



Draft Determination

Application for authorisation AA1000439

lodged by

Australian Energy Council (AEC), Clean Energy Council (CEC), Smart Energy Council (SEC) and Energy Consumers Australia (ECA) (together **the Applicants**)

in respect of

the New Energy Tech Consumer Code

Authorisation number: AA1000439

Commissioners: Rickard

Court

Keogh

Ridgeway

Summary

The ACCC proposes to grant authorisation to the Applicants and future signatories to the proposed New Energy Tech Consumer Code (the Consumer Code) for a period of five years. The Consumer Code sets minimum standards that suppliers of “New Energy Tech” products (e.g. solar panels, energy storage systems and other emerging products and services) must comply with when interacting with consumers, including from initial marketing and promotion through to installation and complaints handling. The Consumer Code operates alongside a range of existing legal and regulatory protections.

The ACCC invites submissions in relation to this draft determination by 23 August 2019, and expects to make its final determination in September or October 2019.

Public benefits and detriments

The ACCC considers that compliance with the Consumer Code will result in public benefits by improving the business practices of signatory retailers and the level of consumer protection provided. This will assist consumers of New Energy Tech to make better informed purchasing decisions in a complex industry and reduce the risk of consumer harm, including from unscrupulous business practices.

The Consumer Code is unlikely to lessen competition between suppliers of New Energy Tech products or services; the Consumer Code will limit certain practices that are not in the best interests of consumers, but does not prevent vigorous competition to win customers by offering attractive products and services at competitive prices.

Effective administration of the Consumer Code

Effective administration and enforcement of a voluntary code is crucial to the realisation of the claimed public benefits under the code. The administrator of the Consumer Code (Code Administrator) has yet to be appointed. Further, membership of the Council charged with appointing the Code Administrator has also yet to be settled. A number of submissions expressed views about who should or should not be appointed as Code Administrator. The ACCC expresses no view on the concerns raised in these submissions but notes it will be open to Council members to consider these submissions when deciding who to appoint as Code Administrator.

In any event, the ACCC considers provisions of the Consumer Code:

- enable the Council to be sufficiently representative of stakeholders in the industry, and
- appear sufficient to ensure the appointed Code Administrator will administer the Consumer Code effectively, including imposing sanctions where appropriate.

Finance arrangements permitted under the Code

Under the Consumer Code, consumer finance associated with New Energy Tech products and services is only permitted if the credit products are regulated under the *National Consumer Credit Protection Act 2009* (NCCPA) and the *National Credit Code* (NCC) and provided by credit providers licensed under the NCCPA. These regulations provide important protections for consumers; they require credit providers to provide relevant product information disclosures, take appropriate steps to assess a consumer’s ability to pay, and provide access to external dispute resolution.

A number of 'buy now, pay later' (BNPL) providers that currently supply finance for a sizeable share of New Energy Tech products, particularly solar products, would not be permitted to provide finance under the Consumer Code as it is presently drafted. Although these providers are not captured by NCCPA and NCC regulation, they submit that they are subject to separate regulation and provide equivalent consumer safeguards. They submit that preventing consumers from accessing these finance arrangements will in turn restrict consumers' access to New Energy Tech products.

The ACCC invites further submissions on whether it is feasible and desirable to modify these provisions of the Consumer Code to permit finance arrangements that fall under other regulatory regimes if they can be demonstrated to provide equivalent consumer safeguards to those in the NCCPA and NCC.

1. The application for authorisation

- 1.1. On 30 April 2019, the Australian Energy Council (**AEC**), Clean Energy Council (**CEC**), Smart Energy Council (**SEC**) and Energy Consumers Australia (**ECA**) (together, the **Applicants**) lodged an application for authorisation with the Australian Competition and Consumer Commission (the **ACCC**). The Applicants are seeking authorisation for the provisions in the proposed New Energy Tech Consumer Code (the **Consumer Code**) for five years.¹
- 1.2. Authorisation provides businesses with legal protection for arrangements that may otherwise risk breaching the law but are not harmful to competition and/or are likely to result in overall public benefits.

