

29 April 2019

General Manager
Adjudication Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Sent by email to: adjudication@acc.gov.au

Dear Madam / Sir

RE: Application for authorisation made under sections 88(1) of the Competition and Consumer Act 2010

Please find attached an application for authorisation in relation to the proposed New Energy Tech Consumer Code, which has been prepared by the following applicants:

- (i) Australian Energy Council (AEC)
- (ii) Clean Energy Council (CEC)
- (iii) Smart Energy Council (SEC)
- (iv) Energy Consumers Australia (ECA)

The applicants have developed the proposed voluntary industry code of conduct for sellers of new energy technology products and services in response to a request from the Council of Australian Governments Energy Council (COAG EC) for a consistent approach from industry to improving the consumer experience in this industry.

The following documents are enclosed:

- (i) Application for Authorisation (Non-merger) New Energy Tech Consumer Code, including Details of the Applicants as Attachment A
- (ii) Attachment B: Proposed draft New Energy Tech Consumer Code
- (iii) Attachment C: The Consumer Code Journey – an explanatory memorandum that sets out the steps taken to develop the Consumer Code, the stakeholder consultation steps including those consulted, the matters raised and how they were resolved through the drafting process. Annexed to this is the letter from the COAG Energy Council requesting the development of a code (originally called the Behind-the-Meter Code) and the Memorandum of Understanding for Governance, Accountability and Administration reached by the Behind the Meter Stakeholder Panel
- (iv) Attachment D: Relevant market participants
- (v) Attachment E: The currently authorised Solar Retailer Code of Conduct

The lodgement fee related to this application has been paid.

For any queries regarding this application, please do not hesitate to contact

Mindy Lim (CEC) on 0403 196 570 and mlim@cleanenergycouncil.org.au (*unavailable from 26 April to 8 May 2019 inclusive*)

Anna Sexton (CEC) on 0438 150 973 and asexton@cleanenergycouncil.org.au

Jacqueline Crawshaw (ECA) on 0436 033 045 and Jacqueline.crawshaw@energyconsumersaustralia.com.au

Ben Barnes (AEC) on 0421 497 491 and ben.barnes@energycouncil.com.au (*unavailable from 12 April to 3 May 2019 inclusive*)

Nick Leys (AEC) on 0413 621 484 and nick.leys@energycouncil.com.au

John Grimes (SEC) on 0400 102 396 and ceo@smartenergy.org.au

Sincerely,

A handwritten signature in blue ink that reads "Anna Sexton". The signature is written in a cursive, flowing style.

Anna Sexton

**Compliance and Risk Manager
Clean Energy Council**

Application for ACCC Authorisation for Proposed Conduct (non-merger)

New Energy Tech Consumer Code

Overview Information

This Application seeks authorisation for the New Energy Tech Consumer Code (Consumer Code), a single industry-wide code of conduct that has been developed by a number of new energy market industry associations in conjunction with consumer organisations in response to a request by the Council of Australian Governments' Energy Council in August 2017.

Parties to the proposed conduct

1. Applicant details

The Applicants are the following organisations:

- a) **Australian Energy Council (AEC)** - The AEC is the industry body representing 23 electricity and downstream natural gas businesses operating in the competitive wholesale and retail energy markets. These businesses collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.
- b) **Clean Energy Council (CEC)** - is a not-for-profit, membership-based organisation and peak body for the clean energy industry in Australia. The CEC represents and works with over 600 businesses operating in or supporting the development of renewable energy (such as solar, wind, hydro, bioenergy, geothermal and marine) and energy storage, along with more than 6000 solar installers. It is committed to accelerating the transformation of Australia's energy system to one that is smarter and cleaner.
- c) **Smart Energy Council (SEC)** – is a peak body for the solar, storage and smart energy in Australia. Since 1954, the SEC has been advancing the cause of solar energy as the Australian Solar Energy Society and the Australian Solar Council. In 2014, it added energy storage with the creation of the Energy Storage Council. In 2017, it became the Smart Energy Council. The SEC is a not-for-profit membership organisation committed to clean, efficient, cheap and smart energy solutions for all Australians. Its membership comprises individual, small and medium businesses as well as many Australian and international companies or organisations as corporate members. It encompasses installers, sales people, engineers, scientists, recruiters, managers and financiers, and some individual consumers; all of whom are in some way involved in the smart energy industry.
- d) **Energy Consumers Australia (ECA)** - The ECA is a national voice for residential and small business energy consumers. Established by the Council of Australian Governments (COAG) Energy Council in 2015, its objective is to promote the long-term interests of consumers with respect to price, quality, reliability, safety and security of supply.

Contact details for all organisations are provided at Attachment A.

This Application is being submitted on behalf of the applicant organisations by:

Mindy Lim
Code of Conduct Manager (Solar Retailer Code)
Clean Energy Council
Level 15, 222 Exhibition St
Melbourne VIC, 3000

Tel: 03 9929 4153

Email: MLim@cleanenergycouncil.org.au

A second contact if required is:

Anna Sexton
Compliance and Risk Manager
Clean Energy Council
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Melbourne VIC, 3000

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2. Authorisation is also sought on behalf of those providers of New Energy Tech (as defined in the Consumer Code) who will become signatories to the Consumer Code and engage in the proposed conduct. Those expected to become signatories range in scale from micro businesses to large energy companies with New Energy Tech lines of business.

Signatories are expected to number in the many hundreds. There are currently 280 signatories to the CEC Solar Retailers Code¹ and they are likely to transfer to the new technology-neutral Code. It is projected that there will be at least another 300 additional future members of the Consumer Code (conservatively based on current growth trends arising from government incentive programs, interest registered by members of the Smart Energy Council and the application of a Code to a broader range of New Energy Tech and services).

The proposed conduct

3. The proposed Consumer Code will set standards of consumer protection that will be provided by signatories covering all aspects of the customer experience, ranging from initial marketing and promotion through, as appropriate to the offering, quoting, contracts, finance and payments, installation, operation, customer service, warranties, complaints and etc.

Details of the proposed conduct are set below and in a series of Attachments:

Attachment A - Details of the Applicants

Attachment B - The proposed New Energy Tech Consumer Code

¹ <https://www.solaraccreditation.com.au/retailers.html>.

Attachment C - The Consumer Code Journey – an explanatory memorandum that sets out the steps taken to develop the Consumer Code, the stakeholder consultation steps including those consulted, the matters raised and how they were resolved through the drafting process. Annexed to this is the letter from the COAG Energy Council requesting the development of a code (originally called the Behind-the-Meter Code) and the Memorandum of Understanding for Governance, Accountability and Administration reached by the Behind the Meter Stakeholder Panel

Attachment D – Relevant market participants

Attachment E - The currently authorised CEC Solar Retailers Code

4. Aspects of the provisions of the Competition and Consumer Act 2010 (Cth) may be relevant to the proposed conduct, in particular:
 - a) Cartel conduct (s45AD) – see paragraph 24 below
 - b) contracts, arrangements or understandings that restrict dealings or affect competition (s. 45) – see paragraph 9 below
 - c) concerted practices (s.45) – see paragraph 9 below
 - d) misuse of market power (s. 46) – see paragraph 9 below
 - e) exclusive dealing (s. 47) – see paragraph 20 below

The proposed conduct is set out in the Consumer Code which requires voluntary signatories to meet certain minimum standards of good practice and consumer protection. The impact of the Consumer Code could be magnified if, as expected, government funded or approved New Energy Tech incentive schemes or rebates are only available for products or services provided by signatories to the Consumer Code or if governments mandate Consumer Code subscription for classes of government purchasing/supply. The result could be that signatories' position in the market is enhanced to the detriment of those that are not prepared to meet those good practice and consumer protection standards.

5. The aim of the Consumer Code is not, however, to diminish competition. Rather the Consumer Code aims to raise standards of consumer protection in the sector and to strengthen consumer confidence in New Energy Tech so that the market continues to grow and innovate, while providing choice for consumers. The Consumer Code aids consumer choice by allowing easier comparisons of offers from signatories by providing an assurance of like-for-like standards. The Consumer Code makes a series of undertakings that cover the key aspects of the customer journey including marketing and sales, quoting, contracts, provision of consumer information, installation, safety and activation, effective operation, customer service and warranties and complaints-handling.
6. This application is seeking authorisation for the proposed conduct for the default period of five years. The Consumer Code itself provides for three-yearly independent reviews (The Annexure, Paragraph 27. g.)). These independent reviews are intended to cover a wide range of stakeholder and internal issues that go beyond the scope of the competition issues that relate to the proposed authorisation. Stakeholders considered this shorter interval of three years to be necessary in light of rapid evolution of the New Energy Tech sector and for testing the effectiveness of the administration arrangements, resourcing and powers.

Market information and concentration

7. New Energy Tech, as defined for the Consumer Code involves products, systems and services that are:
- a) small-scale (in-home or small business) products and systems that generate, store or trade energy away from Australia's main transmission and distribution Energy Networks or as distributed energy resources connected to an Energy Network
 - b) services that support or are closely related to those products and systems
 - c) products, systems and services that monitor or manage a Customer's usage of energy whether on or off an Energy Network and
 - d) permitting future flexibility and innovation, any other product, system and service that the Consumer Code Administrator is satisfied sits appropriately within this Code.

The definition is not intended to include simple, low cost or off-the-shelf New Energy Tech, such as might be purchased from a whitegoods or hardware store for self-installation. The intention is that a class exemption be made by the Administrator to provide clarity, in accordance with paragraph 17 of the Consumer Code Annexure – Code Administration.

Examples of New Energy Tech include:

- e) distributed energy resources owned by or leased to the Customer that are connected to an Energy Network for supplementary supply such as solar photovoltaic systems, wind turbines, hydro and bioenergy generators
- f) a microgrid that may be connected or fully isolated from the Energy Network
- g) a power system for a single Customer, whether or not the Customer is also connected to an Energy Network
- h) energy management products, systems and services supplied to a Customer including home energy management systems and services, battery and other storage products, systems and services
- i) programs aimed at stabilising the supply of energy including by paying Customers an incentive to reduce their usage during critical peak periods or by shutting down or restricting the power consumption of Customer appliances during critical peak periods
- j) a Power Purchase Agreement
- k) person to person energy trading systems and services
- l) electric vehicle charging services
- m) suppliers of repair, maintenance and removal services for New Energy Tech products and systems.

These examples are not intended to limit the scope of the definition. Rather the term has been defined to accommodate new products and services as they enter the Australian market where

the nature, complexity and cost is such that the Consumer Code protections are appropriate. This is a rapidly evolving sector with many innovations. The definition and scope of New Energy Tech is intended to evolve and expand over time.

8. The Consumer Code is intended to apply in all Australian States and Territories
9. The New Energy Tech sector is likely to be quite diverse. Some New Energy Tech markets, such as solar photovoltaics (PV), are highly competitive with large numbers of suppliers. In these markets, any number of potential signatories to the Consumer Code may have business relationships with each other or may be direct or indirect competitors (and for this reason exemption is sought from both aspects of section 45). For nascent New Energy Tech products and services such as Virtual Power Plant services, it is however possible that at least initially, there may be one or a small number of dominant suppliers (and for this reason exemption is sought from section 46).
10. The sector is currently dominated by solar PV, which is now being followed by a rapidly expanding market for energy storage (mostly battery). Electricity self-production and self-consumption is becoming a prime motive for purchasers, along with price certainty. The scale and impact of the New Energy Tech in the marketplace for consumers, which underscores the need for the Consumer Code, can be seen in the following:
 - a) Solar PV – By the end of 2018, more than 2 million residential PV rooftop systems had been installed. Last year saw particularly rapid growth in the small-scale sector of the solar PV market, with the number of solar installations on homes and small businesses increasing by 43% on the previous year.² The Clean Energy Regulator expects that growth is likely to continue for at least 10 years. Installations to date represent 22%³ of dwellings that are suitable for solar PV so the majority of consumer spend is to come. Additionally, after 10 years of implementation of systems and with major cost reductions, the sector is seeing a fast-developing upgrade market.
 - b) Battery Energy Storage Systems (BESS) – the current installed number is around 70,000 and growing rapidly with State and probable Federal Government support programs expanding. There is a rapidly increasing uptake for BESS attached to new PV systems and a booming retrofit market as premium feed-in-tariffs are ended and power export prices have fallen below retail prices, making self-consumption the preferred option.
 - c) Virtual Power Plants (VPP) – a number of these are in pilot stages with around 100,000 households expected to be involved by 2020. These are expected to transition to commercial operation as the early results are already positive.
 - d) Demand Response (DR) Services – this is a nascent market which will burgeon when new market rules allow monetisation of household resource capacity to deliver benefits to the network. The potential is for millions of households to choose these services as they increase the potential revenue from the householders’ assets.
 - e) Battery and hybrid electric vehicles and electric vehicle infrastructure – this market is also at an early stage of development, uptake of electric vehicles having been slow in Australia. Just less than 2,300 battery and hybrid electric vehicles were sold in Australia in 2017 (albeit a 67 per cent increase from the previous year). For the vast majority of Australians, the significant cost of electric vehicles has been a barrier to entering the market. A lack of government

² Clean Energy Council, *Clean Energy Australia Report 2019*
<https://assets.cleanenergycouncil.org.au/documents/resources/reports/clean-energy-australia/clean-energy-australia-report-2019.pdf>

³ <http://www.cleanenergyregulator.gov.au/Infohub/Media-Centre/Pages/Media%20updates/NewsItem.aspx?ListId=19b4efbb-6f5d-4637-94c4-121c1f96fcfe&ItemId=589>

incentives relating to electric vehicles has led to a reluctance by manufacturers to bring their vehicles to Australia. Without strong consumer demand for electrical vehicles, the market for products and services associated with electric vehicles also remains small. However, EV manufacturers are starting to bring electric vehicles at more accessible price points into Australia. And with recent announcements from political parties at Federal⁴ and State⁵ levels, the market is likely to experience significant growth.

- f) Other smart energy systems and services are appearing in the market which would see consumers benefit by purchasing from signatories to the Consumer Code. This is an emerging part of the sector with innovation at its core. The Consumer Code establishes a basis for consumer-centric approaches by signatories who will be obliged to provide detailed and transparent information in their customer interactions.

11. The vast majority of New Energy Tech hardware is imported. Currently local manufacture is limited to a single solar PV panel assembler with a tiny percentage of the market, but a reputation for high quality, a couple of inverter manufacturers and a few BESS assembly plants.

Hardware is mostly sold under distributorship models, but some manufacturers have local operations and direct sell. Australian software and services companies are world leaders and hold high market shares, and there are international providers too. Global competition in this space means that other players are expected to enter the market.

It is important to note that energy systems in Australia and globally are already in a transition to decarbonise – the only question is timing. Regardless of the timing, the heavily decreasing cost curves for renewable energy technologies means that the economics are dictating a faster transition with consumers leading the way based on financial and personal benefit considerations alone. Current trends project New Energy Tech purchases over the coming decade by more than 6 million households.

12. Current experience is that this dynamic growth is both encouraging new entrants to the market and the development of new products and services across the price and quality spectrum. While there are leading participants in each segment of the industry, for example, well-known manufacturers of batteries and electric vehicles, and pioneering product suppliers who remain at the forefront of the photovoltaic industry, the industry is developing at a pace that doesn't allow for leaders or other groups of participants to co-ordinate pricing or other market behaviours. New market entrants support high levels of competition.
13. The Consumer Code is not aimed (and should not be) at pricing decisions. Its aim is to ensure the quality of Consumer Code signatories' product and service offerings and customer service. By acting to maintain quality, the Consumer Code should limit the possibility of the two actions of raising prices and reducing quality or choice being done in conjunction with each other. In particular:
 - a) The Consumer Code will help to maintain high levels of quality in the products and services offered to consumers, and the quality of the customer service around the sale and marketing of those products and services.
 - b) Product quality will be maintained by requiring signatories to provide a minimum warranty, in many cases beyond the requirement of the Australian Consumer Law. It is proposed that the Consumer Code Administrator will operate an audit program designed to encourage high levels of customer service and satisfaction.

⁴ <https://www.afr.com/news/politics/national/labor-sets-50pc-target-for-electric-cars-20190331-p519do>

⁵ <https://roadmaprenewables.nt.gov.au/>

- c) Signatories to the Consumer Code will be required to resubmit their documentation and information about their complaints handling procedures for assessment by the Code Administrator on an annual basis and as requested if a complaint is raised against them. Currently, the Clean Energy Council reports to the Applicants that, in its administration of the Solar Retailer Code of Conduct, it has been able to maintain high levels of customer satisfaction through its investigations of consumer complaints and its ability to assume a conciliatory role in the dispute process. It is intended that this approach will also be adopted by the Consumer Code Administrator.
- d) Market forces are likely to keep prices low or stable in the new energy technology industry. The audit and complaints handling processes of the Consumer Code administrator and technological advances in product development are likely to maintain a high level of quality. Together these factors limit the ability for industry participants to raise prices while reducing quality and/or choice for consumers.
- e) By definition, the New Energy Tech sector is innovative. Global research, development and innovation in this industry are prolific and drive the consumer appetite. As the industry matures, external participants in the market develop new ways to engage with new energy technology consumers.

