in administering the Solar Code, to impose sanctions on retailers who breach the Solar Code's standards. Some detriment may arise in circumstances where a retailer is mistakenly expelled or sanctioned, but the existing independent appeal mechanism to the Code Review Panel would limit the extent of such detriment.
- 4.95. The ACCC considers that to the extent that retailers are inappropriately excluded from becoming a signatory to the Solar Code, or are delayed in becoming a signatory to the Solar Code because of the time period unsuccessful applicants have to wait to reapply, the Solar Code would reduce competition. However, the ACCC considers that the CEC's proposed amendments to introduce an appeals mechanism to the

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<sup>83</sup> [Applicant to ACCC re final version of Code](#), 5 November 2020.



independent Code Review Panel (or its delegate) and reduce the exclusion periods for unsuccessful applicants, as well as formalising the CEC's ability to waive the 12-month operating requirement, render it unlikely that this would be likely to result in a significant public detriment.

- 4.96. The ACCC considers that the Solar Code is unlikely to mislead or deceive consumers regarding alternative finance arrangements. The ACCC accepts that the finance and purchasing arrangement provisions of the Solar Code give consumers relevant information about financing arrangements that are used to purchase a solar PV system. The ACCC also considers that the Solar Code does not generate a public detriment through inappropriately restricting the supply of the finance products (including BNPL products) to consumers.

## Balance of public benefit and detriment

- 4.97. The ACCC considers that the Conduct is likely to result in public benefits in the form of reduced information asymmetry and increased consumer protections.
- 4.98. The ACCC is also satisfied that, in general, the provisions in the Solar Code provide mechanisms to ensure its effective administration and enforcement. Namely, the complaints process for investigations and ability to appeal unsuccessful applications and sanctions to the independent Code Review Panel; and the requirements that the Code Review Panel publish annual reports on the Solar Code's effectiveness.
- 4.99. The ACCC considers that minimal detriment is likely to result from increased costs imposed on retailers who are signatories to the Solar Code. There may be a reduction in competition in the supply of solar PV systems from retailers who are excluded because their signatory status is cancelled or suspended as a result of a compliance activity. However, the ACCC does not consider that this results in significant public detriment because there are sufficient processes in place in the CEC's complaints process to ensure that retailers are not inappropriately sanctioned or excluded from being a signatory.
- 4.100. There may be a reduction in competition in the supply of solar PV systems due to certain retailers being unable to become signatories to the Solar Code. However, the ACCC does not consider that this results in a significant public detriment because there are likewise sufficient processes in place (namely an independent appeals mechanism for unsuccessful applicants, reasonable exclusion periods before applicants can re-apply, and the ability to have the 12-month operating requirement waived) to ensure that retailers are not inappropriately excluded from, or delayed in, becoming signatories to the Solar Code.
- 4.101. Given the amendments which have been made by CEC to the Solar Code, the ACCC is not imposing the conditions which were proposed in the draft determination.
- 4.102. For the reasons outlined in this Determination, the ACCC is satisfied the Conduct is likely to result in a public benefit that would outweigh the likely public detriment.

## Length of authorisation

- 4.103. The Act allows the ACCC to grant authorisation for a limited period of time.<sup>84</sup> This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to

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<sup>84</sup> Subsection 91(1)

review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.

4.104. In this instance, the CEC seeks re-authorisation for three years.

4.105. Prior to the draft determination, the Smart Energy Council submitted that the primary goal must be to get the NETCC in place as soon as possible, because any delay is to the significant advantage of the CEC and to the detriment of consumers.

4.106. The CEC made a number of submissions on this issue, outlining that it considers a three-year transition process is necessary because:

- given that signatories can sign on at any time of year, it is fair that they be given the full term of the annual fee paid; and that by transitioning retailers at their point of renewal, it minimises the administrative burden on retailers and their interactions with the CEC
- there are complex requirements for changing the CEC's existing systems and processes and CEC has very limited capacity for extra costs. This includes revising data capture and data management, all forms and correspondence, and the assessment of applications and compliance procedures all align with NETCC requirements; and alignment with other internal CEC business units, processes and procedures
- the development and consultation required to finalise key operational pieces will require some additional time, particularly given the wide scope of the NETCC to other new energy tech beyond solar PV (for example, NETCC branding, fees, and schedules for specific technologies; the Monitoring Panel; the breach procedures and matrix)
- signatories need to be given time to consider if they wish to transition to the NETCC
- there needs to be a period to promote and communicate when the NETCC is expected to go live, and
- the combined effect of its limited finances, its significant operational costs and staffing pressures, and the requirement to administer both the Solar Code and transition to the NETCC necessitates a three-year authorisation.<sup>85</sup>

4.107. The CEC subsequently provided a project plan outlining the likely timing of the steps in transitioning to the NETCC and forecasts the launch of the NETCC for January to July 2023. The CEC submitted that given the Tribunal has released its determination, it is now progressing its proposal to become Code Administrator of the NETCC and other elements of the project plan. However, a transition of all 1000+ signatories, plus the readiness to accept new applications relating to other technologies with full operational support, is unlikely to be completed within a two-year time frame.<sup>86</sup> Additionally, having to reapply for re-authorisation after two years may cause further delays in progressing the NETCC towards full implementation phase and potentially significantly impact the CEC's resources.<sup>87</sup>

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<sup>85</sup> [Applicant's response to interested party submissions](#), 22 July 2020; [Applicant to ACCC re Amendments to Code](#), 3 September 2020. [Applicant's response to interested party submissions](#), 5 October 2020.

<sup>86</sup> [Applicant to ACCC re final version of Code](#), 5 November 2020.

<sup>87</sup> [Applicant to ACCC re Amendments to Code](#), 3 September 2020.

- 4.108. The Chair of the NETCC Council supports the CEC's request for a three-year re-authorisation. She submits that there are significant steps in appointing a Code Administrator, putting systems and communications in place, and accepting new signatories and transitioning existing signatories; and that given the delays from the Tribunal proceedings, the work of the NETCC Council will only resume in earnest in late January 2021. The Chair of the NETCC Council submits that a two-year extension may be tight, and that a three-year extension would be a reasonable buffer.
- 4.109. The ACT Civil and Administrative Tribunal also submitted that it is inclined to support the CEC's request for three years, in particular because of the potential for delays in the development and implementation of the NETCC.<sup>88</sup>
- 4.110. The ACCC considers that the Solar Code should only be re-authorised for the minimum period necessary to enable the transition of signatories to the NETCC. It acknowledges the various steps (above) that must be completed create some uncertainty as to when the NETCC will commence operation and signatories can begin to transfer.
- 4.111. However, given the NETCC authorisation is now in force, the ACCC considers that granting re-authorisation until 31 July 2023 will be sufficient to cover the period of transition until the NETCC is projected to launch. If, during the transition process, the CEC determines that this period is unlikely to be sufficient, it can seek further re-authorisation of the Solar Code at that time.

## 5. Determination

### The application

- 5.1. On 15 May 2020, the CEC lodged an application to revoke authorisations A91495 and A91496 and substitute authorisation AA1000514 for the ones revoked (referred to as re-authorisation). This application for re-authorisation AA1000514 was made under subsection 91C(1) of the Act.

### The authorisation test

- 5.2. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Conduct.
- 5.3. For the reasons outlined in this determination, the ACCC is satisfied, in all the circumstances, that the Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Conduct, including any lessening of competition.
- 5.4. Accordingly, the ACCC grants re-authorisation.
- 5.5. Authorisation does not represent ACCC endorsement of the Solar Code. Rather, it provides statutory protection from legal action for conduct that meets the authorisation test and that might otherwise raise concerns under the competition provisions of the Act.

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<sup>88</sup> [Submission by the ACT Civil and Administrative Tribunal](#), 14 September 2020.

## Conduct which the ACCC authorises

- 5.6. The ACCC revokes authorisations A91495 & A91496 and grants authorisation AA1000514 in substitution to enable CEC and its current and future signatories to agree, sign up to and comply with provisions of the Solar Code as described in paragraph 1.6 and defined as the Conduct.
- 5.7. The Conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act or may have the purpose or effect of substantially lessening competition within the meaning of section 45 of the Act or constitute exclusive dealing within the meaning of section 47 of the CCA.
- 5.8. The ACCC has decided to grant authorisation AA1000514 until 31 July 2023.
- 5.9. The authorisation is granted in respect of the Solar Code as it stands at the time the authorisation is granted, a copy of which is annexed to the determination. Any changes to the Solar Code during the term of the authorisation would not be covered by the authorisation.

## 6. Date authorisation comes into effect

- 6.1. This determination is made on 19 November 2020. If no application for review of the determination is made to the Australian Competition Tribunal it will come into force on 11 December 2020.
- 6.2. Interim authorisation, as granted by the ACCC on 1 October 2020, remains in place until it is revoked or the date the ACCC's final determination comes into effect.

# SOLAR RETAILER CODE OF CONDUCT

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# 1. INTRODUCTION

The Clean Energy Council (CEC) is the peak body representing Australia's renewable energy and energy efficiency industry

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## 1.1 Purpose and objectives

This non-prescribed voluntary code of conduct (the Code) aims to promote best practice measures and activities for retail businesses selling solar photovoltaic (PV) systems. This Code is for retail businesses that want to demonstrate the commitment they have to promoting responsible activity and development in the renewable energy sector across Australia. This Code is not intended to replace existing consumer, energy or environmental planning legislation, policy or regulations at local, state or federal government levels, but to bring about increased accountability within the PV retail industry.

The primary entities involved in the sale and installation of PV are the installer, designer, and retailer. It is the nature of the PV market that these roles can all be filled by one individual, or conversely, by two or three different entities. The former category is typically found in small retail businesses run by a qualified installer/designer, and the latter typically in medium- to larger-sized companies that subcontract out the designs and/or installations of PV systems, meaning that those running the business or making a sale are less likely to be qualified installers/designers. Many PV retailers in the industry now sell systems direct to consumers and sub-contract the installation of those systems.