The Applicants

- 1.3. The Applicants are:
 - a) **AEC** – The AEC is an industry body representing 23 electricity and downstream natural gas businesses operating in 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) **CEC** – The 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 4000 solar installers. The CEC currently administers the Solar PV Retailer Code of Conduct (**Solar Code**) and an Accreditation scheme for solar PV installers.
 - c) **SEC** – is a not-for-profit peak body for the solar, storage and smart energy industries in Australia. The SEC has been previously known as the Australian Solar Energy Society and the Australian Solar Council, and has been involved in advancing solar energy since 1954. 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.

¹ This application for authorisation AA1000439 was made under subsection 88(1) of the *Competition and Consumer Act 2010* (Cth) (the **Act**).

- d) **ECA** – The ECA is a national voice for residential and small business energy consumers. Established by the Council by 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.

The Proposed Conduct

1.4. The Applicants are seeking authorisation, including on behalf of future signatories to the Consumer Code, to agree, sign up to and comply with (give effect to) provisions of the Consumer Code:

- a) according to which signatories will commit to abide by minimum standards of good practice as set out in the Consumer Code, which are intended to cover all aspects of the customer experience²
- b) for monitoring and sanctioning non-compliance, where the Code Administrator has powers requiring a signatory to rectify issues giving rise to a breach of the Consumer Code, and, where there is serious non-compliance, the Code Administrator may propose to the Code Monitoring and Compliance Panel that the signatory should be suspended or expelled, and
- c) requiring signatories to only offer deferred payment arrangements³ that are regulated under the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**) and the *National Credit Code* (**NCC**), and provided by credit providers licensed under the NCCPA.

(the **Proposed Conduct**). A copy of the Consumer Code is **annexed**.

1.5. The Applicants have identified the following sections of the *Competition and Consumer Act 2010* (Cth) (the **Act**) as relevant to their application:

- cartel conduct (s. 45AD) – the Consumer Code provides for powers to enforce the Consumer Code and suspend or expel signatory members⁴
- contracts, arrangements or understandings that restrict dealings or affect competition, including concerted practices (s. 45) – in many cases signatories will be competitors with each other and are agreeing to undertake consistent business practices
- misuse of market power (s. 46) – for some nascent New Energy Tech products and services such as Virtual Power Plant services, it is possible that at least initially, there may be one or a small number of dominant suppliers which will be a signatory to the Consumer Code
- exclusive dealing (s. 47) – the Consumer Code includes requirements for signatories in relation to the offer of deferred payment arrangements.

² See for example, the commitments outlined in paragraph 4.8 below.

³ A 'deferred payment arrangement' under the Consumer Code is a reference to an alternative method of payment to upfront payment upon delivery or installation. The conditions on the offer of a deferred payment arrangement applies when offered to a residential consumer and this arrangement includes an interest component, additional fees or involves an increased purchase price.

⁴ Application for ACCC Authorisation - New Energy Tech Consumer Code (April 2019), Attachment B – Draft for ACCC – New Energy Tech Consumer Code, Annexure – Code Administration, Section 24.

2. Background

New Energy Tech products and services

- 2.1. New Energy Tech, as defined for the purposes of the Consumer Code, includes products, systems and services that:
- a) are 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) are services that support or are closely related to those products or systems
 - c) monitor or manage a customer's usage of energy whether on or off an energy network, and
 - d) the Consumer Code administrator is satisfied sit appropriately within the Consumer Code, future flexibility and innovation permitting.
- 2.2. The definition under the Consumer Code 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.
- 2.3. Examples of New Energy Tech include:
- a) distributed energy resources connected to an energy network for supplementary supply such as solar photovoltaic systems, wind turbines, hydro and bioenergy generators
 - b) a microgrid
 - c) energy management products, systems and services including batteries and other energy storage methods
 - d) programs aimed at stabilising the supply of energy including those that incentivise or restrict power consumption during critical peak periods
 - e) a power purchase agreement⁵
 - f) person to person energy trading systems and services
 - g) electric vehicle charging services, and
 - h) associated repair, maintenance or removal services for New Energy Tech products and systems.