14. Existing competitors in the New Energy Tech sector

There is no register or other record that establishes the precise number of solar PV retailers operating in the Australian market. Credible estimates range from 4,000 to 5,000 retailers⁶, with approximately 70% being sole proprietors or employing fewer than four people⁷. Consumers are benefiting from the competitive nature of the market, with the cost of a 3 kilowatt system now typically between \$5,000 and \$6,000 before any government rebate or financial incentive is applied, compared with approximately \$10,000 for a 1 kilowatt system ten years ago⁸.

The battery energy storage device market is also accelerating. Incentives introduced by the South Australia, Queensland and Australian Capital Territory governments are contributing to the increased consumer demand⁹. Given the persistently high cost of electricity, demand for home batteries is likely to continue increasing.

For electric vehicles, there are currently approximately ten different brands available in the Australian retail market¹⁰. A small number of suppliers operate in the electric vehicle infrastructure market, including suppliers of home-based electric vehicle chargers.

For less mature segments of the New Energy Tech market, a smaller number of market participants/competitors exist. New Energy Tech products and services still in development or very new to the market are not well known to many consumers, so supply and demand in these segments are proportionate.

15. Likely entry by new competitors

⁶ As is apparent from information provided by solar installers in connection with their accreditation under the *Renewable Energy (Electricity) Regulations 2001*, many of the 6,000 accredited installers are also solar PV retailers.

⁷ See for example, *Industry Report: Solar Businesses in Australia* prepared by Solar Business Services for REC Agents Association in 2014 <http://www.recagents.asn.au/wp-content/uploads/2014/09/Solar-Businesses-in-Australia-Final-2014.pdf>

⁸ <https://www.solarquotes.com.au/panels/cost/>

⁹ <https://assets.cleanenergycouncil.org.au/documents/resources/reports/clean-energy-australia/clean-energy-australia-report-2019.pdf>

¹⁰ <https://electricvehiclecouncil.com.au/about-ev/evs-available/>

The New Energy Tech sector is a small but growing part of Australia's economy. With increasing government and commercial interest in the sector, the market and the number of competitors is expected to expand exponentially.¹¹ In particular, the trend for governments to require suppliers under their incentivised/subsidised programs to be code signatories is likely to continue to bring new competitors into the industry.

Public benefit

16. The Consumer Code aims to protect consumers by setting good practice standards for providers of New Energy Tech products, systems and services and providing additional consumer protections to those applying under the Australian Consumer Law (ACL).
17. Signatories to the Consumer Code agree to deliver the following Key Commitments to customers:
 - a) Provide you with clear, accurate and relevant information to help you make informed choices
 - b) Encourage you to be aware of your rights under the law and the Consumer Code
 - c) Ensure that our sales practices are responsible
 - d) Ensure that products, systems, services and documentation provided under the Consumer Code are suitable and fit for purpose
 - e) Support staff training and work processes that ensure that we comply with the law and the Consumer Code
 - f) Ensure that we will be responsive to your needs and take prompt, appropriate action if you make a complaint.
18. Importantly, the Consumer Code is principles-based and focuses on good customer outcomes through the customer journey. The Consumer Code will also be a mechanism to deliver important Consumer Information Products to better educate customers and allow them to make informed decisions.
19. The solar industry has been active for long enough to reveal areas where consumer detriment can occur with novel energy products and services. Areas of particular concern have included¹²:
 - a) High-pressure or misleading sales tactics leading to consumers buying systems that don't meet their needs

¹¹ https://www.energy.vic.gov.au/_data/assets/pdf_file/0033/73779/New_Energy_Technology_Strategy_-_web_version_-_20160308.PDF

¹² These issues are documented in a number of reports by the Consumer Action Law Centre that are informed by analysis of case studies of detriment experienced by consumers who have sought legal assistance, including *Knock It Off: Door-to-door sales and consumer harm in Victoria* (2017, available at <https://consumeraction.org.au/wp-content/uploads/2017/11/Knock-it-off-Consumer-Action-Law-Centre-November-2017.pdf>), and *Sunny Side Up: Strengthening the consumer protection regime for solar panels in Victoria* (2019, available at https://consumeraction.org.au/wp-content/uploads/2019/04/1904_Sunny-Side-Up-Report_FINAL_WEB.pdf). More general studies of consumer protection gaps in emerging energy markets include *Power Transformed: Unlocking effective competition and trust in the transforming energy market* (Consumer Action Law Centre, 2016, <https://consumeraction.org.au/wp-content/uploads/2016/07/Power-Transformed-Consumer-Action-Law-Centre-July-2016.pdf>) and *Empowering the future: Appropriate regulation and consumer protections in emerging energy markets* (Alternative technology Association, 2016, https://energyconsumersaustralia.worldsecuresystems.com/grants/729/ap729-empowering-the-future-appropriate-regulation-and-consumer-protections-in-emerging-energy-markets_ATA.pdf)

- b) Unaffordable unregulated finance leading to financial hardship and debt for vulnerable consumers
 - c) Grid connection not being properly completed, preventing consumers from being paid for their solar feed-in (a key part of the value proposition)
 - d) Poor quality components with high failure rates and unreasonably short warranty periods
 - e) Inability to claim warranties due to companies going out of business
 - f) Poorly-structured residential Power Purchase Agreements (PPAs) that lead to significant financial losses when solar systems are oversized and most generation is not used
 - g) No access to dispute resolution beyond state small claims tribunals, which are expensive to access
20. The Consumer Code addresses these issues by requiring signatories to:
- a) Avoid high-pressure sales tactics, give clear information on products and prices, base performance estimates on reasonable assumptions and determine the customer's intent in order to verify whether the product or service is suitable for their need
 - b) Use only licenced credit providers and regulated finance products when offering third-party finance (and for that reason exemption is sought from section 47)
 - c) Take stewardship of the grid connection process (where a grid connection is required), following up with other relevant parties to ensure they have actioned the request
 - d) Only use products meeting minimum warranty period requirements
 - e) Provide information about product manufacturers to customers so they can more readily pursue warranty claims if the signatory can not
 - f) Give Power Purchase Agreement customers a billing estimate based on their individual circumstances, and clear information about pricing
 - g) Have an internal complaints process, and refer customers to relevant external dispute resolution bodies (Ombudsmen, State Fair Trading bodies, or the Consumer Code Administrator as appropriate)
21. Some provisions of the Consumer Code are additional requirements over and above the ACL. Others are to clarify the application of ACL to the New Energy Tech markets. For example:
- a) Clause 1 goes beyond ACL's requirement to not mislead in advertising and marketing by requiring signatories to provide explicit information about pricing, performance metrics, and other factors of a product or service in order to inform the customer as fully as possible about the realisable value of the product or service.
 - b) Clause 4 requires signatories to take extra care when marketing to vulnerable customers and clause 50 requires signatories providing ongoing services to respond promptly to customers in vulnerable circumstances, for example, needing energy for medical or life-support equipment.

- c) Clause 15 requires signatories to provide a site-specific design of products that require professional installation in order to fully inform the customer of the functional and aesthetic impact of the product on their living space and property.
 - d) The ACL entitles consumers to redress if a product is not fit for purpose. This entitlement is difficult to enact if the customer's purpose is not clear. The Consumer Code requires vendors of complex and costly products or services to ask about the customer's intent, advise whether or not the product or service can fulfil that purpose, and document this in the contract or agreement.
22. Significantly, the requirement for signatories to use only licenced credit providers and regulated credit products when offering third-party finance is an important clear public benefit. These requirements are likely to result in consumers making more informed and effective decisions about finance arrangements to purchase New Energy Tech because they will be provided with regulated information about the credit product, be in a better position to be able to compare credit products effectively, and benefit from licensing protections. In particular:
- a) Consumers will have regulated information about the credit offer, including repayment terms, percentage rates, fees and charges etc pursuant to the National Credit Code, allowing for clear comparison across different products (this is not required for Buy Now Pay Later (BNPL) providers where the cost of credit is bundled into the cost of the goods);
 - b) Consumers will benefit from the obligation on credit providers to make a responsible lending assessment under the National Consumer Credit Protection Act (this is not a requirement for BNPL and other unregulated credit providers¹³);
 - c) Consumers will be assured of the ability to take any complaint or dispute about the credit product to an external dispute resolution scheme (also not a requirement for BNPL and other unregulated credit providers).

Furthermore, the Consumer Code Administrator will be able to rely on the licensing decisions of the Australian Securities and Investments Commission (ASIC) to ensure a level of consumer protection when assessing signatories, noting that it itself will not be specialist in consumer finance. At the time of submission, there is no other benchmark or specific consumer protection requirements for unregulated credit providers.

23. To achieve these aims, it was agreed that there was a need for clear and robust governance, accountability and administration arrangements for the Consumer Code in line with the ACCC's Guidelines for developing effective voluntary, industry-based codes. The Memorandum of Understanding - New Energy Tech Consumer Code - Governance, Accountability and Administration of January 2019 sets out these arrangements, with one of its key guiding principles being consumer outcomes (clause 2(a)). Its consumer orientation is additionally illustrated by:
- a) The Chair of the Council having expertise in consumer affairs and the confidence of consumers, consumer organisations, industry and other key stakeholders (clause 7)
 - b) Representatives of consumer bodies on the Council (clause 7)
 - c) A consumer representative on the Code Monitoring and Compliance Panel (clause 15).

¹³ Leading consumer advocates have extensively documented the considerable harm caused to vulnerable consumers by unlicensed lenders that provide unregulated finance products: <https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2018/11/181109-Final-submission-Senate-Inquiry.pdf>

24. The Memorandum of Understanding gives the Council the power to appoint the Consumer Code Administrator. Its responsibilities include:

a) Assessing applications by those wishing to become a signatory to the Consumer Code.

Paragraph 4 of the Consumer Code Annexure – Code Administration specifies two matters that the Code Administrator must take into account when considering whether to admit an applicant as a signatory: first, whether the applicant’s processes and documents are sufficient to support compliance with the standards set out in the Consumer Code and secondly, whether the key personnel have had significant involvement in another business that became insolvent. Subject to these requirements and payment of the application fee, admission as a signatory will be open to any business that applies and indeed the hope is that the Consumer Code will have broad uptake within the New Energy Tech sector.

b) Assessing application by signatories to renew their status as a signatory

Paragraph 5 of the Consumer Code Annexure – Code Administration requires the Code Administrator to take into account any complaints that have been made about the signatory and whether the signatory has co-operated with the Code Administrator and the Code Monitoring and Compliance Panel in carrying out their responsibilities. Other than these consumer protection standards, constraints will not be imposed.

c) Powers to enforce the Consumer Code

The Code Administrator’s powers include requiring a signatory to rectify issues giving rise to a breach of the Code. Where there is serious non-compliance, the Administrator may propose to the Code Monitoring and Compliance Panel that the signatory should be suspended or expelled (for this reason exemption from the cartel provisions in section 45AD is sought). Procedural fairness will be accorded to the signatory before this occurs.

These responsibilities are exercised free of influence by existing signatories and subject only to oversight by the Code Monitoring and Compliance Panel.

25. The Consumer Code Annexure – Code Administration also sets out a process that involves multi-party responsibility for fixing fees to be charged to Consumer Code signatories and applicants. This process is designed to ensure that fees are fair and as low as possible, consistent with ensuring that there are adequate resources to administer the Consumer Code properly. The aim is to ensure that fees pose as minimal a barrier to participation in the sector as practicable.

Public detriment (including likely competitive effects)

26. While the introduction of the Consumer Code into the New Energy Tech sector is expected to bring significant consumer benefit through raised standards, the proposed conduct may also have some potentially negative impacts. These include:

a) Raised standards of protection and a professionally administered code that meets ACCC standards will increase direct process and compliance costs for industry which may eventually be reflected in higher prices being passed on to consumers

In this sector, a significant proportion of the products, systems and services are being considered or purchased for economic reasons (as well as sustainability and concern for the environment) – ie. to reduce energy costs. This makes the sector highly price competitive with many purchase decisions hinging on estimated savings (return on investment) calculations. Providers are particularly sensitive to costs and anything that might limit consumer take up of New Energy Tech.

Some submissions in response to drafts of the Consumer Code and input from stakeholder forums put the view that the Consumer Code could add direct costs to their operations (eg. through training, requirement for documentation, the obligation for fit-for-purpose design, some inflexibility in product or design substitution and stronger consumer protection provisions such as refunds, recalls and financial hardship). These stakeholders were concerned that adding costs for the industry providers who were most committed to good customer outcomes might make them less price competitive with providers who avoided the higher standards or who took shortcuts.

Significantly, other industry representatives expressed confidence that the Consumer Code requirements were not too onerous and, in many cases, were already being delivered by providers committed to good customer outcomes.

The Applicants took the view that the value to the community and to industry of higher standards and improved reputation and trust were worth any potential additional costs.

- b) Proposed raised standards of protection for financing New Energy Tech products, systems and services (eg. requiring an Australian Credit License and the use of regulated consumer credit products) may exclude some third-party financiers from providing finance to customers of Code Signatories.

A number of providers and potential Consumer Code signatories partner either with unlicensed credit providers or with licensed credit providers who provide unregulated credit products – in particular the BNPL providers of finance.

BNPL providers and some New Energy Tech providers expressed a concern that setting a standard that excluded this source of financing would diminish options available for consumers and diminish competition.

They argued that the Consumer Code was attempting to set a standard that was beyond common practice in other retail settings and would exclude a legal financing option commonly available to consumers outside the New Energy Tech sector. They quoted from recent reviews by both ASIC and ACCC that did not recommend any change to the regulation of BNPL.

Some provided examples of higher than required standards of consumer protection being voluntarily undertaken by individual providers, eg. membership of external disputes resolution schemes. There was also reference made to moves to establish a BNPL Code of Conduct, albeit we understand that this has not yet begun.

The Applicants took the view that on balance, the consumer benefit of the Consumer Code provisions outweighed any potential impact on competition (see Paragraph 22). In particular, by requiring providers to use licensed credit providers and regulated credit products, the Consumer Code can rely on existing regulation to manage financial hardship, capacity to pay assessments, and dispute resolution between customers and lenders. The alternative would have been to address these issues through the Consumer Code which would have been

resource intensive and less effective. The Applicants are also keen to follow the progress of the potential BNPL Code of Conduct and how it may interact with the Consumer Code to achieve better consumer outcomes in the New Energy Tech market.

- c) A number of stakeholders raised concerns that the codification of good practice through the Consumer Code would introduce inflexibility to a highly dynamic and evolving sector.

One example of these concerns was that a requirement for detailed specification of what will be supplied in a contract might restrict a large provider's ability to substitute newly available components during the implementation stages. The Applicants took the view that this issue could be handled through drafting of contract specifications that are performance-based.

Another example raised was the desire to run pilot programs of new offerings that may not meet the Consumer Code standards – so-called 'sandboxing'. The Applicants took the view that this could be achieved through an application to the Administrator for a temporary exemption, where it could be shown that there would be no customer detriment.

Contact details of relevant market participants

27. The Consumer Code is expected to have interest for a wide range of stakeholders including consumer representatives, potential signatories, industry associations, suppliers and a range of government regulators and policy-makers. See Attachment D for a representative sampling of contact details.

Declaration by Applicant(s)

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).

This Application made on behalf of the four applicant organisations:

- i. Australian Energy Council
- ii. Clean Energy Council
- iii. Smart Energy Council
- iv. Energy Consumers Australia



Signature of authorised person

Office held: Compliance and Risk Manager, Clean Energy Council

Name of authorised person: Anna Sexton

This 29th day of April, 2019

Attachment A – Contact details for Applicants

Australian Energy Council (AEC)

Ben Barnes
Director, Retail Policy

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ben.barnes@energycouncil.com.au

14/50 Market St
Melbourne VIC 3000

Clean Energy Council (CEC)

Mindy Lim
Code of Conduct Manager (Solar Retailer Code)

Tel: 03 9929 4153
mlim@cleanenergycouncil.org.au

Level 15, 222 Exhibition St
Melbourne VIC, 3000

Smart Energy Council (SEC)

John Grimes
CEO

Mob: +61 (0) 400 102 396
ceo@smartenergy.org.au

PO Box 231 MAWSON ACT 2607

Energy Consumers Australia (ECA)

Jacqueline Crawshaw
Associate Director Advocacy & Communications

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jacqueline.crawshaw@energyconsumersaustralia.com.au

Suite 2, Level 14, 1 Castlereagh Street
Sydney NSW 2000

Attachment B – New Energy Tech Consumer Code

Part A - Overview

Scope

This New Energy Tech Consumer Code (“the Code”) sets good practice standards for providing Residential and Small Business Customers with New Energy Tech products, systems and services. We may extend these protections to other customers if we expressly include this in the contract. New Energy Tech is defined in Part C of the Code to include such things as solar photovoltaic systems, wind turbines, energy storage systems, managing a customer’s energy usage and electric vehicle charging services but does not include some simple, low cost, standard New Energy Tech.

The intention of this Code is to raise standards of consumer protection in the sector, to strengthen consumer confidence in New Energy Tech and to encourage innovation and the development of choice for consumers.

Providers who have been accepted by the Administrator as Code Signatories (referred to as “we” and “our”) are bound to comply with this Code. Customers protected by this Code are referred to as “you” and “your”.