### CEC Accreditation for Solar PV Designers/Installers

The CEC Accreditation Team manages a PV accreditation program to accredit the designers and installers of solar systems. CEC Accreditation is not linked to membership with the CEC. This qualification demonstrates competence in design and/or installation of stand-alone and/or grid-connected solar PV systems. Under the PV accreditation scheme, which has a technical focus on safety and the correct design and installation of PV systems, only individuals are able to attain accreditation. A CEC-accredited solar designer/installer:

- has completed the necessary solar specific training courses;
- is bound by the CEC Accreditation Code of Conduct and the CEC Accreditation Terms and Conditions;
- complies with the CEC Design and Install Guidelines, relevant Australian Standards and all other relevant regulations when designing/installing PV systems.

In order to claim federal government financial incentives available under the Small-scale Renewable Energy Scheme (SRES), consumers must use a CEC-accredited installer and designer, in accordance with the Renewable Energy (Electricity) (Cth) Regulations 2001. More information on the Solar PV Accreditation Program is available at: [cleanenergycouncil.org.au/industry/installers](https://cleanenergycouncil.org.au/industry/installers)

### Solar Retailer Code of Conduct

As discussed above, the CEC Accreditation Program deals with matters relating to the installation and design of PV systems. This Code deals with matters relating to the marketing and sale of PV systems to ensure PV retailers also maintain a standard that will benefit consumers and the industry.

The Code has been developed to improve the relationship between consumers and PV retailers and to ensure the industry is suitably regulated. The Code is a self-regulated scheme designed to provide consumers with confidence that solar retailers will act in compliance with (and where appropriate, go beyond) relevant federal and state laws and regulations, and conduct their business in a professional and ethical manner. The Code also deliberately connects the responsibility of the retailer with the obligations of accredited installers/designers, to ensure that retailers are fully accountable for the



## INTRODUCTION

actions of any subcontracted parties. This Code aims to address identified issues that may impact on the reputation of the solar industry. These issues include:

- Misleading claims given to consumers regarding the performance of their PV system and future electricity bills.
- Misleading advertising regarding the size of PV systems, the value of available government incentives, and the suitability of the PV system.
- The retailer not taking responsibility for the whole of the PV system including product warranties and workmanship.
- Sub-standard installation work.
- The retailer not taking responsibility for subcontracted parties acting on their behalf and any parties who generate sales leads utilised by the retailer.

The Code will be updated to reflect changes in the above, with the aim of proactively addressing issues that adversely affect consumers and the reputation of the PV industry.

To achieve its objectives, this Code addresses four broad subject areas:

### 1 | Pre-sale activities

- To protect the consumer against dishonest or misleading advertising and sales tactics, and to ensure that sales representatives act ethically at all times during marketing campaigns and when dealing with consumers.
- To ensure that the consumer is provided with the necessary written information to enable full understanding and awareness of their purchase.

### 2 | Post-sale activities

- To ensure that consumers' legal rights relating to cooling-off periods, deposits and refunds are respected, and that the consumer has the opportunity to cancel a contract where changes are made after point of contract that are not approved in writing.
- To ensure that the consumer receives a system that is installed correctly, in accordance with existing legislation, regulations, standards and guidelines.
- To ensure that the consumer is provided with a standard minimum warranty period covering the operation and performance of the entire system, and that the retailer is responsible for addressing any problems relating to workmanship or product that arise during this period.

### 3 | Documentation

- To ensure that the consumer is provided with the required documentation after the PV system is installed, and that the retailer and the consumer are fully aware of who is responsible for the provision of the relevant documentation.

### 4 | General business

- To ensure that the retailer adheres to all existing legislation and regulations, and maintains consistent business practices including, but not limited to, effective complaint handling procedures and cancellation procedures.

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## 1.2 Scope and interpretation

While the Code has been developed primarily to address issues arising during the sale and installation of small-scale PV to residential and small business consumers, the Code applies to any PV retailer that becomes a Signatory, regardless of what size system and to whom they are selling. However,

## INTRODUCTION

where signatories are selling PV to medium- and large-scale business consumers (who can be assumed to have a genuine and reasonable opportunity to negotiate the terms of a contract), it is acceptable for a commercial contract to supersede specific clauses of the Code.

This Code co-exists with relevant state or federal legislation, including *Australian Consumer Law* (Cth) (ACL) (Schedule 2 of the *Competition and Consumer Act 2010*), which replaced the *Trade Practices Act 1974*. Signatories' obligations under these laws are not replaced or restricted by this Code. This Code applies to the extent that it is consistent with all existing state and federal legislation and regulation. Where the Code is found to be inconsistent with any existing state or federal legislation or regulation, that regulatory obligation will take precedence to the extent of the inconsistency. Compliance with this Code does not guarantee compliance with any legislation.

A summary of relevant laws that protect consumers is provided at Appendix 5.4.

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## 1.3 Signatories to the Code

Solar PV retail businesses that are signatory parties to this Code are compliant with and agree to adhere to the Code. They:

- are PV retailers, including those selling PV to residential and small business consumers and those selling PV to medium and large-scale business consumers;
- are committed to developing and conducting their business in line with best industry practices and interacting with consumers in a professional and ethical manner; and
- include non-CEC members and CEC members who apply and are accepted as signatories to this Code.

A regularly updated map of current signatories to the Code is available online for consumers at [cleanenergycouncil.org.au/find-an-approved-solar-retailer](https://cleanenergycouncil.org.au/find-an-approved-solar-retailer).

## 2. GENERAL RULES AND STANDARDS

Signatories to the Code comply with the rules and standards in this section as set out below.

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### 2.1 Pre-sale activities

#### Advertisements and promotions

- 2.1.1 Any advertisements, promotions, quotations and statements produced must be legal, truthful, and comply with all relevant legislation. Signatories must:
- a. ensure all state and federal government incentive schemes are honestly and accurately represented, including not misrepresenting an association with government, or falsely claiming to be part of a government scheme;
  - b. not provide any false or misleading claims relating to the company, product or services being offered including system performance, stocks and substitution of products;
  - c. clearly attribute any claims relating to performance and savings to a reputable source;
  - d. advertise the total price as prominently as they advertise a component of the price;
  - e. provide information that is specific to the state or region of advertisement; and
  - f. not engage in any misleading or deceptive conduct in relation to the price, value or quality of goods or services including:
    - i. failing to clearly outline disclaimers or relying on disclaimers buried in small print in order to deliberately mislead a consumer;
    - ii. making statements with promises, predictions or opinions that are known to be untrue or incorrect, or for which there are no reasonable grounds to make them;
    - iii. quoting tariffs or financial incentives that are no longer available or not available in the region of advertisement;
    - iv. misleading consumers about the impact that installing solar will have on their electricity bills;
    - v. misleading consumers in relation to the size of the system or output;
    - vi. advertising large inverters with small systems, with the intention of making it appear that the system size is the size of the advertised inverter;
    - vii. the place of origin (manufacture) of a product; and
    - viii. exaggerating or misleading a consumer in regards to their need for the product.
    - ix. making representations regarding the cost of finance or an alternative purchasing arrangement for the product, such as representing that there is no additional cost for the finance or alternative purchasing arrangement when the price of the product has been inflated above the cash price or market value of the product.

## Sales and quoting practices

2.1.2 Signatories must adhere to ethical sales and quoting practices during all steps of the process, including but not limited to:

- a. avoiding high-pressure sales tactics that induce consumers to make hasty or uninformed decisions about the product and technologies they are selecting. High-pressure sales tactics can be defined as (for example):
  - i. seeking to sell products to individuals who, or organisations that, are clearly unable to understand the information and/or the contract they are being asked to enter into. For example, deliberately targeting consumers who are vulnerable due to mental illness or physical disability, age, learning difficulties, or speaking English as a second language;
  - ii. offering inflated prices and then discounts for agreeing to sign on the day or for providing testimonials and/or providing referrals;
  - iii. revisiting the consumer's premises uninvited intending to pressure the consumer;
  - iv. applying psychological pressure (by appealing to the consumer's fears, greed or vanity), to persuade the consumer to make a quick purchase decision;
  - v. employing badgering techniques, such as making frequent telephone calls, to pressure individuals or organisations into signing contracts; and
  - vi. if the consumer reasonably feels they have been subject to high-pressure sales tactics then this may also be considered to constitute such tactics.
    - What constitutes 'reasonable' will be determined by the Code Administrator (see section 3.1 below).
- b. When engaging the consumer in their home or place of business:
  - i. identifying all sales agents with company-issued identification for the safety and comfort of consumers;
  - ii. explaining up-front the purpose of the visit and informing the consumer that they can ask the retailer to leave at any time;
  - iii. leaving the premises immediately if the consumer asks them to do so; and
  - iv. explaining to consumers their right to terminate the agreement within ten business days for unsolicited sales.

2.1.3 Any reference to Small-scale Technology Certificates (STCs) must be consistent with Clean Energy Regulator wording, whereby an STC is a financial incentive, not a rebate, and consumers will not qualify for any government-based financial recompense at the completion of the STC creation process.

2.1.4 Consumers must be given a flyer describing this Code and also including:

- a. the process for provision of consumer feedback and lodging consumer complaints;
- b. a link to the CEC Solar PV Consumer Guide.

## GENERAL RULES AND STANDARDS

- 2.1.5 An electronic link to this flyer is acceptable only if a hard copy can be provided upon request. The Code flyer will be produced and provided to signatories by the Code Administrator (see section 3.1).

### Point of contract

- 2.1.6 A written contract must be provided to the consumer that includes:
- a. All terms and conditions of the contract and these must comply with the Code
  - b. an itemised list of the goods to be supplied;
  - c. the total prices of all goods and services;
  - d. the total value of any discounts, quantity and value of STCs, Good and Services Tax (GST) and rebates as applicable including relevant disclaimers;
  - e. full specifications of the system, including the manufacture, model, quantity and power rating of the solar modules and the inverter/s;
  - f. a site-specific full system design including the proposed roof plan (sketch or diagram with measurements is acceptable), array orientation and tilt in degrees, expected efficiency losses due to shading, inverter location and the system's site-specific estimated energy yield, i.e. average daily performance estimate in kilowatt hours (kWh) for each month of solar generation.
    - The performance estimate must be compliant with and based on data obtained from the CEC *System Design Guidelines for Accredited Designers* or other reputable source.