Background to the New Energy Tech Consumer Code

- 2.4. In August 2017, the COAG Energy Council wrote to industry and ECA respectively, requesting that:

⁵ A power purchase agreement can refer to any agreement between a power generator (vendor) and a purchaser(s) for the sale and supply of energy. In more recent times it has been used to refer to arrangements involving the sale of electricity generated from renewable energy such solar panels (eg. a business may form an agreement with a homeowner, whereby the business will install solar panels on the homeowner's roof and sell that electricity to the homeowner).

- a) industry associations (namely, the AEC, CEC, SEC and Energy Networks Australia), collaborate with the ECA to develop an industry code for behind-the-meter (**BTM**) products and services⁶, and
 - b) ECA develop a range of consumer information products on consumer rights and responsibilities for BTM products and services (the **Consumer Information Products**).
- 2.5. 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 work through the formation of the BTM Working Group.
- 2.6. Since October 2017, the BTM Working Group has met regularly to progress the development of the draft Consumer Code and the Consumer Information Products.
- 2.7. In November 2018, a draft Consumer Code was released for stakeholder consultation and was amended following feedback before being the subject of this application for authorisation.

Previous related authorisations

- 2.8. The ACCC re-authorised the revised Solar Code for five years in 2015.⁷
- 2.9. The CEC currently administers the Solar Code, which requires signatory retailers to meet certain best practice standards that enhance consumer protection. The Solar Code also requires signatories to use installers accredited by the CEC.
- 2.10. Under the Small-Scale Renewable Energy Scheme administered by the Clean Energy Regulator (a government body), installers of solar systems are now required to be a signatory to the Solar Code and accredited by the CEC in order to be eligible to obtain small-scale technology certificates (**STCs**) for installations. STCs have value and can be bought and sold through the open STC market or the STC clearing house.
- 2.11. The Applicants consider current signatories of the Solar Code are likely to transfer to the Consumer Code, if it is authorised by the ACCC.

3. Consultation

- 3.1. A public consultation process informs the ACCC's assessment of the likely public benefits and detriments from the Consumer Code.
- 3.2. The ACCC invited submissions from a range of potentially interested parties including energy companies, new energy tech providers, electrical installers, consumer advocacy and representative groups, BNPL providers and relevant regulatory bodies.⁸
- 3.3. The ACCC received 22 submissions from interested parties in relation to the application. A brief summary of submissions is below:

⁶ New Energy Tech products and services are commonly also referred to in the industry as BTM products and services.

⁷ For further information, please see: <https://www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/clean-energy-council-limited-revocation-and-substitution-a91495-a91496>

⁸ A list of the parties consulted and the public submissions received is available from the ACCC's public register at www.accc.gov.au/authorisationsregister.

- a) The majority of submissions were in support of the intention of the Consumer Code, in improving business standards across the industry and increasing consumer protections.
- b) A number of submissions raised concerns that some of the commitments required of signatories under the Consumer Code were too broad and lacked specificity. Some retailers were concerned it would be unclear what they were required to do in order to comply with some of the provisions of the Consumer Code.
- c) A number of submissions raised concerns regarding the ability of the Consumer Code to be effective and deliver the intended outcomes, particularly if the CEC was appointed the administrator of the Consumer Code. This view appears to have been based on previous experience with the CEC's administration of the Solar Code. This issue is further discussed at paragraphs 4.22 to 4.32.
- d) Submissions from BNPL arrangement providers opposed the commitment required of signatories in relation to the offer of deferred payment arrangements with New Energy Tech products and services. The effect of the commitment under section 24 of the Consumer Code is that signatories are prevented from offering BNPL arrangements and BNPL providers are essentially excluded. The BNPL providers submit that this exclusion is anti-competitive and not a proportionate response to the consumer protection concerns underlying the exclusion.
- e) Submissions from consumer associations generally supported the commitments required of signatories in the Consumer Code, including strongly supporting the requirement in relation to the offer of deferred payment arrangements. Some submissions also called for the Consumer Code to go further to ban all unsolicited sales.