The Code includes:

- Part A that provides an overview of the key commitments we make to you
- Part B that sets out our required practices in detail
- Part C that defines key terms (which are Capitalised in the Code) and
- an Annexure setting out how the Code is administered, monitored and enforced, including our obligations to the Administrator and the Code Monitoring and Compliance Panel (“The Panel”).

The Code operates alongside a range of existing legal and regulatory protections. Generally, it does not repeat these protections except as needed to provide you with a complete understanding of what to expect from us.

Key Commitments

The key commitments made under this Code are to:

- a) Provide you with clear, accurate and relevant information to help you make informed choices
- b) Encourage you to be aware of your rights under the law and the Code
- c) Ensure that our sales practices are responsible
- d) Ensure that products, systems, services and documentation provided under the Code are suitable and fit for purpose
- e) Support staff training and work processes that ensure that we comply with the law and the Code
- f) Ensure that we will be responsive to your needs and take prompt, appropriate action if you make a complaint.

The Code aims to cover the main steps of your 'customer journey' as illustrated below.



Advertising & Promotion

We will be honest, accurate, clear and fair.



Direct marketing & sales

We will identify ourselves, provide unbiased information and use no pressure-selling. We will take extra care throughout if we become aware that you may be vulnerable.



Fit for purpose

Our aim is to ensure that our offers are fit for purpose. Where we are to configure or install on your site, we will ask about your needs and ensure that our offer is fit for that purpose.



Quoting

Our quotes will provide comprehensive details of our offer, including expected performance and any limitations, an itemized list of inclusions, installation times, a breakdown of costs, any relevant warnings and your rights and obligations.

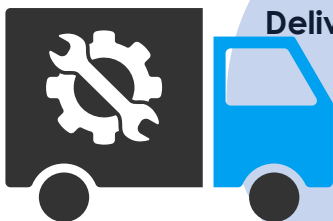


Contracts

If you agree to go ahead with an offer involving a contract, our written contract will address all aspects of the quote, including any variance from the original quote, applicable warranties and any issues that you should particularly note.

Payment & Finance

We will provide clear and complete information about your payment options. We will only offer finance through others if they are a licensed credit provider.



Delivery, installation & safety

We will deliver and install in the timeframe promised and in accordance with all safety regulations, manufacturers' specifications and Australian Standards.



Activation

We will assist you with any necessary activation steps to begin delivering your benefits, including with any necessary approvals and connection to an energy network.



User information

We will provide you with information for safe, effective and optimum use of your service or purchase including any of your obligations.



Customer service

We will have fair terms and maintain high standards of communication and support. We will ensure that we respond courteously and act promptly to any contact or reasonable requests from you.

Warranty

We will honour all guarantees and warranties you may be entitled to and we will promptly fix service issues, and make repairs or replacements.



Complaints

We will respond promptly and fairly if you have a complaint with our service or your purchase. We will keep you informed as to progress and if you are not satisfied with our response, refer you to independent complaints bodies.



Compliance

We will comply with this Code and with all relevant laws, regulations and standards including Privacy laws.



LAW



REGULATIONS



STANDARDS

Part B – Our required practices

Advertising and promotion

2. Our advertisements and other promotional material will not include any false or misleading claims about us or our New Energy Tech. In particular, our advertisements and promotional material will:
- a) ensure all relevant incentive schemes (government and non-government) are honestly and accurately represented
 - b) not misrepresent our association with government or falsely claim to be part of a government scheme
 - c) not make any false or misleading claims about the price, value, quality, capacity, output or other performance characteristic of our New Energy Tech, for example, through selective advertising, exaggeration or misleading focus on one or a few aspects only of the New Energy Tech
 - d) use language that is accessible and that avoids industry jargon
 - e) not make any misleading claims about the place of origin (manufacture and assembly) of our products
 - f) not mislead you about the impact our New Energy Tech will have on your energy usage or costs
 - g) ensure that any claims relating to performance and energy cost savings of our New Energy Tech are reasonably based and where available, based on reputable sources
 - h) advertise the total price for our New Energy Tech as prominently as we advertise any component of the price
 - i) provide information that is specific to the state or region in which the promotional activity takes place
 - j) ensure that any disclaimers are clearly outlined and not buried in small print
 - k) only include a statement, promise, prediction or opinion if it is reasonably based
 - l) not include information that is no longer current, for example, quote an offer or financial incentive that is no longer available
 - m) be clear about any additional cost for finance or an alternative purchasing arrangement for New Energy Tech when the cost is being recovered in the overall price (e.g. where the price of financed New Energy Tech is greater than the price that would apply if immediate payment is made).



Direct marketing and sales

3. When marketing directly to you, including through a sales agent (as well as meeting the requirements in paragraph 2):
 - a) we will explain up-front the purpose of any un-requested (“unsolicited”) contact by us, in person or by telephone and advise that you can ask us to leave or end the contact at any time
 - b) we will leave your premises or end the contact immediately if you ask us to do so
 - c) we will show you our company-issued identification if an unsolicited contact is in person
 - d) any interactive internet marketing channel that we use will clearly identify for you the company whose New Energy Tech is being promoted
 - e) we will provide you with the address of our local office or showroom, an email or other electronic address and a telephone number where any queries can be answered
 - f) we will provide you with the Administrator approved Consumer Information Product that explains the consumer protection framework that applies under legislation and this Code and sets out other key information. The information may be provided to you in electronic format, however if you request, we will provide you the information in hard copy.
4. We will adhere to responsible marketing practices at all times and avoid high-pressure sales tactics that may induce you to make hasty or uninformed decisions about the New Energy Tech you are considering. High-pressure sales tactics include (for example):
 - a) seeking to sell to you if you are unlikely to be able to understand our information and/or our contract (e.g. due to English language difficulties, age, learning difficulties, mental illness or physical disability)
 - b) offering discounts for agreeing to provide testimonials and/or referrals
 - c) claiming special discounts (eg. “community” or bulk-buy discounts) apply, if they don’t
 - d) applying psychological pressure to persuade you to make a quick purchase decision (eg. by unfairly appealing to your emotions)
 - e) employing badgering techniques, such as revisiting your premises uninvited or making frequent telephone calls, to pressure you into signing a contract
 - f) other conduct that the Administrator may reasonably identify as high-pressure sales tactics.
5. Throughout our dealings with you, we will take extra care if we become aware that you may be facing vulnerable circumstances (eg. illness, impairment, a victim of abuse, financial stress).



Fit for purpose inquiry

6. As appropriate to the nature, complexity and cost of the new Energy Tech you are considering, we will support you in making a fit-for-purpose choice including:
- ask you about your specific circumstances, needs and expectations. This includes the extent to which you plan to use our New Energy Tech to supplement or improve the efficiency of energy use while connected to an Energy Network or be isolated from the Energy Network (also known as “off-grid”) or your expected outcomes from participating in forms of New Energy Tech supply such as virtual power plants or other energy markets.
 - enquiring about any need you may have for energy for medical or life-support equipment or services and ensure that our New Energy Tech is suitable for this purpose and that you are made aware of any additional or increased risks.
 - ensuring that any offer of New Energy Tech is fit for purpose in light of your circumstances, needs and expectations as you have described them to us (unless we clearly explain to you orally and in writing that it is not fit for that purpose). We will include a brief description of your circumstances, needs and expectations in our quotes and contracts. Where we offer you a New Energy Tech that is intended to work in conjunction with other New Energy Tech that you already have or are obtaining, we will ensure that our offer is compatible with that other New Energy Tech and confirm this in writing in your quote and contract.
7. If you advise us that you are considering operating off the Energy Network, we will provide you with a copy of the Administrator-approved Consumer Information Product that sets out Energy Networks Australia’s Off-Grid Principles.



Quote – general requirements

8. We will provide you with a written quote that sets out:
- our full name, Australian Business Number (if relevant) and physical address, an email or other electronic address and a telephone number where any queries can be answered
 - an itemised list of the New Energy Tech to be supplied, including relevant specifications. For products and systems, this will include the manufacturer, model, year, quantities, configuration and performance specifications. For services, this will include the nature and purpose of the services, whether the services are ongoing, scheduled (and if so what frequency) or responsive to your request, the duration of the service commitment and whether the services will be provided remotely or at your premises
 - information about how the New Energy Tech operates
 - information about any responsibilities you have to facilitate the operation of the New Energy Tech including maintenance and access issues
 - information about product, system or service limitations that are likely to be relevant to you (eg. where a battery does not provide a back-up facility)



- f) a performance estimate for the New Energy Tech to be supplied, which will be reasonably based, where available rely on reputable sources and comply with any relevant Administrator guidance
- g) where our offer is for a New Energy Tech product or system to be connected to the Energy Network, information that your energy supply contract may change as a consequence of purchasing the New Energy Tech and that it is your responsibility to contact your Energy Supplier to find out about this and whether there are any restrictions to your ability to interact with the Energy Network
- h) our timeframe for supplying and installing products and systems or commencing services to be provided to you (if there are circumstances that are out of our control that may cause delay, we will identify this)
- i) our business terms including the method of making payments
- j) details of any guarantees and warranties that apply. We will specify:
 - i. that your rights under your contractual warranty are in addition to the consumer guarantees under the Australian Consumer Law and that these are not excluded or replaced by your contract
 - ii. the specific details of the guarantee or warranty and how it applies to you
 - iii. for a New Energy Tech product or system - the name and contact details of our supplier in case you want to pursue your consumer guarantee rights under the Australian Consumer Law against that supplier or if for any reason you are unable to contact us.
- k) for a New Energy Tech product or system, information about its expected life and what is involved in disposing of it at the end of its life
- l) information about the portability of the proposed New Energy Tech
- m) information about the term of any applicable ongoing agreement and any provisions that may impact on your existing relationship with an Energy Supplier
- n) if the quote is for an installation on a strata title property and requires the approval of the Owners Corporation – the need for you to obtain that written approval and provide it to us before you sign the contract with us
- o) your cooling-off and termination rights (if applicable) under the Australian Consumer Law (including the right to terminate a sales agreement within 10 business days if the sale resulted from an unsolicited contact) and this Code
- p) any licenses, accreditation or certification that we hold that are needed to fulfil the offer we are making to you
- q) that we are bound by this Code
- r) the Administrator-approved Consumer Information Product that explains the benefits of the Code for our Customers and any other important information as applicable.

Quote – financial disclosure

9. Our quote to you will specify the deposit payable (if any) and the total price of all offered New Energy Tech including any taxes that apply. We will specify the period of time our pricing is valid for (which will be at least 10 business days).
10. Where our offer is of a Power Purchase Agreement, our quote will specify:
 - a) the energy pricing and all associated fees and charges, any rights we have to change any of these and the notice we will provide of any price change
 - b) a reasonable estimate of the aggregate amount payable over the agreement's term based on a stated, reasonable estimate of your energy consumption, including the basis of the calculation and, if applicable, the energy you will export to the Energy Network
 - c) a clear statement that you must pay the stated energy prices for the term of the contract and that this amount may not reflect or be competitive with available prices for energy from the Energy Network.
11. Our quote to you will specify site conditions and circumstances beyond our control that may result in extra chargeable work not covered by the quote (eg. fees for meter exchange/re-configuration, repairs to existing faults, and changing dedicated off-peak control devices if required).
12. Our quote to you will specify the total value of any discounts, regulatory certificates, incentives or rebates (government and non-government) or government relief schemes and how and when these may or may not apply.
13. Where we offer New Energy Tech services and periodic or intermittent charges apply, our quote will specify the amount or method of calculation, any rights we have to vary charges during the term of the contract and the frequency of bills. For example, if there will be charges for software upgrades, we will aim to provide reasonable certainty as to the cost that you will incur.
14. If we make a claim that you are likely to achieve a favourable return on your investment, we will include in our quote a return on investment calculation that is based on reasonable assumptions and where available from reputable sources. Our quote will set out our assumptions including:
 - a) system design, performance and output
 - b) government and non-government financial incentives
 - c) energy prices and usage
 - d) financing costs (if applicable)
 - e) maintenance costs
 - f) end-of-life costs
 - g) any other relevant factors.

We will also clearly state that our calculation is an estimate only and that if our assumptions prove not to be correct you may not achieve the estimated return.
15. If our offer involves us making payments to you (for example, for energy purchased from you), we will clearly specify how payments will be determined, any rights that we have to change the basis on which payments will be calculated and the frequency with which payments will be made.

Quote – design

16. If the quote includes New Energy Tech that requires custom configuration or specification and/or physical installation by us or a competent or qualified installer, we will:
- a) include as part of the quote:
 - i. a site-specific installation design or plan (a sketch or diagram is acceptable) including any configuration or positioning issues and how the New Energy Tech will integrate with other New Energy Tech you may have
 - ii. a site-specific performance estimate for the New Energy Tech.
 - b) before we enter into a contract to provide New Energy Tech to you, complete a site-specific installation design or plan and site-specific performance estimate (both must meet the requirements of paragraph 16a)) for a non-refundable agreed fee, with no obligation on you to proceed to contract with us
 - c) we can provide a site-specific installation design or plan and site-specific performance estimate (both of which will meet the requirements of paragraph 16a)) as an initial deliverable of the contract if:
 - i. we do so before the expiry of your cooling-off period (if applicable)
 - ii. we provide you with a full refund, if within 10 business days of receiving the site-specific installation design or plan and performance estimate you notify us that you do not accept these.

Quote - connections

17. If our quote is for a New Energy Tech that requires approval from your Energy Supplier for connection to the Energy Network and/ or reconfiguration of your meter, we will also include in our quote:
- a) an offer to arrange this on your behalf and what, if any, charge we will make for doing this
 - b) an explanation of the steps that need to be taken to obtain approval and/ or reconfiguration of your meter and the relevant paperwork that must be completed and submitted prior to installation
 - c) a statement that your Energy Supplier may impose a charge for connection to the Energy Network and/or reconfiguring your meter and may change your existing energy pricing
 - d) a statement that we will support you through these steps if you decide to obtain Energy Network connection approval yourself and whether there will be any non-refundable charge for this assistance.

Contracts

18. If you accept our quote and agree to purchase our New Energy Tech, we will provide you with a written contract that is clear, uses plain language and is in legible print.
19. Your contract will meet the same requirements as for a quote (and may do this by attaching the quote with any amendments that are necessary). In addition:
 - a) your contract will include our undertaking to you to comply with the Code
 - b) your contract will provide you with a standard minimum supplier's warranty period on the operation and performance of the New Energy Tech including workmanship. The period will meet or exceed the period set from time to time by the Administrator, in consultation with stakeholders, for the particular New Energy Tech
 - c) your contract will include information about how to make a complaint and the complaint resolution process including your right to access an external dispute resolution scheme (where applicable), to take a complaint to the Administrator and to take a complaint to a government regulator and
 - d) at the time we provide your contract to you, we will also provide you with any relevant Administrator-approved Consumer Information Product. We may give these to you electronically, but if requested, we will provide them in hard copy.
20. We will not offer you a contract that involves requiring you to purchase energy or services from another supplier (called "third line forcing"), except where this is permitted by the *Competition and Consumer Act 2010 (Cth)* and we have made this clear to you.
21. We will explain the contract to you prior to you entering into the agreement. In particular:
 - a) we will draw your attention to any particular requirements of the contract that may cause confusion or disagreement (e.g. where additional fees may arise, early termination fees, end of contract payments or any difference between a verbal quote and the final price)
 - b) we will clearly explain the process for the payment and trade of any government or regulatory certificates, and of any relevant trading facility and any limitations
 - c) we will advise you that your Energy Supply contract may change as a result of purchasing the New Energy Tech and that it is your responsibility to contact your Energy Supplier to check what new pricing may be applied and, after installation of the New Energy Tech, to confirm that the agreed pricing has been applied.
22. Both of us will sign the contract and any amendments. Equivalent methods of legal agreement other than physically signing a written contract in person are also permitted (for example, electronic acceptance).



Payment and finance

23. We will issue you with a receipt for any deposit or other payment you make under the contract.
24. We may offer you New Energy Tech with a deferred payment arrangement as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph 2.m)), we will ensure that:
- a) this payment arrangement is offered through a credit provider (whether ourselves or a third party) licenced under the *National Consumer Credit Protection Act (2009)* (Cth) (“NCCCPA”)
 - b) the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code (“NCC”)
 - c) the term of the deferred payment contract or lease is no longer than the expected life of the product or system
 - d) ensure that you receive the following clear and accurate information:
 - i. the name of the licensed credit provider to whom you will be contracted for the arrangement
 - ii. a clear statement that the deferred payment arrangement is a voluntary finance option
 - iii. the proposed total cost under the deferred payment arrangement compared with the cost of that same New Energy Tech product, system or service if you were to purchase it outright on that day
 - iv. the disclosures required under the NCC, including in relation to fees and charges
 - v. whether at the conclusion of the deferred payment arrangement
 - you own any elements of the New Energy Tech or
 - you have any entitlement to any ongoing services or pricing and/or
 - you have the option to purchase any elements of the new Energy Tech and if so relevant details, including any associated costs and
 - vi. a statement that questions and complaints about the payment arrangement should be directed to the licensed credit provider with whom you will be contracted.
25. Paragraph 24 does not apply if the finance is provided by a government body.
26. Paragraph 24 does not apply if we offer you, as an alternative to full payment on delivery or installation, the opportunity to make progressive instalments to us over a period of not more than 6 months, provided that the total amount to be paid by you does not include an interest component, additional fees or an increased price (see paragraph 2.m)).
27. Paragraph 24 does not apply if the Administrator is satisfied that the contract we offer you is a Power Purchase Agreement and our contract includes a commitment to try and assist you if you notify us that

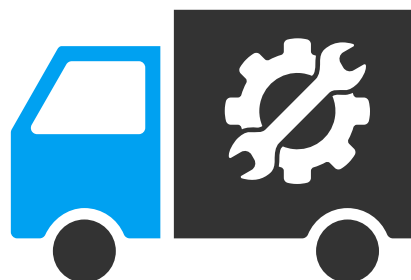


you are experiencing financial hardship, including by advising you of any relevant government assistance schemes and by offering you a payment plan.