It is acceptable for this section 2.1.6 (f) to be provided as a deliverable of the contract, provided that:

- i. this information is provided before the expiry of any cooling-off period; and
- ii. where section 2.1.6(f) is provided as a deliverable of contract:
  1. the initial contract must include a generic outline of the likely system performance estimate (to enable the consumer to make an informed purchase decision); and
  2. the consumer must be entitled to a full refund upon request, if they do not consent to the site-specific full system design and performance estimate upon receipt of this information.
- g. disclosure of the method of all estimations made in relation to system outputs and financial benefits including:
  - i. estimates of import and export tariffs
  - ii. system design, performance and output assumptions
  - iii. STC financial incentives and rebates
  - iv. Estimated return on investment in years and subsequent future savings
- h. Any site conditions and special circumstances beyond the control of the Signatory which

## GENERAL RULES AND STANDARDS

may result in extra chargeable work not covered by the quote. This includes any additional costs that may arise at or after installation and that will not be borne by the Signatory. For example, fees for meter exchange/reconfiguration, damage on meter panels, and changing dedicated off peak control devices if required;

- i. an estimated timetable for supplying and installing the system. Where timeframes are out of control of the retailer, this can be noted with relevant disclaimers;
- j. business terms, including the payment method, deposits and timetable, and how long the quote will be valid for;
- k. details about any after-sales services, guarantees and express warranties. The warranty must:
  - i. Include a statement that the consumer's rights under the warranty sit alongside the consumer guarantees which are required under ACL and cannot be excluded.

Under ACL, consumers cannot sign away their consumer guarantee rights. Signatories must not put terms into their contracts to avoid their consumer guarantee obligations.

- l. the consumer's cooling-off and termination rights;
- m. a clause stating that the Signatory must comply with this Code.

2.1.7 The contract must be expressed in a clear and transparent way, using plain language that is legible.

2.1.8 Signatories must endeavour to draw to the attention of the consumer specific requirements of the contract which, if not brought to the consumer's attention, are likely to result in a dispute. For example, section 2.1.6(h), additional fees that may arise, or if there is any difference between a price verbally quoted, and the final contract price.

2.1.9 Both parties must sign the agreement and any amendments. Equivalent methods of legal agreement other than signing a contract in person are also permitted (for example, electronic acceptance).

2.1.10 Any requirement to provide a document or information, or signature in writing can be met in electronic form, or to provide a signature can be met in electronic or verbal form. Any document which forms part of the contract must be provided to the consumer in a non-editable, i.e. hard copy or pdf.

2.1.11 Receipts must be issued for all deposits collected.

## Prior to signing the contract

- 2.1.12 Before the contract is signed the Signatory must provide the consumer with an address and a telephone number where any queries can be answered.
- 2.1.13 Signatories must ensure that the contract is explained to consumers prior to entering into an agreement.
- 2.1.14 Signatories must clearly explain in writing the process surrounding the payment and trade of STCs, including where relevant, the provision of accurate information about the operation of the STC Clearing House (i.e. that STCs in the Clearing House are only sold when there is a buyer, there is no guarantee on how long they will take to sell, and consumers are not guaranteed \$40).
- 2.1.15 Signatories must advise consumers in writing that their electricity contract/tariff may change following installation of solar and that the consumer should contact their electricity retailer:
  - a. before signing a contract, to check what new electricity tariff rates may be applied; and
  - b. after installation of the solar PV system, to confirm that the agreed tariff has been applied.

## Approval to connect to the electricity grid

- 2.1.16 Signatories must inform consumers (where relevant in the state of installation), before a contract is signed, that:
  - a. the consumer requires approval from their distributor to connect a solar PV system to the electricity grid (“grid connection approval”); and
  - b. the relevant paperwork must be completed and submitted prior to installation.
- 2.1.17 Where Signatories have fulfilled their obligations under 2.1.16 above and the consumer takes responsibility for obtaining grid connection approval and
  - a. the application is rejected and
  - b. the contract has already been signed,the consumer is entitled to the return of all monies paid minus reasonable expenses incurred by the Signatory to the point of termination of the contract.
- 2.1.18 Where a Signatory has fulfilled its obligations under 2.1.16 above and the consumer authorises the Signatory to obtain grid connection approval on its behalf, the Signatory must ensure the consumer receives approval prior to installation.
- 2.1.19 Where a Signatory has fulfilled its obligations under 2.1.16 above and the consumer authorises the Signatory to prepare and submit the documentation required for grid connection approval and
  - a. the application is rejected and
  - b. the contract has already been signed,the consumer is entitled to a full refund.

## Finance and alternative purchasing arrangements

- 2.1.20 When advertising an arrangement that provides an alternative to initial outright purchase (for example, a credit contract or a lease or power purchase agreement), the Signatory must comply with section 2.1 (and all other sections) of this Code.
- 2.1.21 The Code does not provide an exhaustive list of the notification obligations which apply to credit providers. Credit providers are required to meet obligations imposed by section 21C of the Privacy Act 1988 (Cth) and clause 4.1 of the Credit Reporting Privacy Code.
- 2.1.22 When offering to a consumer, whether through the Signatory's own or associated company or via a third party provider, an arrangement that provides an alternative to initial outright purchase, a Signatory must ensure that the consumer clearly and accurately receives the following information:
- a. the name of the provider to whom the consumer will be contracted;
  - b. a clear statement regarding the nature of the arrangement being entered into (e.g. whether it involves a credit contract or other financial product within the meaning of the Australian Securities and Investments Commission Act or a non-regulated credit arrangement);
  - c. a clear statement that the periodic payments are available only if the consumer wishes to take advantage of the finance or alternative purchasing arrangement;
  - d. the comparative cost of that same product if the consumer was to purchase it outright on that day;
  - e. a clear statement that fees and charges apply in relation to the arrangement, including:
    - i. the dollar amount of fees and charges applied under the arrangement and what each fee and charge represents;
    - ii. whether the fees are fixed and, if not, details of escalation rates; and
    - iii. where and in what form the consumer can expect the fees and charges to appear in the finance or alternative purchasing arrangement contract;
  - f. under a solar leasing agreement, the aggregate amount payable over the life of the agreement's term;
  - g. under a power purchase agreement, the aggregate amount payable over the agreement's term based on a reasonable and stated estimate of the solar-generated electricity consumed by the consumer;
  - h. under a power purchase agreement, a clear statement that the consumer must pay the stated price for solar-generated electricity for the term of the contract and that the stated price may not reflect the market price and may not be competitive with the price of electricity purchased through other methods;
  - i. details of any exit payments or penalties associated with the finance or alternative purchasing arrangement;
  - j. a statement as to whether the consumer owns the system at the conclusion of any plan or agreement under the terms of the arrangement and/or details, including any associated costs and/or fees, of any option or options available to the consumer to purchase the



system at the end of the term; and

- k. a statement that questions and complaints about the arrangement should be directed to the provider with whom the consumer is or will be contracted and:
  - i. if the provider is a member of such a scheme, to the relevant external dispute resolution scheme;
  - ii. if the arrangement involves a credit or other financial product, the Australian Securities and Investments Commission (ASIC) or
  - iii. if the arrangement does not involve regulated credit or other financial product, to the relevant state based authority which has responsibility.

To comply with this section 2.1.22, a Signatory may, for example, provide the third party provider with a pro forma to be completed by that provider and attached to the Signatory's contracts, or attach the standard terms of the provider.

2.1.23 A Signatory must make reasonable enquiries as to whether the arrangement that is to be offered to a consumer (whether by the Signatory or by another business introduced to the consumer by the Signatory or Approved Retailer) is regulated by the *National Consumer Credit Protection Act 2009 (Cth)* ("the NCCP Act"), such that the provider of the arrangement would need to hold an Australian Credit Licence.

If as a result of those enquiries, the Signatory believes that the arrangements will not be regulated by the NCCP Act, the Signatory must ensure that:

- a. The relevant contract includes a provision substantially in the form set out in section 2.1.24 below ; and
- b. the provision referred to in section 2.1.23(a) is signed by the consumer.

Note: If an arrangement is a credit contract or a consumer lease that is regulated by the NCCP Act, the credit provider must hold an Australian Credit Licence. Any business that has a role in introducing the consumer to the credit provider (e.g. the Signatory or the Approved Retailer) may also need to hold a licence or be a credit representative of a licensee. It is a breach of the NCCP Act to engage in activities without holding a required licence or being a credit representative of a licensee. The obligations in this section are in addition to the legal obligations under the NCCP Act. A Signatory or Approved Retailer should obtain advice as to their obligations under the NCCP Act.

2.1.24 "This arrangement is not regulated by the *National Consumer Credit Protection Act 2009 (Cth)* ("the NCCP Act"). As a result:

- a. if you have a complaint about the arrangement, you may not have access to the services of an external dispute resolution scheme that has been approved by ASIC. This means that you may have to go to court to resolve a dispute with the provider.
- b. if you have trouble paying the periodic payments required under the arrangement:
  - i. you may not have the right to ask the provider for a hardship variation to help you get through your financial difficulty.
  - ii. The provider may take action against you for non-payment without giving you an opportunity to remedy the default."

## 2.2 Post-sale activities

### Pre-installation

#### Cooling-off period

- 2.2.1 For unsolicited sales, consumers must be given ten business days after they sign the contract to cancel the contract without penalty (the “cooling-off period”).
- 2.2.2 Where a consumer wishes to withdraw from a valid contract after the expiry of any cooling-off period, signatories are entitled to apply their own policies regarding fees for cancellation, in line with the termination rights specified in the initial contract, provided that such cancellation fees do not amount to unfair contract terms under the ACL. Cancellation fees must be reasonable, and related to the cost incurred by the Signatory. Consumers have rights under unfair contract terms provisions in ACL relating to cancellation of contracts and termination fees.