3.4. Public submissions by the Applicants and interested parties are on the Public Register for this matter.

4. ACCC assessment

- 4.1. The ACCC's assessment of the Consumer Code is carried out in accordance with the relevant authorisation test contained in the Act.
- 4.2. The Applicants have sought authorisation for the Proposed Conduct that would or might involve a cartel provision within the meaning of Division 1 of Part IV of the Act, or may substantially lessen competition within the meaning of sections 45 and 46 of the Act, or may constitute exclusive dealing within the meaning of section 47 of the Act. Consistent with subsection 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied, in all the circumstances, that the conduct would result or be likely to result in a benefit to the public, and the benefit would outweigh the detriment to the public that would be likely to result (authorisation test).
- 4.3. To assist with the assessment of the Consumer Code, the ACCC considers:
 - a) the relevant areas of competition likely to be affected by the implementation of the Consumer Code are the supply of:
 - i. different types of New Energy Tech products and services, and

- ii. financial products, including particularly deferred payment arrangements, offered with New Energy Tech products and services,
- b) that the likely future without the Consumer Code is that suppliers of New Energy Tech products and services will be free to engage in sales practices and interactions with consumers provided they comply with relevant laws and regulations. Without the Consumer Code, the Solar Code will continue to apply to signatories to that code who supply solar PV products and services.

Public benefits

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

*...anything of value to the community generally, any contribution to the aims pursued by society including as one of its principal elements ... the achievement of the economic goals of efficiency and progress.*⁹

- 4.5. The Applicants submit that the Consumer Code is likely to result in public benefits in the form of:
- a) providing consumers with clear, accurate and relevant information to help them make informed choices
 - b) encouraging consumers to be aware of their rights under the law and the Consumer Code
 - c) ensuring that signatory sales practices are responsible
 - d) ensuring that products, systems, services and documentation provided under the Consumer Code are suitable and fit for purpose
 - e) supporting staff training and work processes that ensure that signatories comply with the law and the Consumer Code, and
 - f) ensuring that signatories will be responsive to consumer needs and take prompt, appropriate action if customers make a complaint.
- 4.6. Specifically in relation to the commitment restricting the offer of deferred payment arrangements, the Applicants submit that adoption of the Consumer Code will offer public benefits through the protections provided by regulation under the NCCPA and the NCC.
- 4.7. The ACCC has considered the following public benefits:
- a) reduced information asymmetry and enhanced consumer ability to make informed choices that better suit their needs
 - b) increased consumer protections arising from key commitments by signatories beyond what is currently explicitly required by the law, and
 - c) increased consumer protections from the requirement that finance arrangements meet certain regulatory obligations.

⁹ *Queensland Co-operative Milling Association Ltd* (1976) ATPR 40-012 at 17,242; cited with approval in *Re 7-Eleven Stores* (1994) ATPR 41-357 at 42,677.

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

4.8. The ACCC considers that adoption of the Consumer Code is likely to result in better informed consumers, due to the various commitments agreed to by signatories. These include:

- a) Commitments to take positive actions with respect to advertising and promotion, including:
 - i. using language that is accessible and that avoids industry jargon (section 2. d))
 - ii. ensuring that any claims relating to performance or energy cost savings are reasonably based and where available, based on reputable sources (section 2. g))
 - iii. advertising the total price as prominently as any component price (section 2. h))
 - iv. ensuring that any disclaimers are clearly outlined and not buried in small print (section 2. j))
 - v. be clear about any additional cost for finance or an alternative purchasing arrangement when the cost is being recovered in the overall price (section 2. m))
- b) Commitments to educate consumers of their rights when undertaking direct marketing, including:
 - i. advising consumers they can ask the sales person to leave or end the contact at any time (section 3. a))
 - ii. provide the Consumer Information Product that explains the consumer protection framework (section 3. f))
 - iii. avoiding high-pressure sales tactics (section 4)
- c) Commitments to provide detailed information disclosures, including:
 - i. an itemised list of the New Energy Tech being supplied (section 8. b))
 - ii. information about how the New Energy Tech operates and how to operate it (sections 8. c), d) and e))
 - iii. a site specific design plan and performance estimate for the New Energy Tech (section 16. a))
 - iv. explanations of how to operate and maintain the New Energy Tech (section 36)

4.9. The submissions received from interested parties support the benefits of the Consumer Code in improving consumers' understanding of New Energy Tech products and services and their consumer protection rights. In particular, CALC and Uniting Vic. Tas. made submissions regarding the complexity of energy markets, and how difficult, confusing and risky it was for many consumers to make decisions about their energy supply.