28. Where we are providing an ongoing service to you and the contract allows us to change the price that we charge you, we will advise you as soon as practical and no later than five business days prior to the price change taking effect.
29. If your contract requires us to make payments to you (whether by transfer of money or by offset to a payment you make to us), we will make those payments on time in accordance with your contract. If our payments to you are calculated using an undisclosed formula, we will ensure that our payment calculation system is regularly audited by a registered company auditor to ensure that payments are accurately calculated.

Delivery, installation and safety

30. We will arrange delivery and installation (if applicable) of New Energy Tech you purchase from us within the timeframe specified in your contract, unless any delay is because of circumstances that were identified in your contract as outside our control.



31. If you purchase New Energy Tech that requires physical installation by us, we will ensure your safety and the safety of our installers. We will install in accordance with all applicable safety standards, manufacturer's specifications, relevant Australian Standards, Energy Network standards, any binding guidance issued by the Code Administrator and good industry practice, using an installer that is trained, competent and where applicable, holds any required qualification or certification to undertake the work.

Activation

32. If you authorise us to obtain Energy Network connection approval on your behalf for New Energy Tech, we will:

- a) not install or commence the New Energy Tech until approval is provided
- b) provide you with a full refund if the relevant approvals are not obtained
- c) prepare and submit within a reasonable timeframe all relevant documentation required by the Energy Supplier for connection to the Energy Network and for reconfiguration of your meter (if relevant)
- d) respond within a reasonable timeframe to any additional compliance requests from the Energy Supplier (for example, re-submitting incorrect paperwork), and consult with you if necessary
- e) keep you informed of progress at each step, including any restrictions or limitations that may adversely affect you.



33. If you take responsibility for obtaining Energy Network connection approval for New Energy Tech, we supply to you, we will:

- a) clearly explain to you each step in the process for preparing and submitting the documentation to the Energy Supplier
 - b) provide you with information as to where to find and how to complete and submit paper or on-line forms
 - c) provide you with expected timeframes and any deadlines for each step of the process
 - d) advise you of contact details for queries or following up on progress
 - e) advise of any potential problems that may arise
 - f) provide you with a refund consistent with paragraph 47 if your application is rejected.
34. If you take responsibility for obtaining Energy Network connection approval for New Energy Tech and your application is rejected after you have signed a contract for that New Energy Tech, we will provide you with a refund minus reasonable expenses incurred by us to the point of termination of the contract.
35. If we supply you with New Energy Tech that needs another form of activation in order to provide you with the intended benefit, we will explain to you the steps that need to be taken and who is responsible for these. We will promptly fulfil our responsibilities and keep you informed of progress at each step.

Operating Information

36. Prior to the activation of the New Energy Tech we are providing you, we will:
- a) provide you with comprehensive information for safe and effective operation, maintenance and optimisation of your New Energy Tech
 - b) explain to you any obligations that you may have to facilitate or enable the New Energy Tech (for example, to maintain an internet connection that we are able to access)
 - c) advise you how to use your New Energy Tech and/or assess the benefit you are deriving from these. The advice will be appropriate to the New Energy Tech we are providing to you and will involve at least one of the following:
 - i. written instructions and a physical or electronically recorded demonstration (for example, an instructional video)
 - ii. providing you either with a measuring or monitoring device that connects to the New Energy Tech or with continuous access to a remote monitoring service (in either case that will facilitate accurate measurement of benefit that is based on objective standards acceptable to the Administrator) together with written instructions as to how to use that device or access that service or
 - iii. a commitment to provide you with regular reports that accurately quantify the benefit that you are deriving and that meet any guidelines made by the Administrator in relation to reporting of this kind (for example, in the case of a service that is designed to reduce your energy bills by smart management of your energy consuming products).



The required information will vary depending on the specifics of the New Energy Tech but will meet the Administrator's requirements. The information may be provided to you in electronic format, hard copy

or by web link or something similar. If you request, we will provide you the information in hard copy (in which case, we will provide it at least quarterly, namely every three months).

Performance

37. Our New Energy Tech will meet your reasonable expectations including but not limited to:
- a) meeting your needs as explained to us (see paragraph 6), unless we have clearly explained to you and confirmed in writing that those needs cannot be met
 - b) performing properly
 - c) reflecting any agreed contract and meeting the performance specifications outlined by us to you;
 - d) fulfilling any commitments we make to you (for example, to provide access to an accurate monitoring service or regular reports that accurately quantify the benefit you are gaining)
 - e) New Energy Tech that utilises information and communications technology will be secure
 - f) all our services will be provided with due care and skill.
38. If we become aware that New Energy Tech that we have supplied to you is defective or unsafe, we will promptly tell you and offer to fix the problem if this is possible or otherwise remove the product or system from your premises and provide reasonable compensation to you.
39. If we provide you with New Energy Tech that involves the use of equipment that you own, we will do so in a way that is consistent with the equipment manufacturer's instructions and warranty requirements.

Move from premises

40. If our contract with you includes a lock-in period and imposes fees if you terminate early, and
- a) the services are not transferrable to another property
 - b) you sell or move from the property to which those services are being provided
 - c) the occupier of the property agrees to take over your contract

we will agree to the occupier of the property substituting for you under the contract and will not charge you early termination fees, unless we have a reasonable basis for refusing to contract with the occupier of your property.

Warranty claim

41. We will respond promptly to any warranty claim by you and within a reasonable timeframe implement warranty repairs and replacements, remedy service issues or provide compensation.
42. We will provide you with the name and contact details of our New Energy Tech product or system supplier in case you want to pursue your consumer guarantee rights under the Australian Consumer Law against that supplier or if for any reason, you are unable to contact us. ~~we should go out of business.~~



43. In some circumstances, you may not be entitled to a consumer guarantee under Australian Consumer Law, and in that case, you may not be entitled to a remedy, if the claim is due to something that:
- a) someone else said or did (excluding our agents or employees) or
 - b) beyond human control that happened after the goods or services were supplied (for example, an extreme weather event).

Termination of contract

44. You are entitled to terminate your contract and we will provide you with a full refund if:
- a) your contract is for the supply of New Energy Tech that requires physical installation
 - b) consistent with paragraph 16.b), we provide you with a site-specific installation design or plan and site-specific performance estimate as an initial deliverable under the contract (rather than as part of our quote)
 - c) within 10 business days of receiving our site-specific installation design plan and performance estimate you notify us that you do not accept these.
45. You are also entitled to terminate your contract and we will provide you with a full refund, if your contract is for the supply of New Energy Tech that requires physical installation and either of the following applies:
- a) we propose to significantly change the New Energy Tech installation design from that previously provided to you (whether provided in our quote or as a first deliverable under your contract) and you are not willing to accept the change or
 - b) site conditions and circumstances beyond our control result in extra chargeable work not within the contract price and we are not willing to bear those additional costs.
46. You are also entitled to terminate your contract for the supply of New Energy Tech, and we will provide you with a full refund, if we fail to meet the timeframe specified in your contract for delivery and installation (if applicable), or commencement of service of any New Energy Tech. This does not apply, however, if the delay was because of circumstances that were identified in your contract as outside our control.
47. If you take responsibility for obtaining Energy Network connection approvals and your application is rejected after you have signed a contract with us (see para 34), you may terminate the contract and we will provide you with a refund minus reasonable expenses incurred by us up to the time of the termination.
48. We will terminate your contract and remove New Energy Tech that we supplied to you and return the site to its former state, if:
- a) you have a strata title property
 - b) you were required by law to obtain the Owners Corporation written consent before installing our New Energy Tech
 - c) you entered into a contract with us to supply the New Energy Tech before obtaining that written consent and



d) the Owners Corporation subsequently refuses to give that consent.

We will provide a full refund and conduct the removal and restoration at our cost, unless:

e) we advised you of the need for written consent under paragraph 8.n) and

f) we have proceeded with the installation on your incorrect advice that yours is not a strata title property.

49. Under the Australian Consumer Law, if the sale to you was unsolicited and you are a Residential Customer, you will be given 10 business days after you sign a contract to cancel the contract without penalty (the “cooling-off period”). If you wish to withdraw from a valid contract after the expiry of any cooling-off period, we may apply our own policies regarding fees for cancellation, provided that we specified them in the initial contract. For all Customers protected by this Code, we may only impose cancellation or termination fees that are reasonable and related to the cost incurred by us.

Customer service

50. We will provide fair terms, clear communication and maintain high standards of customer service at all times and respond courteously and promptly to any contact from you and queries you may have about New Energy Tech supplied by us to you.



51. If we have an ongoing service relationship with you and we are aware that you may be facing vulnerable circumstances (eg. illness, impairment, a victim of abuse, financial stress or needing energy for medical or life-support equipment or services), we will take additional care to respond promptly to any related issues arising from the use of our New Energy Tech.

Complaints

52. If you are dissatisfied with a New Energy Tech we offered or supplied, you can submit a complaint directly to us. A complaint may include, for example, any expression of dissatisfaction with a New Energy Tech offered or provided, with the sales process or salesperson, or with the complaints handling procedure itself.



53. We will handle your complaint in a way that is fair, timely and transparent. This means that:
- a) we will have information readily available for you and our staff about how complaints may be made, how these are handled and available avenues to which you can escalate your complaint if you are not satisfied with our response
 - b) we will acknowledge receipt of your complaint as soon as possible and tell you when we expect to be able to respond to your complaint
 - c) we will log your complaint in a complaint’s register and promptly begin investigating the issues
 - d) we will aim to provide you with a response to your complaint within 15 business days of receipt of your complaint. If we do not provide you with a final response by then, we will advise you before 15 business days have passed and provide an update of progress;

- e) we will provide you with a final response to your complaint within 25 business days of receipt of your complaint, unless we have both agreed to a further extension
- f) if you are dissatisfied with our response to your complaint, we will provide you with contact details for escalation options including any external dispute resolution (Ombudsman) scheme of which we are a member, the State Consumer Affairs or Fair Trading body and the Administrator
- g) we will maintain appropriate record keeping of complaints and their outcomes and steps that we take to minimise similar complaints in the future.

Legal and privacy obligations

54. We will comply with all local, state and federal legislation, relevant Accreditation Guidelines, and regulations including but not limited to:



- a) The Renewable Energy (Electricity) Act 2000 (Cth) which is supported by the Renewable Energy (Electricity) Regulations 2001 (Cth)
- b) The Do Not Call Register Act 2006 (Cth) and associated telemarketing standards including permitted hours for contacting consumers
- c) Australian Consumer Law
- d) Respecting “Do Not Knock” and “No Hawkers” stickers.

55. Even if we are not bound by the Privacy Act 1988 (Cth), we will take reasonable steps to ensure the safety of your personal information and we will only use your personal information:

- a) for the purpose of providing you with a requested quote or carrying out our obligations under your contract (as applicable)
- b) for future marketing of other related New Energy Tech or providing you with information that you might reasonable expect to receive from us or
- c) to provide your personal information to a third party if you have given express permission for this.

56. We will not provide you with marketing material unless we also provide a simple, easy way for you to ask not to receive future direct marketing communications and include a clear, prominent opt-out provision in each marketing communication.

Training

57. We will train our sales agents, representatives, contractors and employees about our New Energy Tech and their responsibilities under this Code, so that they can provide you with accurate information and quality services.

58. We will ensure the safety of our installers, subcontractors and employees and demonstrate due diligence in ensuring the safety of persons under our direct or indirect responsibility.

59. Our people will be competent, appropriately qualified and have completed the relevant safety training modules (as specified by the relevant regulator or by the Administrator) appropriate to the work.

Compliance with the Code

60. We agree to comply with this Code as amended from time to time and any mandatory standards published by the Administrator on the Code website that apply to New Energy Tech that we provide. We will also ensure that our employees, contractors, agents, representatives and any other individuals or businesses acting on our behalf do likewise. This includes third parties we engage to undertake direct marketing and sales for us.
61. We will be responsible for all actions governed by this Code, whether taken by our employees, contractors, agents, representatives or any other individuals or businesses acting on our behalf. This includes third parties we engage to undertake direct marketing for us or who we engage to install products or systems we provide to you or to deliver services to you.

Part C – Definitions

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

Administrator is the organisation with responsibility for administering the Code as set out in the Annexure – Code Administration.

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

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

Customer – A potential or existing Residential Customer or Small Business Customer. The term also includes other customers if their contract expressly includes that this Code applies.

Consumer Information Product – consumer information (hardcopy, web-based, electronic, etc) that is approved by the Administrator to provide independent information to assist a customer or potential customer to make informed choices about New Energy Tech.

Energy Network – Any of Australia’s principal energy transmission and distribution networks (including South West Interconnected System, North West Interconnected System, Darwin-Katherine Electricity Network, National Electricity Market).

Energy Supplier – Any of Australia’s public offer energy providers, including retailers and network businesses.

New Energy Tech are:

- a) small-scale (in-home or small business) products and systems that generate, store or trade energy away from Australia’s main transmission and distribution Energy Networks or as distributed energy resources connected to an Energy Network
- b) services that support or are closely related to those products and systems
- c) products, systems and services that monitor or manage a Customer’s usage of energy whether on or off an Energy Network
- d) any other product, system and service that the Administrator is satisfied is appropriately within this Code.

The term does not, however, include simple, low cost or off-the-shelf New Energy Tech that are within a class exemption made by the Administrator in accordance with paragraph 17 of the Annexure – Code Administration.

Examples of New Energy Tech are:

- e) distributed energy resources owned by or leased to the Customer that are connected to an Energy Network for supplementary supply such as solar photovoltaic systems, wind turbines, hydro and bioenergy generators
- f) a microgrid that may be connected or fully isolated from the Energy Network
- g) a power system for a single Customer, whether or not the Customer is also connected to an Energy Network

- h) energy management products, systems and services supplied to a Customer including home energy management systems and services, battery and other storage products, systems and services
- i) programs aimed at stabilising the supply of energy including by paying Customers an incentive to reduce their usage during critical peak periods or by shutting down or restricting the power consumption of Customer appliances during critical peak periods
- j) a Power Purchase Agreement
- k) person to person energy trading systems and services
- l) electric vehicle charging services
- m) suppliers of repair, maintenance and removal services for New Energy Tech products and systems.

These examples are not intended to limit the scope of the definition. Rather the term has been defined to accommodate new products and services as they enter the Australian market where the nature, complexity and cost is such that the Code protections are appropriate.

Owners Corporation – The body (however described) that has legal responsibility for the common property in a strata development.

Panel – The independent Code Monitoring and Compliance Panel appointed to oversee the work of the Code Administrator.

Power Purchase Agreement - An agreement for a Signatory to supply a customer with energy from New Energy Tech which may be from generation or storage equipment located on the customer's premises or remotely. This is not intended to cover energy purchased through the wholesale electricity or gas markets.

Residential Customer – A customer that is purchasing New Energy Tech for personal, domestic or household purposes. The term includes an Owners Corporation for a residential strata property and the operator of a retirement village.

Small Business Customer – A customer that is a business or not for profit organisation that employs less than 20 people. Associated entities are taken to be one entity when calculating the number of employees.

Annexure – Code Administration

Introduction

1. The Code is administered in accordance with the Memorandum of Understanding agreed to on 24 January 2019 by Energy Consumers Australia, Energy Networks Australia, Public Interest Advocacy Centre, Clean Energy Council, Smart Energy Council, Australian Energy Council and Renew (MOU). The MOU provides that the governance, accountability and administration structure of the Code will be guided by the following principles:
 - a) Customer focused
 - b) Fair and not anti-competitive
 - c) Relevant expertise
 - d) Independent and avoiding conflicts of interest
 - e) Inclusive
 - f) Adequately resourced.
2. The MOU specifies that the Code will be governed and administered by:
 - a) The Council, which must comprise representatives of key stakeholders including industry associations and consumer bodies
 - b) The Steward, appointed by the Council to be the legal entity responsible for the Code, for entering into any contracts related to the Code and funding any shortfall in Code revenue
 - c) The Administrator, appointed by the Council and responsible for day to day administration of the Code
 - d) The Code Monitoring and Compliance Panel (Panel) appointed by the Council and comprising industry and consumer representatives and independent persons with relevant expertise.

This Annexure to the Code expands upon the role of the Administrator and the Panel and may be revised by the Council from time to time, following consultation with stakeholders.