#### Refunds

- 2.2.3 Once the consumer has signed the contract, any variations to the system design must be documented and signed off by the consumer prior to installation.
- 2.2.4 The Signatory must provide the consumer with a full refund upon request when:
- a. the final system design provided in accordance with section 2.1.6(f) is significantly different to that quoted at the point of contract and is not signed off by the consumer;
  - b. in accordance with section 2.1.6(f), the site-specific full system design and performance estimate is provided as a deliverable of the contract and:
    - i. this information is not provided before the expiry of any cooling-off period; and
    - ii. the consumer does not consent to this information upon receiving it;
  - c. the estimated delivery timeframe for installation completion that was agreed upon at the point of contract is not honoured, for reasons reasonably within the Signatory’s control, and the consumer does not consent to a revised time frame;
  - d. in accordance with 2.1.19 above, the Signatory acting on behalf of the consumer to obtain grid connection approval does not do so prior to installation, and the consumer does not receive approval from the distributor to connect a system;
  - e. extra chargeable work arises, which was not specified in the initial contract, and the additional costs are not borne by the Signatory and the consumer does not consent to these additional costs.

### Post-installation

- 2.2.5 A Signatory must advise the consumer how to measure the performance of their system. The Signatory must specify, using at least one of the following methods, how energy output can be measured:
- a. demonstration;
  - b. written instructions on how to read the inverter; or

## GENERAL RULES AND STANDARDS

- c. provision of a measuring device that links back to the inverter.

Energy output is a reasonable measure of performance; savings are not.

- 2.2.6 Signatories must inform consumers how to appropriately maintain their system and that they should do so on a regular basis (providing maintenance documentation in accordance with section 2.3 below is sufficient).

### Connection to the electricity grid

- 2.2.7 To facilitate connection to the grid, the Signatory must:

- a. in accordance with section 2.1.18, prepare and submit within a reasonable timeframe all relevant documentation required by the electricity retailer and/or distributor for meter installation and connection of the system to the network; or
- b. in accordance with section 2.1.17, signatories must clearly explain to the consumer the process for preparing and submitting the documentation required by the electricity retailer and/or distributor.

- 2.2.8 The Signatory must explain to the consumer the process from system installation to network connection. The Signatory must:

- a. notify the consumer when it has provided the relevant paperwork to the electricity retailer and/or distributor (if applicable) and how the paperwork was provided, for example, by email;
- b. give the consumer expected timeframes for each step of the process;
- c. advise the consumer who they should contact to follow up on progress; and
- d. advise of any potential problems that may arise.

- 2.2.9 The Signatory must respond within a reasonable timeframe to any additional compliance requests from the distributor or electricity retailer (for example, re-submitting incorrect paperwork), and consult with the consumer if necessary.

### Warranty

## GENERAL RULES AND STANDARDS

- 2.2.10 A standard minimum retailer's warranty period of five years<sup>1</sup> on the operation and performance of the whole solar PV system, including workmanship and products, must be provided to the consumer by the Signatory.
- a. That retailer's warranty exists over and above the consumer's rights under consumer guarantees in ACL.
  - b. The consumer is entitled to claim a remedy if the goods or services do not meet a consumer guarantee or retailer's warranty.
    - i. The Signatory must implement warranty repairs or replacements within a reasonable timeframe.
    - ii. The consumer is not entitled to a remedy when the Signatory does not meet a consumer guarantee (statutory and retailer's warranty) due to something:
      - A. someone else said or did (excluding the Signatory's agents or employees); or
      - B. beyond human control that happened after the goods or services were supplied (for example, force majeure events, possums, extreme weather).

## Privacy

- 2.2.11 The Signatory has obligations under the Privacy Act 1988 (Cth) and the Spam Act 2003 (Cth) in relation to collection, use and disclosure of personal information. The Signatory must be aware of and comply with such legal obligations at all times.

Note: Australian Privacy Principle 7 provides that an organisation must not use or disclose personal information it holds for the purpose of direct marketing unless an exception applies

- 2.2.12 Subject to 2.2.11, a Signatory may use personal information collected from consumers:
- a. for the purpose of the intended sale; and
  - b. for future marketing of its products and services that relate to the sale where consent has been obtained from the consumer for that purpose; or
  - c. where a consumer might otherwise reasonably expect to receive marketing material from the Signatory.
- 2.2.13 If personal information is used for the purpose of direct marketing, signatories must seek the consumer's consent, by way of an opt-in clause in the contract or other appropriate document, to receive marketing material.

- 2.2.14 Regardless of whether a consumer consented to receiving marketing material pursuant to

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<sup>1</sup>This warranty period is the minimum applicable to the service component of installation and all products (inverters, panels, electrical components etc.). Certain products, for example, panels and inverters, might have a warranty that exceeds five years.

- 2.2.13 above, Signatories must provide a simple means by which the consumer may easily request not to receive direct marketing communications, and include a prominent opt-out provision in each marketing communication, clearly telling consumers about the means for opting out of future marketing communications.
- 2.2.15 Signatories must not use consumers’ personal data for purposes other than those described in 2.2.12 above (for example, they must not provide the data to a third party, or use the data to promote a business other than that with which the consumer has a direct relationship) unless they have obtained express permission from the consumer.
- 2.2.16 This section sets out the minimum standard for use of customer data. Signatories can determine their own marketing practices, in accordance with all other provisions of this Code and pursuant to the *Privacy Act* 1988, beyond meeting this minimum standard.

## 2.3 Documentation

- 2.3.1 Section 2.3.2 contains a list of documents that the consumer must receive once the PV system is installed and who is responsible for providing that documentation. Signatories must ensure that the responsible parties below provide the consumer with this documentation.
- 2.3.2 The following documentation must be provided to the consumer in either electronic format or hard copy. Where appropriate, specified details of where this information can be found (for example, a web link) is acceptable. However, hard copies must be provided upon request by the consumer.

Party responsible	Documents
Retailer	<ul style="list-style-type: none"> <li>• List of equipment</li> <li>• Warranty information</li> <li>• Equipment manual</li> <li>• Equipment handbook</li> <li>• Array frame engineering certificate</li> </ul>
Designer	<ul style="list-style-type: none"> <li>• Shut down and isolation procedure</li> <li>• System performance estimate</li> <li>• Maintenance</li> <li>• Earth fault alarm actions</li> <li>• System connection diagram</li> </ul>
Installer	<ul style="list-style-type: none"> <li>• Testing/commissioning</li> <li>• Declaration of compliance</li> <li>• Certificate of electrical safety (where applicable)</li> </ul>

- 2.3.3 Signatories are accountable for the work of their sub-contractors. In addition to the document requirements set out above, Signatories must be aware of any other documentation required by electricity distributors and regulators in their regions of operation

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## 2.4 General business and obligations of Signatories

### Compliance with the law

- 2.4.1 Signatories must comply with all local, state and federal legislation, CEC Accreditation Guidelines and regulations including but not limited to:
- a. The Renewable Energy Target (*Renewable Energy (Electricity) Act 2000* and *Renewable Energy (Electricity) (Charge) Act 2000*) which is supported by the *Renewable Energy (Electricity) Regulations 2001*.
  - b. The Australian Government Do Not Call Registry (*Do Not Call Register Act 2006*) and associated telemarketing standards including permitted hours for contacting consumers.
  - c. Schedule 2 of the *Competition and Consumer Act 2010*, which replaced the Trade Practices Act 1974.
  - d. Respecting “Do Not Knock” and “No Hawkers” stickers
  - e. Additional outlined in Appendix 5.4.

### In-house procedures and complaints handling

- 2.4.2 Signatories must be responsive to, and deal appropriately with, consumers at all times.
- 2.4.3 Consumers have the right to expect that PV systems supplied by a Signatory will:
- a. perform properly;
  - b. reflect the agreed contract;
  - c. be fit for purpose as per the specifications provided and as outlined by the Signatory; and
  - d. meet the standards the consumer would reasonably expect, including those set out in this section 2: General Rules and Standards.
- 2.4.4 If a consumer is dissatisfied with a product or service offered or provided, they can submit a complaint to the Signatory. A complaint may include, for example, any expression of dissatisfaction with a product or service offered or provided, with the sales process or salesperson, or with the complaints handling procedure itself.
- 2.4.5 Signatories must have an appropriate internal complaint handling procedure that is fair, efficient and transparent, in line with the following:
- a. the complaint handling procedure must be compliant with relevant legislation and standards including the Australian Standard on Complaints Handling AS/NZS 10002:2014;
  - b. information about the complaints process must be made available to consumers and staff;
  - c. the Signatory must log the complaint and begin its investigation within a reasonable time of its receipt;
  - d. every reasonable effort must be made to advise the complainant as soon as possible

of receipt of the complaint and the expected timeframe for resolution of that complaint;

- e. feedback on the outcome of complaints must be provided to the consumer within 21 days of receipt. Where additional time is required:
  - i. consumers must be informed of the need for more time to complete investigation; and
  - ii. the investigation must be completed within 45 days of receipt of the complaint;
- f. where a consumer is dissatisfied with the outcome of a complaint, the Signatory must provide the consumer with the appropriate contact details for escalating that complaint either internally or externally to the relevant state or territory industry consumer protection organisation, as an independent dispute resolution body.

Signatories must ensure that consumers fully understand the various avenues of complaint available to them. This is best done by clearly documenting those avenues in the complaints handling procedure. Consumers who have attempted to have their complaint resolved by the Signatory and are dissatisfied with that response must be referred by the Signatory to the applicable industry ombudsman or consumer affairs body; and

- g. Signatories must maintain appropriate record keeping of complaints and their outcomes.

2.4.6 Signatories must be able to demonstrate compliance with the Code and provide evidence of compliance to the Code Administrator when a suspected breach of the Code is being investigated. This may include:

- a. documented procedures;
- b. discussion of standard practices; and
- c. examples of standard documentation given to consumers such as contracts and warranty documents.