4.10. The ACCC accepts that for complex products such as New Energy Tech, the initiatives and commitments under the Consumer Code requiring additional information disclosures are likely to result in public benefits. Where consumers are able to make better and more informed purchasing decisions about the products or services that best meet their needs there may also be some efficiency improvements.

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

4.11. The ACCC considers that adoption of the Consumer Code is likely to result in greater consumer protections, as a result of the commitments adopted by signatories that are beyond that which is currently explicitly required under current consumer protection laws. These include:

- a) taking extra care if the signatory becomes aware that the consumer may be facing vulnerable circumstances (section 5)
- b) making product or service 'fit-for-purpose inquiries', including:
 - i. asking about the potential consumer's specific circumstances, needs and expectations (section 6. a))
 - ii. ensuring that any offer of New Energy Tech is fit for purpose in light of the consumer's needs and expectations and recording a brief description of the consumer's circumstances, needs and expectations in quotes and contracts (section 6. c))
- c) providing site-specific installation designs or plans and site-specific performance estimates (section 16)
- d) facilitating any activation required for the use of products or services (section 32)
- e) taking responsibility for sales agents, representatives, installers, subcontractors etc. to ensure the accuracy of information provided and safety of installations (section 57-59), and
- f) improving complaints handling processes (section 53).

4.12. The ACCC considers that these commitments by signatories under the Consumer Code are likely to result in public benefits by providing protections to reduce the likelihood and degree of consumer harm that can arise from the kinds of practices sought to be addressed by these provisions.

4.13. Some submissions from interested parties called for the Consumer Code to provide further consumer protections by banning all unsolicited sales. As drafted, the Code provides a level of protection by requiring signatories to provide information disclosures up-front in the unsolicited interaction (including the Consumer Information Products) and informing consumers of their rights as part of the interaction. The ACCC invites further submissions on this issue.