Applications and renewals

3. The Administrator is responsible for developing application forms and renewal forms for use by industry participants wanting to become a signatory to the Code (Signatory) or renew their status as a Signatory.
4. Where an application is made by an industry participant and the application fee is paid, the Administrator must assess whether to admit the applicant as a Signatory. In making this assessment, the Administrator must take into account:
 - a) whether the applicant's processes and documents are sufficient to support compliance by the applicant with the Code (other than a provision of the Code from which the Administrator has exempted the applicant)

- b) whether the key personnel in the applicant's business have had a significant involvement in another business that became insolvent.
5. Where a Signatory applies to renew their status as a Signatory, the Administrator may take into account any complaints that have been made about the Signatory, whether the Signatory has co-operated with the Administrator and Panel in carrying out their responsibilities and any other relevant factors.

Fees

6. The Council must, on an annual basis, agree to the fees and contributions required to cover the costs of operating the Council. These shared costs include the costs of the Independent Chair and the Consumer representatives. Industry members of the Council must cover the attendance costs of their own representatives. Council members may volunteer additional contribution but are not liable for any shortfall in funding to meet the costs of governing and administering the Code.
7. The Administrator, on an annual basis, must review the fees payable by applicants and annual and other fees payable by Signatories, with a view to cost recovery including Code governance and administration costs. As part of its annual budgeting process, the Administrator must propose a schedule of fees and contributions to the Council for approval, at least 3 months prior to the intended date of effect.
8. If the Council is not willing to endorse the fees proposal, the Steward must engage an independent accountant to review the reasonableness of the fees proposal in light of the budget for the Code and, if relevant, the extent of revenue shortfall that the Steward has indicated it is willing to fund. The Steward must bear the accountant's costs. Fees for the coming year will then be set by the Administrator taking into account any recommendations made by the independent accountant.
9. The Administrator must publish details of fees on the Code website. A change in fees is not effective until at least 3 months after publication of the new fee on the Code website.

Code promotion and branding

10. The Council and the Administrator must promote the benefits of the Code to customers, to industry participants and to other stakeholders.
11. The Council and the Administrator must develop Code brand mark guidelines for Signatories and publish these on the Code website. The Administrator must enforce compliance with these guidelines.
12. The Administrator must maintain an easily accessible list of Signatories on the Code website.

Supplementary materials

13. The Administrator may develop supplementary materials to assist Signatories to meet the expectations of the Code. These may include written standards, guidelines, approved Consumer Information Products, checklists, templates or training. They may apply to particular technologies or systems or address particular aspects of New Energy Tech that apply across many or all types.
14. These materials may include any combination of:
- a) Mandatory and binding standards which must be followed where they apply
 - b) Safe harbour guidelines which provide a Signatory with an approved method of complying with an aspect of the Code while allowing for other ways of compliance
 - c) Non-binding guidance, which may be of assistance to Signatories

- d) Independent consumer information, designed to assist consumers to make informed choices
- 15. The Administrator must consult with stakeholders (including consumer representatives, industry and government) in the development of these materials. The period of consultation may vary and must be adequate to the importance and impact of the proposed materials. In the case of materials that are intended to be mandatory and to bind Signatories, the period of consultation must not be less than 3 months and may well be longer.
- 16. Where substantive disagreement emerges in the course of the consultation over mandatory or safe-harbour guidance, the Administrator may refer the proposed material to the Panel for decision. Where a Signatory makes an application for referral, the Administrator must refer the proposed material to the Panel for decision.

Exemptions

- 17. If an applicant or a Signatory applies to the Administrator for an exemption from a provision of the Code, the Administrator may agree to an exemption if satisfied that the exemption would not unduly diminish customer protection. For example, an exemption might be sensible if:
 - a) an existing Code requirement was not appropriate to a proposed New Energy Tech or a trial involving new technology or a new offering
 - b) A product or service is a free additional 'value-added' service that does not materially impact the benefit of the core offering.
- 18. The Administrator, following consultation with stakeholders, may publish a class exemption. This does not require an individual application by a Signatory. A class exemption may set out conditions required for a Signatory to be able to rely on the exemption. (For example, it is intended that the Administrator will issue a class exemption to exempt simple, low-cost or off-the-shelf products or services (say priced below \$199) for which the Code consumer protections are not appropriate. The Administrator may also publish a class exemption that permits temporary customer trials of new offerings.) The Administrator must publish class exemptions on the Code website.
- 19. Any exemption (including a class exemption) must be for a fixed period and may only be extended following review by the Administrator.

Monitoring and investigations

- 20. The Administrator must monitor compliance with the Code, for example, undertake regular compliance audits and mystery shopping, assess customer satisfaction, analyse customer complaints and investigate repeat instances.
- 21. The Administrator must develop and publish a Complaints Procedure, consistent with Australian Standard AS ISO 10002, setting out the process where an allegation of breach of the Code is made. This must provide that:
 - a) a complaint may be self-reported by a Signatory or made by Customers, another Signatory, regulators or others
 - b) if a complaint is made by a Signatory's Customer, the Administrator will investigate the complaint and, where appropriate, attempt to negotiate an outcome that is fair for both the Signatory and the Customer

- c) where the Administrator is satisfied that a Signatory has breached the Code, the Administrator will determine what, if any, remedial action or sanction is appropriate
 - d) if the Signatory wishes to do so, the Signatory may ask the Panel to review a decision by the Administrator requiring the Signatory to take remedial action or imposing a sanction on the Signatory in response to a breach.
22. The Administrator has the power to require a Signatory to:
- a) rectify the issues that gave rise to the breach
 - b) train staff to minimise the likelihood of repeat breaches
 - c) appoint an external auditor, at the Signatory's cost, to audit areas of activity relevant to the breach (generally required if there are more than three major breaches in a 12-month period).

The Administrator also has the power to publicise the breach, including the name of the Signatory, on the Code website.

23. If the Administrator requires a Signatory to undertake remedial action in accordance with paragraph 22 a. to c., the Administrator must monitor the Signatory's compliance with that requirement.
24. If the Administrator considers that a Signatory has breached the Code in a way that may warrant the suspension or expulsion of the Signatory, the Administrator may refer the matter to the Panel for its consideration. For example, the Administrator may do this if the Signatory fails without reasonable excuse to undertake remedial action as required by the Administrator in accordance with paragraph 22 a. to c.
25. If the Administrator identifies an issue that may constitute a serious or systemic breach of law, the Administrator may refer the matter to the Panel to decide whether the matter should be referred to the relevant regulator.

Panel

26. The Panel is responsible for:
- a) overseeing the monitoring of compliance and enforcement of this Code by the Administrator
 - b) reviewing a proposed mandatory or safe-harbour standard or guideline referred to it by the Administrator under paragraph 16
 - c) reviewing a decision made by the Administrator requiring rectification of a breach (under paragraph 22), if the relevant Signatory requests a review
 - d) deciding matters of suspension or expulsion referred under paragraph 24 to it by the Administrator
 - e) referring serious or systemic breaches of law to relevant regulators under paragraph 25
 - f) publishing on-line an annual report about the Code's operation. This must include reporting on Code compliance to enable assessment of the Code's effectiveness and extent to which the Code is promoting the confidence of the community in New Energy Tech. The report must also set out any exemptions from Code requirements agreed to by the Administrator. It must also include each finding of breach by the Administrator or Panel and the remedial action or sanction imposed

on the relevant Signatory. This information must only identify the name of the relevant Signatory if the Signatory has been suspended or expelled

- g) every 3 years, engaging an independent body to undertake a review of the Code and its governance framework including by seeking the views of stakeholders (the review report must be published on the Code website) and revising the Code in light of that review.

Signatories' obligations to Administrator and Panel

- 27. A Signatory must ensure that it takes all reasonable steps to promote the benefits of this Code to Customers including prominent links to or a display of the latest version of this Code on its online presence.
- 28. A Signatory must promptly pay annual and any other Code-related fees applicable to it.
- 29. A Signatory must comply with the Code and all standards mandated by the Administrator in accordance with the Code.
- 30. A Signatory must co-operate with the Administrator and Panel in their exercise of their powers and responsibilities under the Code.

Attachment C - The New Energy Tech Consumer Code Journey

Introduction

This document summarises the key steps taken by the Behind-The-Meter Working Group (BTM Working Group) in the process of development of the draft New Energy Tech Consumer Code (the Consumer Code). This process included the development of companion elements:

- a) The Consumer Code's governance, stewardship and administration Memorandum of Understanding and
- b) The Consumer Information Products

It is intended to accompany the Draft Consumer Code provided to the Council of Australian Governments (COAG) Energy Council and to be submitted for approval to the Australian Competition and Consumer Commission (ACCC).

Background

2. In August 2017, COAG Energy Council wrote to industry and Energy Consumers Australia respectively (Attachment A), requesting that:
 - a) Industry (namely, the Australian Energy Council (AEC), the Clean Energy Council (CEC), the Smart Energy Council – previously the Australian Solar Council - and Energy Networks Australia (ENA), collectively referred to as industry) collaborate with Energy Consumers Australia to develop an industry Code for behind-the-meter products and services (BTM). The request referenced the Australian Competition and Consumer Commission (ACCC) guidelines for developing effective voluntary industry-based Codes
 - b) Energy Consumers Australia develop a range of consumer information products on consumer rights and responsibilities for behind-the-meter products and services (the Consumer Information Products).
3. Representatives from other consumer advocacy organisations (the Consumer Action Law Centre (CALC), RENEW (previously the Alternative Technology Association) and the Public Interest Advocacy Centre (PIAC)) – joined with the industry associations and ECA to progress this important work through the formation of the BTM Working Group.
4. Since October 2017, the BTM Working Group has met regularly to progress the development of the draft Consumer Code and the Consumer Information Products, looking specifically at the customer journey and how to achieve better consumer outcomes.

5. In relation to the Consumer Code, it was agreed early in the development that:
 - a) The Consumer Code would apply broadly to BTM products, systems and services
 - b) The Consumer Code would clearly set out commitments to consumers
 - c) The Consumer Code would follow the typical customer journey
 - d) The Consumer Code would be principles-based and focus on good customer outcomes and
 - e) The Consumer Code would be a mechanism to deliver Consumer Information Products to allow customers to make informed decisions.
6. A draft Consumer Code was released for broad stakeholder consultation during the last week of November 2018 with a request for stakeholder feedback by 6 February 2019. The stakeholder consultation targeted a broad range of consumer representatives, industry, government bodies, other stakeholder groups and organisations. Stakeholders were invited to attend workshop style forums in Adelaide, Brisbane, Sydney and Melbourne in the second week of December. Registered interest was very high at almost 300, with 115 attendees. Hundreds of comments and suggestions were received through these forums – which were shared with the BTM Working Group.
7. At end January 2019, some 82 participants attended Technical forums in Brisbane and Melbourne, where attendees responded to structured questions and tested draft Consumer Code provisions for applicability to 6 broad categories of BTM technologies and services. Again, a significant number of gaps and suggested refinements were identified and again tested and workshopped by the Consumer Code drafters.
8. In parallel with this activity, a CEO-led group from the BTM Working Group (the BTM Stakeholder Panel made up of CEOs from the AEC, CALC, CEC, ECA, ENA, RENEW and Ombudsman representatives) worked with the BTM Working Group to develop a Memorandum of Understanding (MOU) about how the governance, stewardship and administration of the proposed Consumer Code could be managed. This was agreed in late January and the key provisions have been reflected in the current Draft of the Consumer Code. A copy of the MOU is at Attachment B. It is anticipated that these arrangements will come into effect in parallel to the Consumer Code, after ACCC approval.
9. Similarly, the Consumer Information Products have been progressed through a sub-set of the BTM Working Group, working closely with the BTM Working Group and other key stakeholders. The Consumer Information Products will be finalised at the time when the Consumer Code comes into effect, after ACCC approval.
10. In early February, 16 written submissions were also received from individuals and organisations regarding the draft Consumer Code. These were also analysed and workshopped by the drafters and members of the BTM Working Group.
11. Some more submissions were received in late February and early March. Although this was after the deadline for submissions, in the interests of producing the best Consumer Code possible, the Working Group has considered material issues raised in these submissions also.
12. As a result of these numerous steps to test successive drafts and to obtain expert feedback, the Draft Consumer Code has been extensively revised in several stages from Version 5.5 that was

circulated in November 2018 - through to this re-titled version 9.7. This document provides a summary of the key substantive changes that have been applied to the Draft Consumer Code as a result of stakeholder and expert contribution and the main categories of suggestions that were not incorporated into the Draft Consumer Code – and the reasons why.

Diverse views

13. It is acknowledged that no Consumer Code intended to apply to a diverse industry will ever have unanimous agreement by all stakeholders as to its content and style. The Consumer Code has therefore sought to balance a number of objectives such as:
 - a) Consumer-friendly, accessible language and using industry-familiar terms
 - b) Keeping the Consumer Code succinct and approachable, yet providing enough explanation and detail
 - c) The need to explain the interaction with other forms of regulation, yet avoid repeating provisions that belong elsewhere
 - d) The desire to use principles-based obligations to allow for different scenarios, yet make it easy for signatories (often very small businesses) to know how to comply and
 - e) The need to choose terms and language that can apply to a wide range of technologies, yet be descriptive enough to make sense.
14. The focus for the BTM Working Group has been to achieve good customer outcomes while creating a pragmatic Consumer Code that will attract broad signatory support throughout industry.

Results of feedback

15. A significant number of changes were **accepted** and made to versions 9.0 through 9.7 of the Draft Consumer Code as a result of the feedback and advice received. Some resulted in changes to the structure and presentation, some in a series of key themes that were reflected in multiple places in the document and many were detail changes that have improved the flow and operation of particular sections. These are discussed in sections below.
16. Some suggested changes were **not accepted** – for a range of reasons. A few key issues were judged to be beyond the scope of a voluntary Consumer Code and are to be referred to COAG Energy Council as matters more appropriately dealt with by law or regulation. Inevitably, many were at odds with other feedback and a judgement was made by the BTMWG to go one way or the other. Some were matters of design choices – the drafters trying to strike the right balance amongst many competing pressures.
17. Many suggestions were recognised as important, but for practical purposes, identified as issues that should be taken up in **supplementary material** to be approved by the Consumer Code Administrator – rather than as part of the main Consumer Code – these are discussed below.

Accepted changes

Structure and presentation

18. In response to stakeholder reaction, the overview section of the draft Consumer Code, Part A, has been much simplified and presented largely as a consumer-facing infographic representing the key steps in the customer 'journey'.
19. In response to stakeholder reaction, Part B, which is the detail of the practice obligations, has been re-written to:
 - a) more closely follow the customer journey and provide visual links to the infographic in Part A
 - b) make the language more clearly technology-neutral
 - c) be more outcomes-focused and less prescriptive
 - d) better accommodate New Energy Tech services (rather than just products or systems) and
 - e) improve consistency and (hopefully) readability.
20. Definitions are now listed in Part C.
21. Provisions governing the administration of the Consumer Code are now in an Annexure. The intention is to better distinguish the customer-facing language in Part A and B, (expressed as promises from "we" the signatory, to "you" the customer) from the language needed for Consumer Code administration (mostly framed between the Administrator and the signatory) which is in the Annexure.

Content changes by theme

22. Hundreds of detail changes have been made to the Consumer Code over the past three months in response to stakeholder input, most of which fall into some key themes, set out below.
 - a) The sector is in a state of rapid change and innovation and a number of obligations were redefined to allow for greater flexibility and to recognise that what is **good practice may not yet be clear**.
 - b) The proliferation of different technologies and offerings meant that a number of **definitions required refining** to allow for new and emerging aspects of that environment.
 - c) The sector has a widening range of participants who play different roles in delivering products, systems and services to customers. Some clauses needed to be rewritten to **accommodate the sector's diversity**.
 - d) A number of terms that are familiar to industry were identified as being unhelpful for customers without the same background knowledge and have been replaced with **simpler language** (not least of which are the former draft titles "Behind the Meter" and "Distributed Energy Resources").

- e) In a number of places, **additional consumer protections** have been augmented in order to meet expectations of the COAG Energy Council and of consumer advocates (e.g. finance, complaint-handling and vulnerable customers).
 - f) In other areas, changes have been made to make it **easier for signatories to know when they will be complying** and to avoid setting tests that in practice, are difficult to define.
23. Attachment C provides a tabular summary of the key content changes that have been made as a result of all of the stakeholder and expert inputs.

Not adopted

Out of scope

24. A number of significant issues were raised by stakeholders in the course of consultations that could not be accepted and included in the Consumer Code – because the BTM WG believed that were beyond its scope. These issues included aspects of off-grid provision of New Energy Tech, collective purchases of a single New Energy Tech product such as a microgrid, problems raised with the conduct and responsiveness of existing market players particularly around connection to Energy Networks, perceived gaps in the existing legal and regulatory framework, protection for industrial and commercial (larger-scale) New Energy Tech and pricing and safety practices that are regulated by governments.
25. Other issues raised were considered to be valuable but would require coordinating action from governments or other parts of the sector. One example was providing access to energy Ombudsmen services (as applies in the established energy retail markets). This would require enabling legislative amendment in most jurisdictions and resolution of funding issues.
26. The BTM Working Group has maintained a record of these issues and has provided Attachment D to this document referring a number of them for consideration by the COAG Energy Council.

Consumer Code style

27. A number of submissions and suggestions came from industry, asking for greater definition of what should be required of signatories to demonstrate compliance. In particular, concerns were raised that terms such as ‘reasonable’ or ‘good practice’ are open to different interpretations and could result in inadvertent breaches or create disagreements with customers or the Consumer Code Administrator.