## Information to be provided to the Code Administrator

2.4.7 In the event of a change in control of a Signatory, the Signatory must notify the Code Administrator within 10 business days of the change. If the Signatory is not able to satisfy the Code Administrator that the Signatory has the necessary systems and procedures in place to ensure ongoing compliance with the Code, the Code Administrator may revoke the status as signatory to the Code.

If the Code Administrator identifies a substantial change which was not disclosed, the signatory status may be revoked.

2.4.8 Signatories are required to provide an annual confirmation of their compliance with the Code, which also serves to reaffirm the Signatory's ongoing commitment to implementing the Code.

2.4.9 Signatories must nominate a person who is authorised by the company to be the primary contact for all matters and correspondence relating to the Code (the Primary Contact). Signatories must provide the Code Administrator with up-to-date details including email address, title and telephone number for the Primary Contact. Signatories must inform the Code Administrator within 28 days of a change to the Primary Contact's details. Signatories must inform the Code Administrator immediately of any change in circumstances that may impact on the Primary Contact's ability to fulfil their role.

## GENERAL RULES AND STANDARDS

- 2.4.10 A Signatory must inform the Code Administrator, within 10 business days of the Signatory being notified by the relevant body of receipt of a complaint, of any complaints lodged against them with an energy ombudsman or consumer affairs body.
- 2.4.11 Signatories must undertake to inform the Code Administrator of any breaches to the Code made by other signatory companies.
- 2.4.12 Signatories must provide the Code Administrator with the following information and data upon request:
- a. relevant procedures outlined above in section 2.4: In-house procedures and complaints handling;
  - b. records of all relevant business activities and transactions relating to a suspected breach, including (if applicable) information provided to the consumer who lodged the complaint, and training provided to employees. These records must be kept for a minimum period of five years for audit purposes in the administration of this Code;
  - c. details of any known breaches of the Code;
  - d. regular (for example, quarterly) complaints data, including:
    - i. the number of complaints received;
    - ii. the type of complaints received; and
    - iii. the number of resolved complaints; and
  - e. any other information that the Code Administrator deems relevant for investigating a suspected breach of the Code.

This information will be used by the Code Administrator in managing the administration of and compliance with the Code, including compliance audits and investigating all suspected breaches of the Code.

- 2.4.13 All commercial-in-confidence information will be treated with appropriate confidentiality.
- 2.4.14 Signatories must comply in a timely manner with reasonable requests made by the Code Administrator for the provision of information or documentation in relation to compliance audits or investigation of suspected breaches of the Code.
- 2.4.15 Signatories must comply with all reasonable requests of the Code Review Panel in pursuance of its functions (see section 3.2).

## Training and promotion of the Code

- 2.4.16 Signatories must ensure consumers are made aware of the Code and:
- a. take all reasonable steps to promote the benefits of the Code to consumers, including telling consumers about the Code and providing copies on request;
  - b. advertise the latest version of the Code on their website and in other relevant marketing documents;



## GENERAL RULES AND STANDARDS

- c. ensure that consumers are aware of the Signatory's complaints handling provisions.
- 2.4.17 Signatories must ensure that its employees and representatives, whether employed directly, subcontracted or selling or providing services on the company's behalf, are aware of the Code and their responsibilities under the Code.
- 2.4.18 For all system designs and installations, Signatories must employ and contract CEC-accredited designers/installers who abide by the CEC Accreditation Code of Conduct and Accreditation Terms and Conditions, or an equivalently trained accredited designer/installer as defined by the federal government in accordance with the Renewable Energy (Electricity) (Cth) Regulations 2001.
- a. The system design must comply with CEC Accreditation Guidelines and manufacturer's requirements.
- 2.4.19 Signatories must ensure the safety of their installers, subcontractors and employees.
- a. Persons must be appropriately qualified and have completed safety training modules (as listed in CEC Accreditation Guidelines) appropriate to the work including working from heights training.
  - b. Signatories must demonstrate due diligence in ensuring the safety of persons under their direct or indirect responsibility.

### **Obligations of Signatories and grounds for action to be taken**

- 2.4.20 Signatories have given an undertaking that they agree to follow the Code as outlined in this document.
- 2.4.21 Signatories must comply with the Code General Rules and Standards (this section 2) when selling, designing and installing solar PV systems.
- 2.4.22 Signatories are also subject to the Code Administrator's Compliance Procedure, the Code Review Panel Terms of Reference and the Brand Mark Guidelines.
- 2.4.23 Signatories must not act in any way that might bring the Code into disrepute.
- 2.4.24 Signatories must not make any vexatious or unfounded claims against another Signatory.
- 2.4.25 Signatories must ensure that their employees, contractors, agents, and any other individuals or businesses acting on the Signatory's behalf comply with the latest version of the Code. Signatories will be held responsible for all the actions of their employees, contractors, agents, and any other individuals or businesses acting on the Signatory's behalf to the extent that such actions are governed by this Code.
- 2.4.26 The Code Administrator/Code Review Panel may need to modify both the Code and supporting documentation to reflect the changing industry and ensure the Code standards continue to meet the stated objectives of the Code. Changes required may be identified through regular reviews of the Code which will assess the Code's effectiveness and possible areas for improvement (see section 3.8). Any major changes will be undertaken in consultation with the key stakeholders including signatories, industry, ACL regulators and consumer protection agencies. Signatories are obliged to comply with the most current version

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of these documents at all times. Code signatories will be notified by email of any changes to these documents, and will be given three months' notice of any significant changes.

2.4.27 The Code Administrator/Code Review Panel may take action where there is any failure by a Signatory to meet their obligations under the Code. These circumstances include:

- a. any conduct or activity which has or may bring the Code into disrepute;
- b. failure to observe and conform to all relevant Australian Standards and all relevant CEC Accreditation Guidelines, and all applicable laws, ordinances, regulations and codes of practice;
- c. failure to comply with the requirements for provision of information and data as outlined above in section 2.4: Information to be provided to the Code Administrator;
- d. failure to pay any fees and charges associated with being a Signatory;
- e. making any false or misleading declarations or statements to the CEC relating to the Code and the Signatory's conduct;
- f. where there are complaints of a serious nature made against the Signatory that are unresolved;
- g. where the Signatory becomes bankrupt, insolvent, or their organisation is placed under administration; and
- h. serious, wilful, systemic, repetitive non-compliance with the potential to impact a large number of consumers or to have a serious impact on a lesser number of consumers.

## 3. CODE ADMINISTRATOR AND COMPLIANCE

Signatories to this Code are also subject to the Code administration and compliance arrangements as set out below.

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### 3.1 Role of the Clean Energy Council (Code Administrator)

- 3.1.1 The Code will be administered by the CEC Code of Conduct Team. The Accreditation Team manages the PV Accreditation Program to accredit designers and installers of PV.
- 3.1.2 The Code Administrator (CEC Code of Conduct Team) will be responsible for:
- a. managing the administration process relating to Code signatories;
  - b. monitoring Code compliance, including:
    - i. carrying out compliance audits and initiating inquiries into compliance; and
    - ii. investigating complaints that the Code has been breached;
  - c. determining when breaches of the Code have occurred;
  - d. determining appropriate action when breaches of the Code have occurred;
  - e. enforcing sanctions;
  - f. referring cases to the Code Review Panel for consideration as required;
  - g. performing secretariat functions for the Code Review Panel;
  - h. overseeing promotion of the Code; and
  - i. developing training and supporting material on the Code to assist signatories to comply with the Code.
- 3.1.3 The Code Administrator is not a dispute resolution body and may refer consumers to either the Code Signatory or the relevant consumer protection organisation in accordance with section 3.3 below.
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### 3.2 Role of the Code Review Panel

- 3.2.1 The oversight, monitoring and direction of the Code will be undertaken by the Code Review Panel (the Panel) or its appointed delegate. The Panel will appoint its delegate in accordance with the criteria in 3.2.2 below.
- 3.2.2 The Panel will:
- a. be an independent body. All representatives must be independent of Code signatories. They must not have any conflict of interest, for example, having recently been employed by, or consultant to, any Code Signatory;

- b. have no representative of the Code Administrator sitting on the Panel;
  - c. be suitably qualified to arbitrate cases referred to it by the Code Administrator, and to hear appeals against sanctions imposed by the Code Administrator;
  - d. consist of at least three participants that are all non-signatories to the Code, including:
    - i. a consumer representative with relevant experience and knowledge in, for example, consumer advocacy, protection and law, appointed by the Code Administrator in consultation with regulators of ACL;
    - ii. a PV representative with experience in the solar PV industry appointed by the Code Administrator; and
    - iii. a Chair with relevant experience and knowledge in, for example, regulatory or government administration of consumer law, or a suitable background to ensure due process is followed at all times, particularly when dealing with any breach of the Code. The Chair will be appointed by the Code Administrator and not employed in the PV industry.
- 3.2.3 Panel members will be appointed for a period of three years, and will be eligible for reappointment.
- 3.2.4 The Panel, or its appointed delegate will be responsible for:
- a. arbitrating cases referred to it by the Code Administrator;
  - b. arbitrating appeals against sanctions imposed by the Code Administrator in accordance with section 3.7 and appeals against rejections imposed by the Code Administrator in accordance with section 4.2; and
  - c. conducting its own inquiries into Code compliance.
- 3.2.5 The Panel and its appointed delegate will adhere to the Panel Terms of Reference, which set out its powers and functions.
- 3.2.6 The Panel will meet regularly to look at revisions to the Code, policy changes, how the Code operates, and complaints data.
- 3.2.7 All decisions of the Panel and its appointed delegate are final. Signatories and applicants have no right of review beyond the Panel.