Some of these suggestions were adopted, in part, but many were considered unnecessary in light of the objective of a simple, customer-friendly Consumer Code and the objective of flexible provisions that would apply to all products and services in New Energy Tech.

The outcome for many of these suggestions will be for referral to the Consumer Code Administrator to incorporate, to the extent possible, into supplementary materials such as Standards, Guidelines, non-binding guidance and Administrator-approved Customer Information Products.

28. Similarly, the BTM Working Group received requests for cross-referencing within the Consumer Code to the relevant sections of related government regulations and standards. The BTM Working Group took the view that this would be contrary to the intended spirit of the Consumer

Code and would add a significant continuing workload in maintaining the accuracy of the cross-references. A possible resolution would be for the Consumer Code Administrator to publish a cross-reference guide from time to time as an aid to Signatories.

Consumer Code reach and enforcement

29. Some of the feedback received proposed standards of consumer protection that are currently beyond common standards in other sectors – for example, outright bans on unsolicited selling. The BTM Working Group took the view that a voluntary Consumer Code of conduct in what is a fledgling industry needs to balance the need for encouraging take-up by signatories with the aim of raising standards. This would mean that in some areas, it is not reasonable to expect the Consumer Code to be ‘out in front’ of community standards. It was also felt that consumer information products could be leveraged to ensure that customers were making informed choices in areas of concern.
30. Similarly, the BTM Working Group received a great deal of feedback calling for robust sanctions to be applied to those found breaching the Consumer Code. Some of this reflected frustration at what is seen as weak enforcement by energy and consumer regulators generally and some reflects a misconception of what can be expected of a voluntary industry Consumer Code. The Consumer Code provides the Administrator and Panel with the powers appropriate to a voluntary Consumer Code, but they are much more limited than those available to legal regulation. There is also a governance structure that will allow the Council to keep abreast of these issues in a strategic manner.

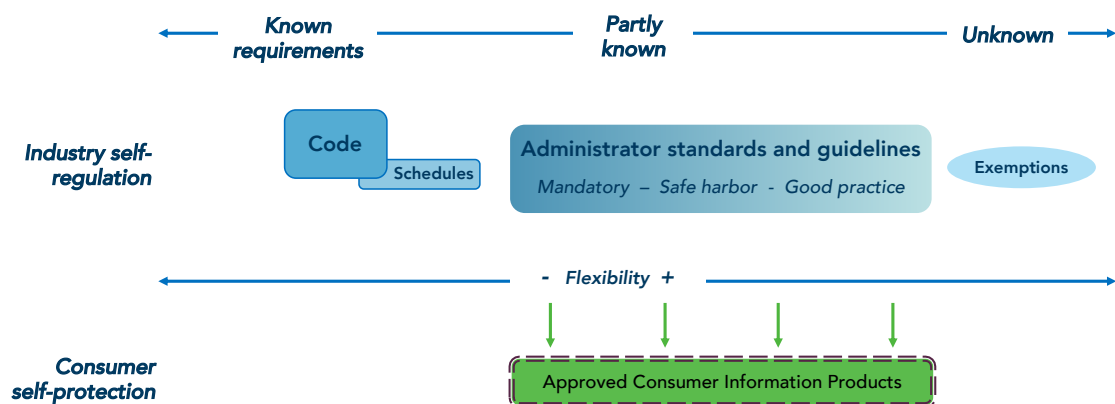
Unlicensed credit providers and unregulated credit

31. A significant issue raised with the BTM WG was a request for the Consumer Code to permit certain types of unlicensed credit providers and unregulated credit – from the so-called buy now, pay later group of providers. The BTM WG has not accommodated this request at this stage, with significant concerns raised by consumer advocates. Discussions with industry are continuing, in particular in light of a proposed code of conduct for the buy now, pay later providers.

Supplementary material

32. Although there was widespread expectation during the early stages of the development of the Consumer Code of a significant need for ‘technical schedules’ which related to individual technologies, this has proved to be significantly less than anticipated. Many technology specific issues raised were able to be accommodated sufficiently in the body of the Consumer Code, often with a minor change or a few additional words.

Furthermore, many issues will be more appropriately dealt with in supplementary materials and the following diagram illustrates the range of types of materials envisaged. The left hand side of the diagram is for obligations that are well-known and need the lowest levels of flexibility and as the you move to the right, the issues being dealt with become progressively less well known and require more flexibility in application.



33. The stakeholder and expert forums illustrated a range of needs for supplementary materials that Administrator standards and guidance could address in a number of ways:

- a) Technology-specific requirements could be drafted by relevant experts and included as Schedules to the Consumer Code.

There a couple of disadvantages associated with this course of action. First, the Consumer Code could not be finalised and submitted to the ACCC until these Schedules are completed. Second, any change to a Schedule to the Consumer Code would require ACCC approval (a process that may take many months if consultation was deemed necessary). Technical experts consulted thought that this approach was not optimal, given the rapidly-changing nature of this industry.

- b) Mandatory Standards can be made by the Administrator in conjunction with industry.

The Administrator has a power to develop written standards that are binding upon Signatories (para 13 and 26 of Annexure and paragraph 55 of Part B). Where this is done, the Administrator has to publish the Mandatory Standards on its website and give Signatories at least 3 months' notice of the new requirements.

- c) 'Safe harbour' guidelines can be made by the Administrator.

The Administrator also has the power to prepare guidelines (para 13 of the Consumer Code Annexure). These can set out a method of complying with a particular Consumer Code provision (sometimes called 'deemed to satisfy') – on the basis that other methods are potentially available to Signatories, but if followed, the Signatory has certainty that they have complied with the Consumer Code.

- d) Non-binding guidance materials can be prepared by the Administrator to assist Signatories

This would not be binding on Signatories. It would be in the nature of a service provided to assist Signatories. For example, the Administrator could develop standard form contracts that Signatories could use or suggestions for good practice with particular types of services or installations.

- e) Exemptions can be provided by the Administrator

As a safeguard against unintended consequences and to encourage innovation and experimentation, the Administrator can be empowered to issue exemptions – to aspects of the Consumer Code and any subsidiary mandatory requirements. These may be for a limited period of time, for example to permit a pilot project or trial.

f) Customer Information Products

Stakeholder and technical expert forums identified the need for customer information products to ensure that consumers were making informed decisions. Customer Information Products, drafted and/or approved by the Administrator are seen as the vehicle for this. Under the Consumer Code Signatories will provide these directly to their customers.

As now embedded in the Draft Consumer Code, the Administrator may choose to publish supplementary materials in any combination of the above categories. A Guideline for (say) battery storage may incorporate mandatory elements alongside safe-harbour guidelines and non-binding suggestions for good practice.

- 34. Understandably, much of the technical input received related to the better-established products, systems and services. We expect that with the passage of time, additional categories will need to be added to include such things as biomass generation, wind, hydro and mini-hydro, non-battery energy storage, engine-driven generation such as gas turbines and diesel, fuel cells and other emerging forms of DER.
- 35. The following table illustrates examples of supplementary materials that stakeholders and technical experts identified a need for:

Technology/offering	Issue for supplementary material
Across all	1. Identify and prohibit particular problematic high-pressure sales tactics – in response to intelligence from the market
	2. Prepare Customer Information Products explaining disposal of system in an ethical manner at end-of-life
	3. Publish general compliance policy providing assistance for Signatories as to how the Administrator will approach monitoring and investigating complaints
SolarPV	4. Publish guidance list of reputable sources for Solar/PV performance
	5. Guidance for factors to be dealt with in site-specific design/plan
	6. Identify accreditation/qualifications required for installers

	7. Identify training required for installers – eg. working from heights, privacy for customer data
Energy storage	8. Publish Guidelines and Consumer Information Products for battery usable performance information, load profile assessment, standardisation of key definitions
	9. May need guidance/exemptions for pricing uncertainty for some components subject to rapid change
	10. Guidance needed for warranty – usage parameters must include energy throughput, cycles, depth of discharge, etc
	11. Guidance needed for performance monitoring/measurement
VPPs & Microgrids	12. Consumer Information Products needed in due course
	13. Consumer Code requirement for warning as to uncertainty of returns/benefits is OK for now, but may need Administrator guidance depending on what customer issues emerge with experience
	14. Once data capabilities established, may need guidance for obligation on provider to alert customer to any problems suggested by data analysis
	15. Should develop good practice procedures for protecting customer data at end of contract
Electric vehicle charging	16. Consumer Information Products needed in due course
	17. Guidance for factors to be dealt with in site-specific design/plan
Demand management/ response, HEM	18. Standardised contracts may be of benefit
	19. Generally warranty is not an issue for a service, but some offers include hardware and software, may need guidance

20. Guidance re: service downtimes, software upgrades

21. May need some guidance for Signatory response to any evidence of tampering by customer

22. Some guidance may be needed for premises changing hands

Attachment A – Request from COAG Energy Council



Mr Kane Thornton
Chief Executive
Clean Energy Council
Level 15, 222 Exhibition Street
Melbourne VIC 3000

Dear Mr ^{Kane} Thornton

I am writing to request Clean Energy Council, in collaboration with Energy Consumers Australia and other relevant stakeholders, develop an industry-wide Code of Conduct for sellers of behind-the-meter products and services.

Consumers are driving change in the energy market by embracing distributed generation and storage technologies, and in response, the industry is transforming by offering a wider range of energy services and products. While this changing market is offering greater choice to consumers, with commensurate benefits, it can lead to greater complexity and a risk of some consumers getting products that don't meet their needs or offer poor value.

Given this, the Council of Australian Government Energy Council has undertaken a review of consumer protections for energy products and services that fall 'behind the meter' including solar and storage technologies. Ministers wanted to ensure consumer protections continued to balance consumer wellbeing with market efficiency and promotion of innovation. The review was informed by consultation with industry, consumer representative organisations and other stakeholders.

The way energy is regulated depends on how that service is provided. The National Energy Customer Framework (NECF) provides energy-specific consumer protections related to the sale of energy by authorised retailers and exempt sellers. While the NECF has not been adopted in Victoria, similar protections apply under the Victorian Retail Code.

The Australian Consumer Law (ACL) provides universal consumer protections in areas such as unfair contract terms, product safety, misleading information, and product liability. This offers complementary protections in cases where the NECF or Victorian Retail Code does not apply. For example, when consumers are leasing or purchasing technology outright, the ACL serves as the principle form of regulation for these energy products.

coagenergycouncil.gov.au

Secretariat
GPO Box 787
Canberra ACT 2601
Telephone: (02) 6274 1668
energycouncil@environment.gov.au

In March 2017 the Final Report of the ACL Review made recommendations that will improve regulation including, allowing for greater consumer access to consumer guarantees and greater guidance on contract terms and unsolicited consumer agreements. It will also increase the threshold of purchases from \$40,000 to \$100,000.

Noting the above, the Council has concluded that consumer protections offered under the ACL and the NECF provide sufficient protection in relation to new and emerging products, appropriately balancing consumer protection with an innovative energy market. Ministers did not, at this stage, find a case for NECF regulation to be extended to behind-the-meter energy products that currently fall outside the NECF.

That said, stakeholders raised a range of concerns that suggest a more consistent approach by industry in relation to a range of issues is needed. Consistent with this, the Council is seeking industry agreement to cooperatively develop a single, industry wide Code of Conduct for all behind-the-meter electricity supply services and products. Ministers believe an industry led Code would improve the consistency and quality of information and the management of disputes without the need for heavy handed regulation. The Code should address the following issues with further detail provided in the attachment:

- Information provision;
- Dispute resolution mechanisms;
- Ensuring product is fit-for-purpose; and
- Customers in financial difficulty.

The Australian Competition and Consumer Commission (ACCC) has a guideline for developing effective voluntary industry-based codes that could inform this work. The Clean Energy Council's Solar Retailer Code of Conduct has been established since 2013 and is a good example of an effective voluntary code that benefits industry and consumer alike, and could be potentially be expanded to encompass other products.

The Council has also written to Energy Networks Australia, the Australian Solar Council and the Australian Energy Council. While the Code would need to be collaboratively developed across organisations, there may be a need for one organisation to co-ordinate this effort. While the Council sees clear benefits in industry taking the lead, if agreement cannot be reached on developing a single industry-wide code, or the Code is not universally applied, the Council will consider whether further regulatory intervention is required.

coagenergycouncil.gov.au

Secretariat
GPO Box 787
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energycouncil@environment.gov.au

Council would welcome the opportunity to review the draft Code of conduct no later than 31 August 2018, and invite a representative of the industry group developing the Code to address the Council at its November 2017 meeting on progress against its development.

Any inquiries on the Code can be directed to Gayle Leaver (07 3166 0170) or Rebecca Knights (08 8226 5500) Co-Chairs, Energy Market Transformation Project Team.

Yours Sincerely



The Hon Josh Frydenberg MP

Chair

COAG Energy Council

16 August 2017

coagenergycouncil.gov.au

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Attachment B – Memorandum of Understanding - Governance

January 2019 – Final agreed by BTM Stakeholder Panel

Memorandum of Understanding - New Energy Tech Consumer Code - Governance, Accountability and Administration

This Memorandum of Understanding sets out an agreement between the Behind-the-Meter Code Stakeholder Panel as to the governance, accountability and administration of the New Energy Tech Consumer Code (the Code).

1. Background

The Code is a single, industry-wide code of conduct that has been developed by a group of industry bodies and consumer representatives (collectively referred to as the BTM Working Group) and engagement with other key stakeholders in response to a request by the Council of Australian Governments' Energy Council of August 2017.

The Code aims to protect consumers by setting good practice standards for providers of behind the meter goods and services (BTM) and provide consumer protections.

To achieve these aims, it is agreed that there need to be clear and robust governance, accountability and administration arrangements for the Code in line with the Australian Competition and Consumer Commission's (the ACCC) guidelines (the ACCC Guidelines) for developing effective voluntary, industry-based codes.

It is acknowledged that the wider the coverage of the Code, the more effective it will be.

2. Key guiding principles

It is intended that the governance, accountability and administration structure of the Code will be guided by the following principles:

- a) Customer focused
- b) Fair and not anti-competitive
- c) Relevant expertise
- d) Independent and avoiding conflicts of interest
- e) Inclusive
- f) Adequately resourced

3. Structure

The structure supporting the Code is in four parts as set out in Schedule 1:

- a) The Council – strategic oversight responsibility.
- b) The Steward - legal and financial responsibility.
- c) The Administrator - day-to-day operations of the Code.
- d) The Code Monitoring and Compliance Panel – independent body set up to monitor Code compliance, enforcement and drive better practices.

4. Code branding and promotion

The Code is a single, industry-wide code of conduct which is branded to include the logos of all members of the Council, unless agreed otherwise by the Council. The Council is responsible for the promotion of the Code to their own organisation's members (as appropriate), stakeholders and to consumers more broadly.

Guidelines for the branding, marketing and promotion of the Code will be jointly developed and agreed by the Council, the Steward and the Administrator, with the final guidelines to be approved by the Council.

5. The Council

The Council, with secretarial support, is a forum for co-operation in relation to the Code and will ensure that the Code achieves wide coverage and achieves its overall aims, as set out in Part A – Key Commitments (as amended from time to time), namely:

- a. Provide consumers with clear, accurate and relevant information to help them make informed choices
- b. Encourage consumers to be aware of their rights under the law and the Code
- c. Ensure that sales practices are responsible
- d. Ensure that products, systems, services and documentation provided under the Code are suitable and fit for purpose
- e. Support staff training and work processes that ensure that signatories comply with the law and the Code
- f. Ensure that signatories will be responsive to customer needs and take prompt, appropriate action if they make a complaint.

6. Responsibilities of the Council

The Council's responsibilities will be:

- a) Promoting the benefits of the Code, including encouraging signatories to the Code
- b) Agreeing to the branding of the Code and its marketing and promotion to ensure widespread consumer and industry awareness
- c) Appointing a Steward for the Code
- d) Appointing an Administrator for the Code
- e) Appointing individuals to the Code Monitoring and Compliance Panel
- f) Participating in the setting of the fees to be paid by signatories to the Code
- g) Engaging an independent body to review the Code and Code governance every three (3) years.

7. Appointment of the Council

Chair

A position description for the Chair of Council will be agreed by the Council, together with remuneration.

A Chair of the Council will be initially appointed by the BTM Working Group in line with the ACCC Guidelines. This will be a person of high standing and with an extensive understanding of consumer protection issues. They must be able to demonstrate that they are:

- a) Capable of reflecting the viewpoints and concerns of consumers
- b) Have expertise in consumer affairs and the confidence of consumers, consumer organisations, industry and other key stakeholders

- c) Have knowledge of the industry and the issues involved in the Code.

Members

It is agreed that representatives of key stakeholders, including industry associations and consumer bodies may appoint a representative to the Council, if they apply to the Chair of the Council to do this and the Chair of the Council decides in favour of this. The initial criteria and terms for such appointment will be agreed by the BTM Working Group.

The Council will be made up of between [INSERT NUMBER] industry and [INSERT] consumer representatives and other key stakeholder representatives. It is possible for other key stakeholders such as regulatory authorities or government to have observer status on the Council if appropriate.

The term of the appointee is to be not less than 12 months and no more than 3 years. Members can be reappointed after their initial term.

It is understood that the success of the Council depends on productive relationships and a shared commitment to the development of this industry, with a focus on good consumer outcomes.

8. Meetings of the Council

The Chair and Council members will agree a Ways of Working (WoW) document for the purposes of the Council.

Members of the Council must be given at least two (2) weeks' notice of a meeting (although they may unanimously agree to short notice if there is urgent business to be considered). If a member of the Council is not able to attend, the appointing organisation is entitled to send an alternate in the person's place.

A Council decision must be made at a meeting (whether in person or technology enabled) attended by 75% or more of members of the Council or their alternates. The decision must be supported by a majority of members attending that meeting. If there is a tied vote on any matter for decision by the Council, the Chair will have a casting vote.

9. Costs of participating in the Council

The Council will agree on the fees and contributions to the Council on a yearly basis.

Council members must pay any costs associated with their representative's attendance at meetings. The costs of the Chair and the consumer representatives be covered by industry.

Council members are not, however, responsible for contributing to any shortfall in Code revenue to meet the cost of governing and administering the Code. It would be open to a Council member to choose to contribute towards a particular program of activity for a period of time such as marketing the Code to its members – the terms of which could be reached in a side agreement.

10. Appointment of the Steward and Administrator

Prior to the operation of the Code, the Council must put in place financial and legal stewardship and Code administration arrangements for a period of [3] years, subject to an initial review date of 12 months. These functions can be carried out by the same or separate organisations, as is appropriate.

The Council will agree on a set of criteria and process for the appointment of the Steward and the Administrator. Separate agreements will be put in place between the Council and the appointed Steward and Administrator respectively on appointment.

The following applies to ongoing appointments of the Steward and Administrator at the end of their term of appointment:

- a) If the Steward or Administrator wish to continue in their respective roles, the Council will negotiate a review date prior to the end of the term of appointment. The reviewer must be chosen jointly by the Steward or Administrator respectively and the Code Monitoring and Compliance Panel. The costs of the review will be borne by the Steward or Administrator respectively.
- b) On the basis that the independent review finds that the Steward's or Administrator's performance in that role during its initial term has been adequate, they may be reappointed into that role by the Council for a further [3] year term.
- c) On the basis that the independent review finds that the Steward's or Administrator's performance in that role during its initial term has been inadequate, the Council may appoint another organisation/s into the respective role in the same terms as set out above.
- d) If for any reason, the Steward or Administrator respectively ceases in its role at the end of its initial year term, no compensation is payable to it for any losses it has incurred in connection with the Code to that point in time.

11. Role of the Code Steward

The Steward will take responsibility for legal and financial stewardship of the Code including:

- a) Applying to the ACCC for authorisation of the Code
- b) Entering into contracts in relation to the Code (for example, with signatories to the Code and any third party providers of services in relation to the governance of the Code)
- c) Deciding what, if any, remuneration is paid to Code Monitoring and Compliance Panel members
- d) Preparing an annual budget for the Code (revenue and all expenses associated with governing and administering the Code and the costs of the Code Monitoring and Compliance Panel)
- e) Funding any shortfall in Code revenue
- f) Overseeing the administration of the Code
- g) Providing staff to act as secretariat to the Council
- h) Providing staff to act as secretariat to the Code Monitoring and Compliance Panel.

12. Role of the Code Administrator

The Administrator will take responsibility for administration of the Code including:

- a) Carrying out the responsibilities of the Code Administrator set out in the Code in Part C, namely:
 - Managing administration process, including applications and renewals to the Code
 - Monitoring compliance, both responsive to complaints and proactive inquires
 - Determining breaches and sanctions of the Code
 - Developing standards and guidelines for the Code
 - Referring matters to Code Monitoring and Compliance Panel

- Provide training and consumer information.
- b) Entering into contracts in relation to the Code (for example, with signatories to the Code and any third party providers of services in relation to the administration of the Code)
- c) Collecting fees payable by signatories to the Code as well as any contribution made by other stakeholders and paying all costs associated with the Code.

13. Fees by Code signatories

Each financial year, the following process must be followed to set the fees payable by signatories to the Code (application fees, annual fees and any other fees):

- a) As part of its annual budgeting process, the Administrator will develop a fees proposal for consultation with the Council and the Steward, at least three months prior to the intended date of effect
- b) If the Council is not willing to endorse the fees proposal, the Steward must engage an independent accountant to review the reasonableness of the fees proposal in light of the budget for the Code and, if relevant, the extent of revenue shortfall that the Steward has indicated it is willing to fund. The Steward must bear the accountant's costs. Fees for the coming year will then be set by the Administrator taking into account any recommendations made by the independent accountant.

14. Role of the Code Monitoring and Compliance Panel

The Code Monitoring and Compliance Panel is an independent body and will carry out the responsibilities set out in the Code in Part C, namely:

- a) Overseeing the monitoring of compliance and enforcement with the Code
- b) Responding to matters referred to it by the Administrator
- c) Hearing and arbitrating appeals from any signatory affected by a decision of the Administrator
- d) Referring systemic breaches to the relevant regulators
- e) Conducting its own inquiries into Code compliance
- f) Publishing an annual report on the Code's operation online
- g) Driving best practice standards in the industry.

15. Appointment of the Code Monitoring and Compliance Panel

The Code Monitoring and Compliance Panel will be comprised of between three (3) and seven (7) people and appointed by the Council. The appointees to the Code Monitoring and Compliance Panel must be eligible for appointment in accordance with the Code.

When appointing individuals to the Code Monitoring and Compliance Panel, the Council will ensure:

- a) There are at least two (2) industry representatives
- b) There is at least one (1) consumer representative

- c) In addition to industry representatives and consumer representative, there may be one or independent experts who have expertise that would be relevant to the work of the Code Monitoring and Compliance Panel, as set out in the Code.

The Council will appoint one of the Code Monitoring and Compliance Panel consumer representative members or independent expert members to chair the Code Monitoring and Compliance Panel. If there is a tied vote on any matter for decision by the Code Monitoring and Compliance Panel, the Chair will have a casting vote.

In other respects, the Code Monitoring and Compliance Panel may decide how its meetings are to be conducted.

16. Relationship between the parties

None of the individual members of the Council will be entitled to hold themselves out as speaking publicly on behalf of the Council, the Steward, the Administrator or the Code Monitoring and Compliance Panel. The Steward has no liability for anything done or omitted to be done by any other member of the Council.

17. Further agreements

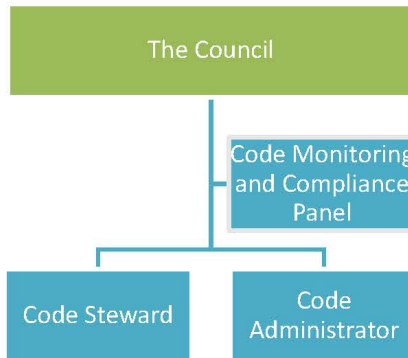
The signatories to this Memorandum of Understanding agree to work in good faith to reach agreement about any other matters necessary in order to:

- a) enable the effective operation and coverage of the Code
- b) establish clear and robust governance, funding and administration arrangements for the Code
- c) achieve the Code's authorisation by the ACCC as soon as possible.

Dated 2019

Execution clauses

**Schedule 1: Table
- New Energy Tech Consumer Code -
Governance, Accountability and Administration**



Body	Role and responsibilities
The Council	<ul style="list-style-type: none"> • The Council will ensure that the Code achieves wide coverage and achieves its aims (set out in Key Commitments in the Code) • Providing strategic oversight for the Code • Promoting the benefits of the Code, including encouraging signatories to the Code • Agreeing to the co-branding of the Code and its marketing and promotion to ensure widespread consumer and industry awareness • Appointing a Steward for the Code • Appointing an Administrator for the Code • Appointing individuals to the Code Monitoring and Compliance Panel • Participating in the setting of the fees to be paid by signatories to the Code • Engaging an independent body to review the Code every three (3) years.
The Steward	<ul style="list-style-type: none"> • Overall responsibility for legal and financial stewardship of the Code including: <ul style="list-style-type: none"> ○ Applying to the ACCC for authorisation of the Code

Body	Role and responsibilities
	<ul style="list-style-type: none"> ○ Entering into contracts in relation to the Code (for example, with signatories to the Code and any third party providers of services in relation to the governance of the Code) ○ Deciding what, if any, remuneration is paid to Code Monitoring and Compliance Panel members ○ Preparing an overall annual budget for the Code (revenue and all expenses associated with governing and administering the Code and the costs of the Code Monitoring and Compliance Panel) ○ Overseeing the administration of the Code ○ Funding any shortfall in Code revenue ○ Providing staff to act as secretariat to the Council ○ Providing staff to act as secretariat to the Code Monitoring and Compliance Panel.
The Administrator	<ul style="list-style-type: none"> ● Carrying out the responsibilities of the Code Administrator set out in the Code in Part C (from time to time), namely: <ul style="list-style-type: none"> ○ Managing administration process, including applications and renewals to the Code ○ Monitoring compliance, both responsive to complaints and proactive inquires ○ Determining breaches and sanctions of the Code ○ Developing standards and guidelines for the Code ○ Referring matters to Code Monitoring and Compliance Panel ○ Provide training and consumer information. ● Entering into contracts in relation to the Code (for example, with signatories to the Code and any third party providers of services in relation to the administration of the Code) ● Collecting fees payable by signatories to the Code as well as any contribution made by other stakeholders and paying all costs associated with the Code.
The Code Monitoring and Compliance Panel	<ul style="list-style-type: none"> ● Overseeing the monitoring of compliance and enforcement with the Code ● Responding to matters referred to it by the Administrator ● Hearing and arbitrating appeals from any signatory affected by a decision of the Administrator ● Referring systemic breaches to the relevant regulators

Body	Role and responsibilities
	<ul style="list-style-type: none"><li data-bbox="651 667 1086 689">• Conducting its own inquiries into Code compliance<li data-bbox="651 712 1155 734">• Publishing an annual report on the Code's operation online<li data-bbox="651 757 1059 779">• Driving best practice standards in the industry.

Attachment C - Summary of Changes

The following is a summary of substantive changes made since November 2018 (Version 5.5.).

V 9.7 Location	Impetus for change	Summary
Title change and terms used throughout	Customer research conducted for ECA Technical forums BTMWG	Renamed New Energy Tech based on terms best understood by consumers in market research References to 'electricity' and 'grid' recast as technology neutral – eg. Energy Supply, Energy Network Greater emphasis on safety Reduce emphasis on 'products and systems' – more explicitly allow for services
Part A	BTMWG & submissions	Simpler overview with infographics
Para 1a.	Technical forum	Must not mislead re: non-government incentives (not just government incentives)
Para 1d.	BTMWG	Advertising and promotion to avoid use of industry jargon
Para 4	COAG, submissions	Take extra care with consumers facing vulnerability
Para 5 & 6	COAG, BTMWG	Clear upfront obligation to ask about needs and circumstances and ensure products, systems, services are fit for purpose
Para 6	Technical forum, submissions, BTMWG	Fit for purpose obligation includes ensuring compatibility with other New Energy Tech products, systems or services; and is appropriate for the nature, complexity and cost of the product or service
Para 6.	BTMWG	Provide consumer considering off-grid with approved ENA off-grid principles
Para 7b.	Technical forum, BTMWG workshop	Need better definition to allow for different 'through the meter' scenarios – e.g. demand response control by service providers, feed-in controls
Para 7d.	COAG requirement, Technical forum, submissions	Quote must make it clear what obligations are on the customer to facilitate operation of service
Para 7e.	COAG requirement	Quote must make product/ service limitations clear

V 9.7 Location	Impetus for change	Summary
Para 7f.	Technical forum, submissions	Performance estimate must be reasonably based (given that reputable objective data may not exist for some new products/ services)
Para 7g.	Technical forum, submissions	Disclosure must be made to the customer that their energy retailer and network may impose restrictions on the extent to which the customer can interact with the grid eg. limiting ability to export to the grid
Para 7h.	Technical forum	More certainty to be provided to customers as to timeframe for installation
Para 7m.	Submissions	Clarity for customers about term of agreements and interaction of New Energy Tech with energy retailers or distributors
Para 7p.	Submissions	Transparency about vendors having appropriate licensing, certification, or accreditation
Para 9	Technical forum, submissions	Obligation to specify energy pricing only applies where energy is provided as New Energy Tech, not by network supply. Also to allow flexibility in estimated cost for PPAs with variable economics
Para 12	Technical forum, BTMWG workshop	Disclosure must be made of costs associated with software upgrades
Para 13	BTMWG	Return on Investment claim must be based on reasonable assumptions and these must be set out in quote
Para 14	Technical forum	Where offer involves payment/ offset to customer, quote must specify how this will be determined, rights to vary price, frequency of payments
Para 15	Submissions	Clarification that site-specific design, plans, or performance estimates only required for expert installation is required (i.e. not for user-installable plug-in devices)
Para 15b.	Written submissions, BTMWG	Allow for provision of a design/planning service as a separate non-refundable, no obligation, initial stage.
Para 16	BTMWG workshop, submissions	Disclosure must be made of fees for connecting to Energy Networks and that energy supplier may impose a fee for

V 9.7 Location	Impetus for change	Summary
		reconfiguring the customer's meter or apply different pricing
Para 19	Submissions	Align to 3 rd line forcing reference in legislation
Para 23b.	BTMWG	Fully capturing the original intent of the requirement for licensed credit providers by also requiring regulated credit products
Para 23c.	BTMWG workshop	Credit contract or consumer lease must not be for a longer period than expected life of product or system
Para 24	Technical forum	Exception from licensing obligation for government financier
Para 25	Technical forum	Exemption for vendor provided, interest-free deferred payment arrangements
Para 26	BTMWG, submissions	Exception from licensing obligation for a Power Purchase Agreement provider
Para 27	BTMWG	Provision requiring advance notice of price increases in ongoing contracts
Para 28	Technical forum	If contract requires payment/ offset to the customer, this must be done on time as per contract. If payments are calculated using an undisclosed formula, our payment calculation system must be regularly audited by a registered company auditor to ensure that payments are accurately calculated.
Para 29-30	Technical forum, BTMWG workshop	Installation must be done in accordance with safety standards and any applicable energy network standards by an installer that is competent and if applicable, qualified to undertake the work (recognising that standards and accreditations may not yet be in place for new products, systems or services).
Para 31-33	BTMWG workshop	Refine words to accommodate different meter activities
Para 34	BTMWG	Addresses activation of a product/ service other than by connecting to Energy Network and allocates responsibilities
Para 35a.	Technical forum	Advice prior to the time product/ services ready to commence must include how to optimise the product/ service

V 9.7 Location	Impetus for change	Summary
Para 35b.	Technical forum	Prior to the time product/ services are ready to commence, provider must explain customer's obligations – e.g to maintain an internet connection that provider can access
Para 35c.	Technical forum	Advice about how to utilise product/ service – now encompasses possibilities that better cater for range of products services
Para 35c.	Technical forum	Advice as to how to assess benefit may be a commitment to provide regular reports quantifying benefit in which case these must be provided.
Para 36	BTMWG, BTMWG workshop	Performance obligations – services must be provided with due care and skill, ICT-enabled products and systems must be secure
Para 36	Written submissions, BTMWG	Recognise that some performance reporting is only suitable in digital form, limit obligation to provide in hardcopy
Para 37	Technical forum	Recall obligation where become aware that product is defective or unsafe
Para 38	Technical forum	Provider who uses customer's other equipment must do so in a way that is consistent with the equipment manufacturer's instructions and warranty requirements
Para 39	Technical forum	Sale of premises provision – purchaser of premises can substitute into a contract with lock in provision unless reasonable basis for provider to refuse to this (for services that are not possible or practicable to relocate)
Para 40	Technical forum	Warranty provision better encompasses services by referring to provision of compensation
Para 46	BTMWG	Restate para 33 on refunds less reasonable expenses for cancelled contract due to non-approval to connect when customer handles connection applications
Para 47	BTMWG	Exemption for requirement for refund if install begun without strata title owners corporation consent (if incorrectly advised by owner that property is not a strata title)
Para 49	Technical forum	Consumer Code should begin with positive commitment to good customer service – before dealing with complaints, warranty etc

V 9.7 Location	Impetus for change	Summary
Para 51	BTMWG, submissions	Complaints obligations expressly stated – fair and timely resolution of complaints
Para 52d.	BTMWG, submissions	Aim to respond to complaints within 15 business days; requirement to inform customer within that time if a response will take longer
Para 52e.	BTMWG, submissions	Requirement to respond to complaints within 25 business days, unless an extension is mutually agreed to
Para 54	Technical forum, submissions	Provider obligation to keep customer’s data safe and only to use data for permitted purpose Express consent must be obtained from the customer if the provider wants to supply customer’s data to a third party (e.g. inform a product retailer of a customer with an inefficient appliance)
Para 54	BTMWG	All providers (even if not caught by Privacy Act) must keep customer personal info secure and only use customer personal info for intended purpose or with consent
Para 59	BTMWG	Provider is responsible for third party marketers and sales force
Para 60	Technical forum	Provider is responsible for installer if provider engages the installer
Part C definition of New Energy Tech	Technical forum, submissions	The definition now includes a service that manages or monitors a customer’s usage of network-supplied energy, and excludes simple, low-cost, off-the-shelf products
Part C definition of customer	BTMWG workshop	Includes the operator of a retirement village
Part C definition of small business	BMTWG	Small business definition – uses Australian Bureau of Statistics’ definition - now less than 20 people
Annex paras 1 to 3	BTMWG workshop	Replicates MOU principles and provides a summary of roles of each participant in governance and administration of the Consumer Code
Annex para 5b	BTMWG, technical forums	Application process to act as a limitation re: phoenixing in the sector

V 9.7 Location	Impetus for change	Summary
Annex para 7	BTMWG, submissions	Specify the fee principles for transparency
Annex para 9	BTMWG, submissions	Reasonable notification of fee changes
Annex para 18	Technical forum, submissions	Administrator power to provide an exemption – could be used to allow ‘sandboxing’ for new offerings or trials - ie without full compliance
Annex para 19	Submissions	Administrator power to define class exemptions for simple, low-cost, off-the-shelf products or to allow trials of new products without requiring specific exemption
Annex paras 23 - 26	BTMWG, submissions	More express sanctioning powers for Administrator and Panel

Attachment D - Out-of-scope issues

During development of the draft New Energy Tech Consumer Code (the Consumer Code), a number of issues were identified by the Behind the Meter Working Group (BTM WG) and by stakeholders in the numerous consultation forums as important for the continued development of the sector to ensure good customer outcomes, but outside the scope of a voluntary industry self-regulatory code. These issues are summarised below and referred to the COAG Energy Council for consideration.