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## 3.3 Consumer disputes

- 3.3.1 The Code Administrator will investigate all reported breaches of the Code but will not resolve a dispute between the Code Signatory and the consumer.
- 3.3.2 Consumers who wish to make a complaint against a Signatory should first contact the Signatory directly. Signatories are required to have a fair and transparent consumer complaints process that meets or exceeds the requirements of the Complaints Handling standard, AS ISO 10002-2006. Details of this process are outlined in section 2.4: In-house procedures and complaints handling.

- 3.3.3 If the consumer is not satisfied with the complaint resolution by the Signatory, the consumer should then contact the relevant industry consumer protection organisation, for example the state consumer affairs or fair trading body (see Appendix 5.3).
- 3.3.4 Consumers are encouraged to inform the Code Administrator of any behaviour which may be in breach of the Code that is lodged with a consumer protection organisation, even if their complaint is subsequently resolved. They can do so using the dispute form available online or in writing or by telephone.

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## 3.4 Compliance and auditing

- 3.4.1 The Code Administrator has put in place arrangements for monitoring Signatories' compliance with the Code to ensure it delivers the desired outcomes. Signatories must agree to comply with the requirement for regular monitoring and to allow audits on their compliance with the Code.
- 3.4.2 The Code Administrator will carry out the following monitoring and auditing measures and assess ongoing compliance with the code through:
- a. audit compliance checks;
  - b. mystery shopping;
  - c. assessing feedback from consumers obtained through consumer satisfaction surveys;
  - d. investigating cases it is aware of in which signatories may have breached the Code;
  - e. analysis of conciliation and arbitration cases;
  - f. analysis of consumer complaints;
  - g. using information obtained from media reports;
  - h. using information received from other Code signatories; and
  - i. using information obtained from any additional sources.

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## 3.5 Breaches of the Code

- 3.5.1 The Code Administrator will investigate potential breaches of the Code. Breaches can be raised via:
- a. self-reporting from Code signatories;
  - b. consumers using the dispute forms available on CEC websites;
  - c. any other person or body using the dispute form on the CEC solar accreditation website; or
  - d. evidence of breaches taken from any source including those outlined in section 3.4.

3.5.2 Alleged breaches of the Code will be investigated by the Code Administrator, which will follow the Complaints Procedure. The key steps of this procedure are:

- a. Where the only source of information on a potential breach is raised by a third party (section 3.5.1(a), (b) or (c) above), evidence of the breach will be requested from the third party.
- b. The Code Administrator will contact the Signatory in writing, providing details of the alleged breach as soon as practicable.

The Signatory will be given 21 days to respond to the Code Administrator setting out its comments and evidence on the alleged breach.

Once a Signatory is aware a breach may have occurred, if the matter is not disputed, they must explain the actions they have taken to address the alleged breach as soon as practicable.

- c. The Code Administrator will investigate and assess the issue as soon as reasonably practicable in order to minimise consumer dissatisfaction and improve industry standards.
- d. Where a breach is found to have been made, depending on the severity of the breach (see section 3.5: Breach Matrix below), the Code Administrator will either:
  - i. allocate a sanction in accordance with section 3.6; or
  - ii. provide documentation relating to the breach along with a recommended course of action to the Code Review Panel for consideration.
- e. In the event that the breach is handled solely by the Code Administrator, a Signatory is entitled to appeal the ruling to the Code Review Panel (see section 3.7).
- f. If a breach is referred to the Code Review Panel (either by the Code Administrator or by appeal), the Panel will determine if a breach has occurred and the subsequent action, if any, that will be taken against the Signatory.
- g. All parties involved in the complaint/breach will be notified of the outcomes of the investigation.
- h. All decisions by the Code Review Panel are binding.

## Breach matrix

3.5.3 The table below indicates the severity of the breaches. In order to proactively target systemic issues in the industry, the breach levels can be altered at the discretion of the Code Review Panel. Any changes will be made in accordance with section 2.4.26. The Code Administrator may exercise discretion to lower a breach severity level if it is deemed appropriate in an investigation.

Section of the Code	Breach level
<b>Pre-sale activities</b>	
<b>Advertisements and promotions</b> Any advertisements, promotions, quotations and statements produced must be legal, truthful, and comply with all relevant legislation.	Severe
<b>Sales and quoting practices</b> Signatories must adhere to ethical sales and quoting practices during all steps of the process	Severe
Any reference to Small-scale Technology Certificates (STCs) must be consistent with Clean Energy Regulator wording.	Medium
Consumers must be given information describing this Code that includes: <ol style="list-style-type: none"> <li>the process for provision of consumer feedback and lodging consumer complaints; and</li> <li>a link to the CEC's Guide to Installing Solar PV for Households Solar PV Consumer Guide.</li> </ol>	Major
<b>Point of contract</b> A written contract must be provided to the consumer and executed as described in the Code.	Severe
Any document which forms part of the contract must be provided to the consumer in a non-editable format, eg. hard copy or pdf.	Severe
Site specific system design must be executed as described in the Code and accepted prior to installation.	Severe
Site specific system design must be compliant with the requirements of the CEC System Design Guidelines for Accredited Designers.	Severe
Contract must include all terms and conditions and these must be compliant with the Code.	Severe
The contract must be expressed in a clear and transparent way, using plain language that is legible.	Major
Receipts must be issued for all deposits collected.	Medium
<b>Prior to signing the contract</b> Before the contract is signed the Signatory must provide the consumer with the address of the local office or showroom, or a telephone number where any queries can and will be answered.	Minor
Signatories must ensure that the contract is explained to the consumer before the contract is signed.	Major
Signatories must clearly explain the process surrounding the payment and trade of STCs.	Medium

Consumers must be advised that their electricity contract/tariff may change following installation of solar and that they should check with their electricity retailer as to what new electricity tariff rates may be applied.	Medium
Where relevant in the State of installation, the Signatory must inform the consumer before a contract is signed that approval is required from the distributor to connect a system to the electricity grid, that the relevant paperwork must be completed and submitted prior to installation and that approval should be gained prior to installation.	Medium
Where the Signatory prepares and submits the documentation required for approval to connect to the network on behalf of the consumer, they must ensure consumers have approval prior to installation.	Medium
<b>Finance and alternative purchasing agreements</b>	
Signatories must provide all required information for finance and alternative purchasing agreements	Severe
Signatories must comply with additional requirements if the finance provider is not regulated by NCCP Act.	Major
<b>Post-sale activities</b>	
<b>Pre installation</b> Cooling-off periods and requirements must be adhered to.	Major
Refund requirements must be adhered to.	Major
<b>Post-installation</b> Signatories must inform consumers as to how to measure the performance of their system.	Minor
Signatories must inform consumers as to how to appropriately maintain their system on a regular basis.	Medium
Signatories must prepare and submit all relevant documentation on behalf of the consumer (where permitted to do so) or otherwise clearly explain to the consumer the process for preparing and submitting such documentation to facilitate connection to the electricity grid.	Major
Signatories must inform provide adequate details to the consumer of the process between system installation and network connection.	Medium
Signatories must endeavour to respond in a timely manner to any additional compliance requests from the distributor or electricity retailer, and if required, in consultation with the consumer.	Medium
Warranty requirements must be adhered to.	Severe
<b>Privacy</b>	
Signatories must comply with obligations under the <i>Privacy Act</i> 1988 and the Code's privacy provisions.	Severe
<b>Documentation</b>	
Signatories must ensure that the responsible parties provide the consumer with the relevant documentation in either electronic format or hard copy.	Major
<b>General business and obligations of signatories</b>	



<b>Compliance with the law</b> Signatories must comply with all local, state and federal legislation, CEC accreditation guidelines and regulations.	Severe
<b>In-house procedures and complaints handling</b> Signatories must be responsive to, and deal appropriately with, consumers at all times.	Major
Complaint handling requirements will be adhered to. Signatories must have an appropriate internal complaint handling process that is fair, efficient and transparent.	Severe
Signatories must be able to demonstrate compliance with the Code and provide evidence of compliance to the Code Administrator when a suspected breach of the Code is being investigated.	Medium
<b>Information to be provided to the Code Administrator</b> Signatories must comply with the requirements for information and data to be provided to the Code Administrator.	Major
Signatories must nominate a Primary Contact and inform the Code Administrator of changes thereto.	Medium
Signatories must inform the Code Administrator, within 10 business days of any complaints lodged against them with the energy ombudsman or consumer affairs body	Medium
Signatories must comply with all reasonable requests of the Code Review Panel in pursuance of its functions.	Major
<b>Training and promotion of the code</b>	
Signatories must ensure employees and representatives, whether employed directly, subcontracted or selling on the company's behalf are aware of the Code and their responsibilities under the Code.	Major
Signatories must employ and contract CEC-accredited designers/installers for all system designs and installations, or an equivalently trained accredited designer/installer as defined by the federal government in accordance with the Renewable Energy (Electricity) Regulations 2001.	Severe
System design and installation must comply with CEC Accreditation Guidelines and manufacturer's requirements	Severe
Signatories must ensure the safety of their installers, subcontractors and employees.	Severe
<b>Obligations of signatories and grounds for action to be taken</b> Signatories must adhere to the Compliance Procedure, Code Review Panel Terms of Reference, and Brand Mark Guidelines.	Severe
Signatories must not act in a way that might bring the Code into disrepute.	Severe
Signatories must not make any vexatious or unfounded claims against other Signatories.	Medium
<b>Code administration</b>	
Failure to pay any fees or charges associated with the Code.	Major
Failure to comply with agreed action plan from an audit.	Major
Failure to comply with directives from the Code Administrator relating to Code breaches.	Major

<b>Systematic breaches</b> This is a breach of the Code that is not a singular event but is, in the Code Administrator's opinion, a procedural lack of compliance with the Code by the Signatory.	Severe
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## 3.6 Sanctions

3.6.1 Once a breach of the Code has been confirmed then the sanctions will be undertaken as per the matrix below:

Breach	Actions / Sanctions
Severe	Signatory details to the Code Administrator its strategy to rectify the issue and appoints an independent auditor to audit the areas of activity where the breach(es) occurred at the Signatory's cost. Audit results and actions to prevent the breach occurring again to be sent to the Code Administrator.  The breach will be listed on the CEC website in accordance with section 3.6.3 below.
Major	Signatory details to the Code Administrator its strategy to rectify the issue and implements an agreed action plan (at their cost) to prevent the issue re-occurring.  If more than three major breaches occur within a 12 month timeframe, the Signatory must appoint an independent auditor, at the Signatory's cost, to audit the areas of activity where the breach(es) occurred. Audit results and actions to prevent the breach occurring again to be sent to the Code Administrator.
Medium	Signatory details to the Code Administrator its strategy to rectify the issue, and implements an agreed action plan (at their cost) to prevent the issue re-occurring.
Minor	The Signatory provides a written undertaking to the Code Administrator that the breach will not be repeated.