1. **Obligations on Energy Retailers and Distribution Network Service Providers that fall outside the Consumer Code, specifically in relation to:**
 - a. **Customers' ability to choose appropriate tariffs in the retail market.** Retail tariffs are pivotal to value assessments in the New Energy Tech market – providers are often unable to ascertain the impacts of each tariff to households.
 - b. **Smart meters are regulated under the National Electricity Rules.** Timeliness of installation (and sometimes, inclusion of non-standard functionalities, if needed) are beyond control of New Energy Tech vendors but critical to delivery of some New Energy Tech services.
 - c. **Ease of access to energy data** for both customers and their authorised agents. Data adds significant value to New Energy Tech value assessments and service delivery, however it is very often not within the control of the New Energy Tech provider. (We note that the Consumer Data Right for energy may address this in time.)
 - d. **Grid connection and activation of New Energy Tech products.** This is a complex process requiring considerable paperwork and arrangements between different parties. We note that Energy Networks Australia's new Uniform Connections Framework goes some way toward addressing this by providing consistent processes within DNSPs; but this is only part of the picture.
2. **Protections for off-grid (off-energy network) customers.** While the Consumer Code will provide general consumer protections for purchasing off-grid systems (or components for such systems) from Consumer Code signatories, greater levels of protection (and universal reach of such protections) may be needed. Off-grid customers may not desire, require or be able to afford grid equivalency for their stand-alone power systems (SAPS); however there is a growing market that does need additional protection to ensure that an essential service of electricity is offered in an acceptable manner that requires technical and operational rules beyond the capacity of the Code to deliver. (We note that the AEMC's review of the regulatory framework for stand-alone power systems may address this, if it applies to New Energy Tech vendors.)
3. **End of life and recycling/waste management**, particularly with respect to solar panels, household battery storage and electric vehicle batteries. (We note that some jurisdictions are beginning to address some aspects of this.)
4. **Power Purchase Agreements (PPAs)** can have serious impacts on customers. The Consumer Code attempts to address this; but PPAs are currently captured by the National Energy Consumer Framework, though largely exempted from the customer protection obligations in the NERR and without any SPPA-specific protections.
5. **Safety** and installation obligations vary by jurisdiction and do not consistently cover the range of New Energy Tech products and systems. The BTM WG strongly supports an increased focus on safety for New Energy Tech Providers, however imposing additional responsibilities is inappropriate in a voluntary code.

6. The Consumer Code applies when a provider sells a product or service to a single household or small business. It does not attempt to address **sales to multiple consumers or community-based collective purchases**, such as the development of a microgrid or stand-alone power system. Detriment to individual consumers can still occur in these situations and needs further exploration.
7. **Access to external dispute resolution** (energy ombudsman schemes or equivalent, as available to mainstream energy customers) for New Energy Tech customers. Establishing a comprehensive dispute resolution service is beyond the expected resources of the Consumer Code, and existing jurisdictional fair-trading bodies may lack the necessary expertise and systems to resolve complex energy-related issues. In general, these bodies are designed to monitor and pursue non-compliance rather than to find a satisfactory resolution for every dispute.
8. **Customers with life support and medical heating or cooling needs:** in addition to the general consideration for off-grid customers (issue 2), there are other critical considerations for these customers. The Consumer Code addresses them in the relevant sections (clause 5 regarding consideration of vulnerable customers' specific needs, clause 6 regarding assessing fitness for purpose, and clause 49 regarding customer service), but the BTM WG believes that the consequences for these customers are too severe to be managed by a voluntary code.

Attachment D – Relevant Market Participants

Market participants who may have an interest in the proposed conduct would include those in the table below. These names were drawn from the list of interested parties who registered for public consultation on the draft Code. Registered parties were not directly asked their permission to share details with the ACCC, so this list does not include individuals (including a number of sole traders). It would be possible to contact the registered parties to seek their permission for sharing their contact details, if requested by the ACCC.

Organisation	Phone	Email
ABB Australia	02 9738 2277	contact.center@au.abb.com
AG Abbeys Australia	0296 920 820	australia@abbeys.com.pl
AGL	13 12 45	
Aica Energy	1800 242 228	info@aicaenergy.com.au
All Energy Solutions	0433 164 658	askqut@qut.edu.au
Allune Energy	03 9028 2019	info@alluneenergy.com.au
AMS		sales@ams-it.com.au
Aone Solar	08 8351 2229	info@aonesolar.com.au
ATCO	08 6163 5400	enquiries@atco.com.au
CB Energy	07 5552 5222	cb@cb.com.au
Citipower Powercon	13 12 80	
Citipower Powercon	13 24 12	
Colin, Biggers & Paisley	03 8684 2031	Reception_Mel@cbp.com.au
Dept for Energy & Mining Sth Australia	08 8463 3000	resources.customerservices@sa.gov.au
Dept of Natural Resources Mining and Energy	13 74 68 (general) 13 43 87 (energy)	customerFeedback@dnrme.qld.gov.au
EfficientSee	0437 170 999	info@efficientsee.com.au
Embertec	1300 033 367	customerservice@embertec.com
Energy & Water Ombudsman QLD	1800 662 837	complaints@ewoq.com.au

Organisation	Phone	Email
Energy and Water Ombudsman Victoria	1800 500 509	ewovinfo@ewov.com.au
Energy Australia	133 466	smecustomercare@energyaustralia.com.au
Energy Safe Vic	1800 800 158	info@energysafe.vic.gov.au
Energywise P/L	1300 843 275	info@energywise.net.au
Financial & Consumer Rights	03 9663 2000	admin@fcrc.org.au

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.

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: solaraccreditation.com.au.

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 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.

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, 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.

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 list of current signatories to the Code is available online for consumers at www.solaraccreditation.com.au/retailers/approved-solar-retailers.

2. GENERAL RULES AND STANDARDS

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

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.
- 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 shows:
- (a) an itemised list of the goods to be supplied;
 - (b) the total price of all goods and services;
 - (c) the total value of any discounts, STCs, Goods and Services Tax (GST) and rebates as applicable;
 - (d) full specifications of the system, including the manufacturer, model, quantity and power rating of the solar modules and the inverter/s;
 - (e) a site-specific full system design including the proposed roof plan (sketch or diagram is acceptable), orientation and tilt, expected efficiency losses due to shading, 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 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(e) 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(e) 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.

- (f) Any site conditions and special circumstances beyond the control of the Signatory which 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;
- (g) 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;
- (h) business terms, including the payment method, deposits and timetable, and how long the quote will be valid for;
- (i) 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.
 - (ii) The consumer's cooling-off and termination rights.
- (j) Full disclosure of all assumptions made in relation to systems and finance offerings including:
 - (i) system design, performance and output assumptions;
 - (ii) financial savings including STC financial incentives, savings relating to return on investment, income and energy prices; and
- (k) 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(g), 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 in writing can be met in electronic form, or to provide a signature can be met in electronic or verbal form.

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 the address of the local office or showroom, or 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 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 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 moneys 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.”

2.1.25 Signatories will not offer an agreement which involves “third line forcing”, such as supplying solar panels on condition that the consumer purchase energy from another energy supplier, unless prior notification to, or authorisation from, the ACCC has been provided in accordance with the *Competition and Consumer Act 2010*.

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(e) 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 timeframe;
- (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; and
- (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
- (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

- 2.2.10 A standard minimum retailer's warranty period of five years¹ 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.

¹ 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.

- 2.2.12 Subject to 2.1.11, 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; or
 - (c) where a consumer might otherwise reasonably expect to receive marketing material from the Signatory.
- 2.2.13 Signatories may (but are not required under this Code to do so) 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 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">• List of equipment• Warranty information• Equipment manual• Equipment handbook• Array frame engineering certificate
Designer	<ul style="list-style-type: none">• Shut down and isolation procedure• System performance estimate• Maintenance• Earth fault alarm actions• System connection diagram• Site inspection checklist
Installer	<ul style="list-style-type: none">• Testing/commissioning• Declaration of compliance• Certificate of electrical safety (where applicable)

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.

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 ISO 10002-2006, which Australia adopted as the replacement for AS 4269 in 2006;

- (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 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.

- 2.4.8 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.
- 2.4.9 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.
- 2.4.10 Signatories must undertake to inform the Code Administrator of any breaches to the Code made by other signatory companies.
- 2.4.11 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.

- 2.4.12 All commercial-in-confidence information will be treated with appropriate confidentiality.
- 2.4.13 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.

2.4.14 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

2.4.15 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;
- (c) ensure that consumers are aware of the Signatory's complaints handling provisions.

2.4.16 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.

2.4.17 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.

2.4.18 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

2.4.19 Signatories have given an undertaking that they agree to follow the Code as outlined in this document.

2.4.20 Signatories must comply with the Code General Rules and Standards (this section 2) when selling, designing and installing solar PV systems.

2.4.21 Signatories are also subject to the Code Administrator's Complaints Procedure, the Code Review Panel Terms of Reference and the Brand Mark Guidelines.

2.4.22 Signatories must not act in any way that might bring the Code into disrepute.

2.4.23 Signatories must not make any vexatious or unfounded claims against another Signatory.

- 2.4.24 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..
- 2.4.25 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 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.
- 2.4.26 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 ADMINISTRATION AND COMPLIANCE

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

3.1 Role of Clean Energy Council (Code Administrator)

3.1.1 The Code will be administered by the CEC Accreditation Team. The Accreditation Team also manages the PV Accreditation Program to accredit designers and installers of PV.

3.1.2 The Code Administrator (CEC Accreditation 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 will refer consumers to either the Code Signatory or the relevant consumer protection organisation in accordance with section 3.3 below.

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).

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 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
- (c) conducting its own inquiries into Code compliance.

3.2.5 The Panel 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 are final. Signatories have no right of review beyond the Panel.

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.

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.

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 2.4.25.

Section of the Code	Breach level
Pre-sale activities	
Advertisements and promotions Any advertisements, promotions, quotations and statements produced must be legal, truthful, and comply with all relevant legislation.	Severe
Sales and quoting practices Signatories must adhere to ethical sales and quoting practices during all steps of the process	Major
Any reference to Small-scale Technology Certificates (STCs) must be consistent with Clean Energy Regulator wording.	Medium
Point of contract A written contract must be provided to the consumer and executed as described in the Code.	Severe
Receipts must be issued for all deposits collected.	Severe
Prior to signing the contract 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
Consumers must be given a flyer describing this Code and also including: a) the process for provision of consumer feedback and lodging consumer complaints; and b) a link to the CEC's <i>Guide to Installing Solar PV for Households</i> Solar PV Consumer Guide.	Medium
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
Signatories must advise consumers of potential billing issues that may arise following changeover of the meter.	Minor
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
Post-sale activities	
Pre installation	
Cooling-off periods and requirements must be adhered to.	Major
Refund requirements must be adhered to.	Major
Post-installation	
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.	Major
Signatories must inform provide adequate details 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
Documentation	
Signatories must ensure that the responsible parties provide the consumer with the relevant documentation in either electronic format or hard copy.	Medium
General business and obligations of signatories	
Compliance with the law	
Signatories must comply with all local, state and federal legislation, CEC accreditation guidelines and regulations.	Severe
In-house procedures and complaints handling	
Signatories must be responsive to, and deal appropriately with,	Medium

consumers at all times.	
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
Information to be provided to the Code Administrator Signatories must comply with the requirements for information and data to be provided to the Code Administrator.	Severe
Training and promotion of the code Signatories must ensure consumers are made aware of the Code.	Medium
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
Signatories must ensure the safety of their installers, subcontractors and employees.	Severe
Obligations of signatories and grounds for action to be taken Signatories must adhere to the Complaints Procedure , Code Review Panel Terms of Reference, and Brand Mark Guidelines.	Severe
Signatories must not make any vexatious or unfounded claims against other Signatories.	Medium
Code administration	
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
Systematic breaches 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

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 has been made, Signatories will be given an opportunity to rectify the breach within a reasonable timeframe, in accordance with a determination by the Code Administrator/Code Review Panel.

- (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.
- 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.

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.

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.
- 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:
- (a) cases where a Signatory has been removed or suspended from the Code; and
 - (b) severe breaches that are not rectified by the Signatory, as outlined in section 3.6.3 above.
- 3.8.3 For the purpose of sections 2.4.7 to 2.4.11, none of this information will be made publicly available, with the exception of 2.4.7(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

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 or print and complete the application form and submit it to the CEC (both forms located at <http://www.solaraccreditation.com.au/retailers/application-process.html>);
- (b) agree to and sign the Code including the Code *General Rules and Standards* (section 2);
- (c) provide examples of standard documentation as requested (for example, contracts and quotes);
- (d) submit to an integrity/financial check using an external agency;
- (e) allow documentation to be checked by independent experts (for example, lawyers) as required by the Code Administrator. This will be completed in confidence;
- (f) explain any adverse findings from a summary report on any dispute history lodged with the Code Administrator;
- (g) if required by the Code Administrator, attend an interview with Code Administrator; and
- (h) if required by the Code Administrator, provide referees for reference checks/consumer feedback data.

4.1.2 Based on the information submitted by the applicant, the Code Administrator will make an assessment as to whether the application sufficiently demonstrates that the applicant retailer complies with the Code and has the systems and procedures in place to ensure ongoing compliance.

4.1.3 Formal feedback on the application assessment will be provided to the applicant.

4.1.4 Incorrect or incomplete information submitted by an applicant may lead to the delay or rejection of an application.

- 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 Becoming a Signatory to the Code is open to both non-CEC members and CEC members.

4.2 Code Fees

- 4.2.1 All fees are stated exclusive of GST.
- 4.2.2 All fees are subject to GST.
- 4.2.3 All fees are published on the Solar Accreditation website at www.solaraccreditation.com.au/codeofconduct/application, including in the Application Form available for download in pdf format from that website.
- 4.2.4 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 2.4.25.
- 4.2.5 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.
- 4.2.6 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.
- 4.2.7 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).

4.3 Withdrawing from the Code

- 4.3.1 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.
- 4.3.2 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.

4.4 Use of Brand Mark

- 4.4.1 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

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.

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 himself 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 himself 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.

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: solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines
- Install Guidelines: solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines
- Accreditation Code of Conduct: solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines/accreditation-code-of-conduct
- Accreditation Terms and Conditions: solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines/accreditation-terms-and-conditions

The Code

- Code Review Panel terms of reference: approvalsolarretailer.com.au
- Brandmark guidelines: approvalsolarretailer.com.au
- Code flyer (consumer guide to the Code): approvalsolarretailer.com.au

Consumer Information

- CEC Consumer guide to buying household solar panels: solaraccreditation.com.au/consumers/purchasing-your-solar-pv-system.html
- CEC guides to connecting to the grid: cleanenergycouncil.org.au/technologies/grid/grid-connection.html

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

New South Wales NSW Fair Trading

PO Box 972
Parramatta NSW 2124
T. 13 32 20
fairtrading.nsw.gov.au

Australian Capital Territory Office of Regulatory Services

GPO Box 158
Canberra ACT 2601
T. (02) 6207 0400
ors.act.gov.au

Northern Territory Consumer Affairs

GPO Box 1722
Darwin NT 0801
T. 1800 019 319
consumeraffairs.nt.gov.au

Queensland
Office of Fair Trading
GPO Box 3111
Brisbane QLD 4001
T. 13 13 04
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

Tasmania
Office of Consumer
Affairs & Fair Trading
GPO Box 1244
Hobart TAS 7001
T. 1300 654 499
consumer.tas.gov.au

Victoria
Consumer Affairs Victoria
GPO Box 123
Melbourne 3001
T. 1300 55 81 81
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

Australian Securities and
Investments Commission
PO Box 9827
(in your capital city)
T. 1300 300 630
asic.gov.au

Other Bodies

- Clean Energy Regulator ret.cleanenergyregulator.gov.au
- Australian Competition and Consumer Commission acc.gov.au

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*, the new name of the *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)).