3.6.2 The relevant regulator and ombudsman will be notified of any breach of ACL.

3.6.3 Where a major breach occurred, the Signatory will be given a reasonable time period to respond to the Code Administrator's requested actions to remediate the breach, in accordance with the Code Administrator's Compliance Procedure.

- a. If the breach is not rectified during this time, the breach will be publicly listed on the CEC website and in the Code Annual Report, identifying the name of the Signatory involved.
- b. If the breach is rectified during this time, the breach will be publicly listed on the CEC website and in the Code Annual Report, but will not name the Signatory involved (i.e. de-identified listings of major breaches will be published in order to advise customers of issues prevailing in the sector).

## Termination of Signatories

- 3.6.4 Serious, wilful, systemic or repetitive non-compliance which is detrimental to consumers may be cause to remove the retailer as a Signatory to the Code with immediate effect. The Code Administrator must consult with the Code Review Panel before doing so.
- 3.6.5 Suspension or cancellation of a Signatory can occur if:
- a. the Signatory fails to provide evidence that they have rectified or addressed a breach of the Code within a reasonable timeframe; or
  - b. the Signatory has multiple breaches that signify a systematic failure to adhere to the Code. In this case, they can be suspended until they provide evidence the systemic issue has been rectified.
- 3.6.6 Where a Signatory has been suspended or withdrawn from the Code, the Code Administrator/Code Review Panel has the right to inform the general public and any interested party that the Signatory is no longer a signatory to the Code. The Signatory will also immediately cease to:
- a. describe itself as a signatory to the Code or an Approved Retailer;
  - b. use the Code brand mark; and
  - c. advertise or portray itself as in any way being connected to the Code.
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## 3.7 Appeals

- 3.7.1 If a Signatory believes that the Code Administrator did not exercise reasonable discretion, that they were denied natural justice, or that new evidence has come to light that was not available at the time of original determination, they are entitled to appeal the determination of the Code Administrator to the Code Review Panel.
- 3.7.2 Signatories can lodge an appeal using the appeals form online.
- 3.7.3 Appeals must be lodged within one month of the original Code Administrator determination. They must be submitted in writing, detailing the relevant issue, and reasons why the appeal is being made.
- 3.7.4 The Code Review Panel will consider and provide a ruling on the appeal in writing, along with reasons for the determination, as soon as reasonably practicable.
- 3.7.5 All parties involved will be notified of the outcomes of the investigation.
- 3.7.6 All decisions by the Code Review Panel are binding and there is no further right of appeal.
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## 3.8 Review of the Code and public reporting

- 3.8.1 An annual report on the Code's operation, including reporting on Code compliance, will be produced by the Code Review Panel, to enable a periodic assessment of the Code's effectiveness, ensure the Code standards meet the identified objectives and community expectations, and to identify systemic issues and areas for improvement.

## CODE ADMINISTRATOR AND COMPLIANCE

- 3.8.2 All breaches and sanctions occurring each year will be reported in the Code's annual report. This information will not identify the names of any signatories, with the exception of:
- i. cases where a Signatory has been removed or suspended from the Code; and
  - ii. severe breaches that are not rectified by the Signatory, as outlined in section 3.6.3 above.
- 3.8.3 None of this information required by section 2.4.7 to 2.4.11 will be made publicly available, with the exception of 2.4.11(c) and (d), which may be included de-identified in the Code's annual report.
- 3.8.4 The Code, Code reporting, Code Review Panel and Code Review Panel Terms of Reference will also be independently reviewed every three years following their commencement. The review will be undertaken by a suitably qualified, independent person/body.
- 3.8.5 The independent three-yearly reviews will be conducted in consultation with relevant stakeholders including consumer advocacy groups, government bodies and regulators of consumer law. The independent reviewer will have access to all necessary documentation including procedures and reporting from the Code Review Panel and Code Administrator.
- 3.8.6 Systemic concerns identified during Code reviews will be referred to the relevant regulators, as will any breaches of laws and regulations.
- 3.8.7 The Code annual report and independent reviews will be published online.

# 4. BECOMING A CODE SIGNATORY

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## 4.1 Application process

- 4.1.1 PV retailers wanting to sign on to the Code will need to complete the following steps:
- a. complete the online application form at:  
[cleanenergycouncil.org.au/industry/retailers/apply](https://cleanenergycouncil.org.au/industry/retailers/apply);
  - b. agree to comply with the requirements of the Code;
  - c. provide examples of standard documentation as requested (for example, contracts and quotes);
  - d. provide declarations relating to company history and key stakeholders;
  - e. submit to an integrity/financial check using an external agency;
  - f. allow documentation to be checked by independent experts (for example, lawyers) as required by the Code Administrator. This will be completed in confidence;
  - g. explain any adverse findings identified by the Code Administrator;
  - h. if required by the Code Administrator, attend an interview with Code Administrator;
  - i. if required by the Code Administrator, provide referees for reference checks/consumer feedback data and
  - j. where the applicant has not been in operation for 12 months, the Code Administrator may request that the applicant provide further details, including supporting documentation, to demonstrate relevant experience in the industry.
- 4.1.2 Based on the information submitted by the applicant, and further information gathered by the Code Administrator in the application process, the Code Administrator will assess whether the application has sufficiently demonstrated that the applicant retailer complies with the Code. Applications unable to meet this requirement may be rejected.
- If the Code Administrator determines that the applicant's response to adverse findings does not sufficiently demonstrate compliance with the Code or assurance that the necessary systems and procedures are in place to ensure ongoing compliance, the Code Administrator may reject the application.
- 4.1.3 Incorrect or incomplete information submitted by an applicant, including the information supplied in the declarations required by section 4.1.1(d) above, may lead to the delay or rejection of an application.
- 4.1.4 Formal feedback on the application assessment will be provided to the applicant.
- 4.1.5 Where an applicant's actions or behaviour is considered to be inconsistent with the Code, the Code Administrator has the right to decline an application.
- 4.1.6 Unsuccessful applicants must wait one month from the date of rejection before a new application can be assessed. Before re-applying applicants must sufficiently demonstrate in writing, that they can comply with the requirements, and have systems and procedures in

#### 4. BECOMING A CODE SIGNATORY

place to ensure ongoing compliance. The written assurance needs to be signed by a director of the company or an authorised representative. A second rejection will result in the applicant waiting two months before a new application can be assessed. If the applicant is rejected a third time, the applicant must wait three months before a new application can be assessed. A third application can be declined if the applicant's behaviour or actions are considered inconsistent with the Code.

- 4.1.7 Becoming a Signatory to the Code is open to both non-CEC members and CEC members.
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## 4.2 Appeals

- 4.2.1 If an Applicant believes that the Code Administrator did not exercise reasonable discretion, that they were denied natural justice, or that new evidence has come to light that was not available at the time of original decision, they are entitled to appeal the decision of the Code Administrator to the Code Review Panel, or its appointed delegate.
- 4.2.2 Applicants can lodge an appeal using the appeals form online, with a non-refundable fee to be paid.
- 4.2.3 Appeals must be lodged within 30 days of the original Code Administrator decision. They must be submitted in writing, detailing the relevant issue, and reasons why the appeal is being made.
- 4.2.4 The Code Review Panel, or its appointed delegate, will consider and provide a ruling on the appeal in writing, along with reasons for the determination, as soon as reasonably practicable.
- 4.2.5 All parties involved will be notified of the outcomes of the investigation and applicants will be allowed a maximum of one appeal per application to the Code Review Panel, or its appointed delegate.
- 4.2.6 All decisions by the Code Review Panel are binding and there is no further right of appeal.
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## 4.3 Code fees

- 4.3.1 All fees are stated exclusive of GST.
- 4.3.2 All fees are subject to GST.
- 4.3.3 All fees are published on the Solar Accreditation website at [cleanenergycouncil.org.au/industry/retailers/fees](http://cleanenergycouncil.org.au/industry/retailers/fees), including in the Application Form available for download in pdf format from that website.
- 4.3.4 The CEC reserves the right to vary the fees from time to time. Notice of fee variations will be given to signatories in accordance with section 2.4.26.
- 4.3.5 A non-refundable Application Fee will be charged for each application. On receipt of an application, the CEC will issue a tax invoice for the Application Fee to the applicant's Primary Contact. On receipt of the Application Fee, the CEC will process the application. The Application Fee is not charged to Signatories undertaking their annual renewal.

#### 4. BECOMING A CODE SIGNATORY

- 4.3.6 Signatories are required to pay an Annual Fee. The Annual Fee is calculated at a price per kilowatt (kW) of solar PV installed by the applicant company in the previous financial year or calendar year, whichever concluded more recently. The Annual Fee charged will have a set minimum and maximum, published in accordance with section 4.2.1 above.
- 4.3.7 Becoming and remaining a Signatory is conditional upon the timely payment of fees, charges and additional agreed costs associated with being a Signatory (for example, agreed payment for advertising).

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### 4.4 Withdrawing from the Code

- 4.4.1 A Signatory can withdraw from the Code at any time provided they advise the Code Administrator of their intention in writing, and give two weeks' notice of their request to be removed as a Signatory.
- 4.4.2 Signatories who choose to withdraw from the Code will not be entitled to a refund of any fees or associated charges already paid at the date of receipt of notice to withdraw.

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### 4.5 Use of Brand Mark

- 4.5.1 Signatories are required to use the Code brand mark in accordance with the relevant guidelines. The Code brand mark remains the intellectual property of the CEC and legal action may be taken in regard to its misuse.

# 5. APPENDIX

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## 5.1 Glossary and definitions

The definitions for terms used in this document are as follows.

**Approved Retailer** – A solar retailer who is a current signatory to this Code of Conduct.

**Australian Consumer Law** – Schedule 2 to the Competition and Consumer Act 2010 (Commonwealth).

**Agreement** – See ‘Contract’

**Best Industry Practice** –

- a. Developing and conducting a business in a manner in line with leading practice in the industry, in order to maintain quality that goes beyond mandatory legislated standards.
- b. A benchmark for the industry that shows results superior to those achieved purely through adherence to legislation.
- c. Can evolve over time as improvements are discovered.

**Breach** – Any failure to comply with the Code of Conduct including the Code General Rules and Standards, and other documentation referred to in the Code.

**Business day** – A day that is not a Saturday, Sunday or public holiday in the relevant location in Australia.

**CEC** – the Clean Energy Council.

**Code** – This Solar Retailer Code of Conduct, as published by the Clean Energy Council. Code Administrator – Clean Energy Council. Has the meaning outlined in section 3.1. Code Review Panel – Has the meaning outlined in section 3.2.

**Complaint** – Any expression of dissatisfaction with a product or service offered or provided, or with a complaints process.

**Consumer** – A person, business or not for profit organisation that seeks to buy or lease goods or services from a business or other provider, is party to a contract, or is eligible under the criteria set by a retailer to enter into a contract to acquire a product. Includes the following categories of consumer:

- a. Residential Consumer – A person who purchases solar PV principally for personal, household or domestic use at premises.
- b. Small Business Consumer – A business or not for profit organisation which at the time it enters into the contract, may not have a genuine and reasonable opportunity to negotiate the terms of the contract. A small business is defined in accordance with the Fair Work Act 2009 as one with fewer than 15 employees, not including casual employees. Associated entities are taken to be one entity when calculating the number of employees.
- c. Medium and Large Scale Business Consumer – Any that does not fit into a) or b) above.

**Contract** – An agreement made between two or more parties (for example, a retailer and a consumer) to supply goods or services relating to a solar PV product, that is intended to be legally enforceable. Contracts can be made in writing or orally. A contract may be a written quote that has been accepted by the Consumer orally or by text or email notification.

**Designer** – A designer of solar PV systems.

**Dispute** – A complaint by a consumer in relation to a Code signatory, that has not been immediately resolved when brought to the attention of that signatory.

**Distribution** – The activity of delivering electricity from the generator via wires to the end user (retail customers including homes, businesses, etc.).



**Distributor** – A distribution network service provider, which is an owner, controller or operator of an electricity distribution system.

**Electricity Retailer** – An entity that delivers and sells electricity directly to the end-use customer.

**Force Majeure Event** – an extraordinary event outside the reasonable control of a retailer or a consumer.

**Inform** – To advise in writing or verbally. **Installer** – An installer of solar PV systems. **Manufacturer** – Includes a person who:

- a. grows, extracts, produces, processes or assembles goods
- b. portrays themselves to the public as the manufacturer of goods
- c. causes or permits their name, business name or trademark to be applied to goods they supply
- d. permits themselves to be held out as the manufacturer by another person, or
- e. imports goods into Australia where the manufacturer of the goods does not have a place of business in Australia.

**Product** – The solar PV system including panels, inverters and components.

**Signatory** – A signatory to the Solar Retailer Code of Conduct, also referred to as an Approved Retailer.

**Signed** – Has the meaning of something signed in person or equivalent point of acceptance in accordance with the Electronic Transaction Act and other relevant legislation.

**Solar PV** – Solar photovoltaic.

**System** – The solar PV system. Refers to the entire arrangement, including PV modules and all other equipment required to make it work including inverters and components.

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## 5.2 Additional information

Further information relating to this Code including documentation referred to in the Code, guides for signatories to assist in complying with the Code, Code templates, and information for consumers, can be found online.

### Designer/Installer Accreditation

- Design Guidelines: [cleanenergycouncil.org.au/industry/installers/compliance-toolkit/accreditation-guidelines](https://cleanenergycouncil.org.au/industry/installers/compliance-toolkit/accreditation-guidelines)
- Install Guidelines: [cleanenergycouncil.org.au/industry/installers/compliance-toolkit/accreditation-guidelines](https://cleanenergycouncil.org.au/industry/installers/compliance-toolkit/accreditation-guidelines)
- Accreditation Code of Conduct: [cleanenergycouncil.org.au/industry/installers/compliance-toolkit/accreditation-code-of-conduct](https://cleanenergycouncil.org.au/industry/installers/compliance-toolkit/accreditation-code-of-conduct)
- Accreditation Terms and Conditions: [cleanenergycouncil.org.au/industry/installers/compliance-toolkit/accreditation-terms-and-conditions](https://cleanenergycouncil.org.au/industry/installers/compliance-toolkit/accreditation-terms-and-conditions)
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### The Code

- Code Review Panel terms of reference: [cleanenergycouncil.org.au/industry/retailers/code-review-panel/code-review-panel-terms-of-reference](https://cleanenergycouncil.org.au/industry/retailers/code-review-panel/code-review-panel-terms-of-reference)
- Brandmark guidelines: [cleanenergycouncil.org.au/industry/retailers](https://cleanenergycouncil.org.au/industry/retailers)
- Code flyer (consumer guide to the Code): [cleanenergycouncil.org.au/industry/retailers](https://cleanenergycouncil.org.au/industry/retailers)

## Consumer Information

- CEC Consumer guide to buying household solar panels: [cleanenergycouncil.org.au/documents/consumers/solar-guide-for-consumers.pdf](https://cleanenergycouncil.org.au/documents/consumers/solar-guide-for-consumers.pdf)
- CEC guides to connecting to the grid: [cleanenergycouncil.org.au/documents/consumers/solar-guide-for-consumers.pdf](https://cleanenergycouncil.org.au/documents/consumers/solar-guide-for-consumers.pdf)

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## 5.3 Consumer protection organisations/other contacts

### Consumer affairs

#### **Australian Competition and Consumer Commission**

GPO Box 3131  
Canberra ACT 2601  
T. 1300 302 502  
[acc.gov.au](http://acc.gov.au)

#### **Australian Capital Territory Office of Regulatory Services**

GPO Box 158  
Canberra ACT 2601  
T. (02) 6207 0400  
[ors.act.gov.au](http://ors.act.gov.au)

#### **New South Wales NSW Fair Trading**

PO Box 972  
Parramatta NSW 2124  
T. 13 32 20  
[fairtrading.nsw.gov.au](http://fairtrading.nsw.gov.au)

#### **Northern Territory Consumer Affairs**

GPO Box 1722  
Darwin NT 0801  
T. 1800 019 319  
[consumeraffairs.nt.gov.au](http://consumeraffairs.nt.gov.au)

#### **Queensland**

##### **Office of Fair Trading**

GPO Box 3111  
Brisbane QLD 4001  
T. 13 13 04  
[fairtrading.qld.gov.au](http://fairtrading.qld.gov.au)

#### **South Australia Office of Consumer & Business Services**

GPO Box 1719  
Adelaide SA 5001  
T. (08) 8204 9777  
[ocba.sa.gov.au](http://ocba.sa.gov.au)

#### **Tasmania**

##### **Office of Consumer Affairs & Fair Trading**

GPO Box 1244  
Hobart TAS 7001  
T. 1300 654 499  
[consumer.tas.gov.au](http://consumer.tas.gov.au)

#### **Victoria**

##### **Consumer Affairs Victoria**

GPO Box 123  
Melbourne 3001  
T. 1300 55 81 81  
[consumer.vic.gov.au](http://consumer.vic.gov.au)

#### **Western Australia**

Department of Commerce: Consumer Protection  
Locked Bag 14  
Cloisters Square WA 6850 T. 1300 30 40 54  
[commerce.wa.gov.au](http://commerce.wa.gov.au)

#### **Australian Securities and Investments Commission**

PO Box 9827  
(in your capital city) T. 1300 300 630  
[asic.gov.au](http://asic.gov.au)

## Other bodies

- Clean Energy Regulator [ret.cleanenergyregulator.gov.au](http://ret.cleanenergyregulator.gov.au)
  - Australian Competition and Consumer Commission [accc.gov.au](http://accc.gov.au)
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## 5.4 Relevant acts and legislation

The Code and Code General Rules and Standards should be read in conjunction with relevant legislation including:

- *Australian Consumer Law* (Schedule 2 of the *Competition and Consumer Act 2010*, formerly known as *Trade Practices Act 1974*) (Cth).
- State and Territory fair trading legislation, where relevant.
- State and Territory door-to-door sales legislation, where relevant.
- The *Disability Discrimination Act 1992* (Cth).
- The *Racial Discrimination Act 1975* (Cth).
- Any other relevant equal opportunity legislation.
- The *Privacy Act 1988* (Cth)
- The *Spam Act 2003* (Cth).
- The *Do Not Call Register Act 2006* (Cth).
- Renewable Energy Target legislation (*Renewable Energy (Electricity) Act 2000* and *Renewable Energy (Electricity) (Charge) Act 2000*) which is supported by the *Renewable Energy (Electricity) Regulations 2001* (Cth).
- Relevant state domestic building work contracts Acts:
  - *Domestic Building Contracts Act 1995* (Victoria).
  - *Home Building Act 1989* (New South Wales).
  - *Domestic Building Contracts Act 2000* (Queensland).
  - *Building Work Contractors Act 1995* (South Australia).
  - *Home Building Contracts Act 1991* (Western Australia).
  - *Housing Indemnity Act 1992* (Tasmania).
- The *Electronic Transactions Act 1999* (Cth).
- Relevant state and territory electrical licensing legislation (for example, *Electricity (Licensing) Regulations 1991* (Western Australia)).