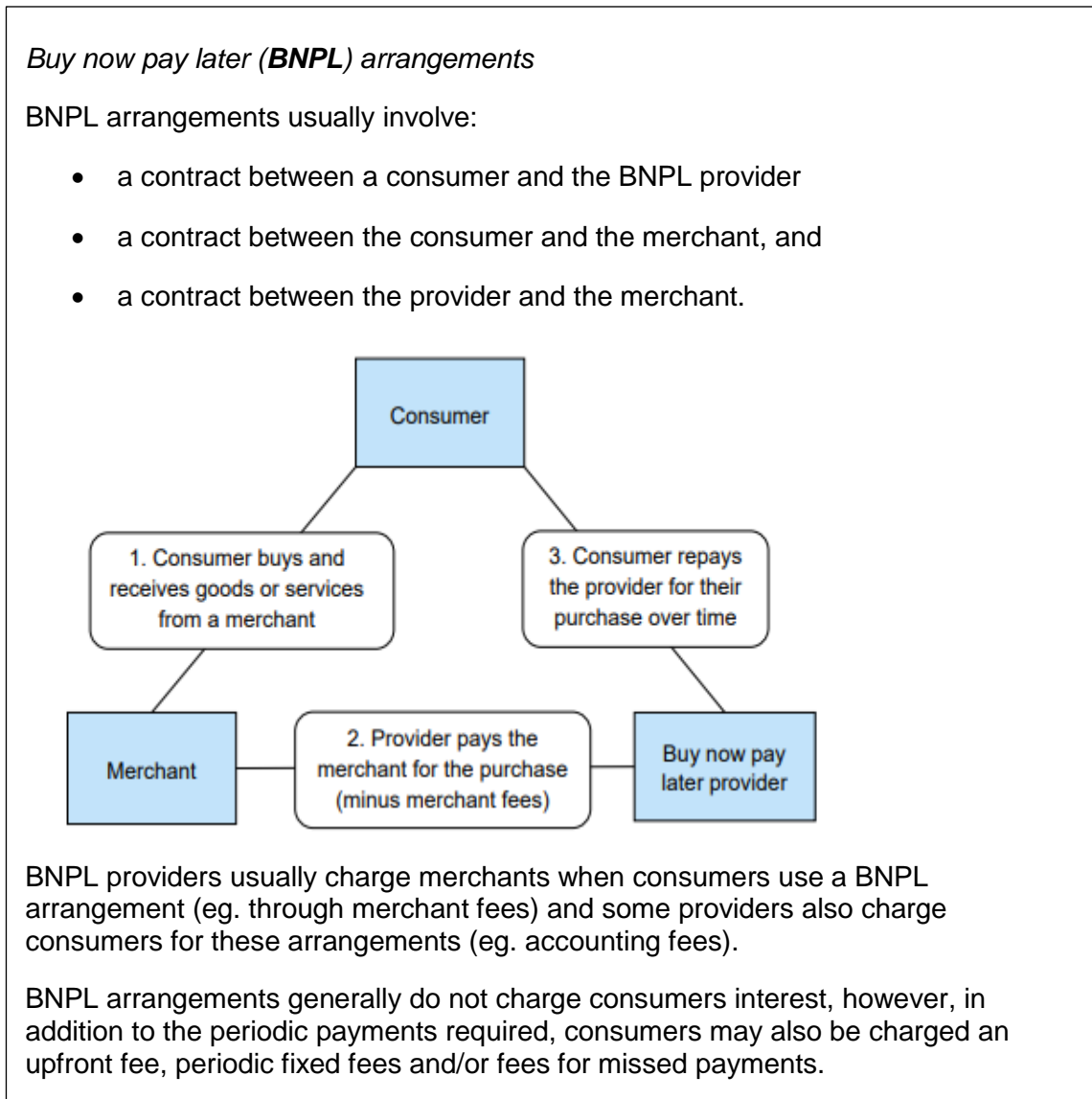
Increased consumer protections from the requirement that finance arrangements meet certain regulatory obligations

4.14. The Applicants submit that consumers have been harmed by taking up unaffordable unregulated finance leading to financial hardship and debt for vulnerable consumers. The Applicants seek to address this issue under section 24 of the Consumer Code. Section 24 requires that if a signatory is to offer New Energy Tech to a residential

consumer with a deferred payment arrangement, and this arrangement includes an interest component, additional fees or an increased price, it will ensure that:

- a) this payment arrangement is offered through a credit provider licenced under the NCCPA, and
- b) this payment arrangement is regulated by the NCCPA and the NCC.

4.15. Section 24 effectively means that signatories to the Consumer Code are prevented from offering BNPL arrangements¹⁰, as these arrangements are not regulated under the NCCPA and the NCC.



4.16. The Applicants submit that this requirement will provide clear public benefits as this will provide consumers with the following protections not applicable to BNPL arrangements:

¹⁰ A reference to a BNPL arrangement in this document is a reference to a BNPL arrangement that is not regulated under the NCCPA and the NCC. See also: Australian Securities and Investment Commission, 'Report 600 – Review of buy now pay later arrangements' (November 2018) 6-7.

- a) consumers will be provided with regulated information about the credit offer
 - b) consumers will benefit from the obligation on credit providers to make a responsible lending assessment under the NCCPA, and
 - c) consumers will be assured of the ability to take any complaint or dispute about the credit product to an external dispute resolution scheme.
- 4.17. BNPL providers, Brighte and FlexiGroup, submit that consumer protections do exist for BNPL arrangements and such arrangements are regulated by the Australian Securities and Investment Commission (**ASIC**) through the *ASIC Act 2001 (ASIC Act)* and ASIC's new product intervention powers. As such, consumers utilising BNPL arrangements have access to similar consumer protections as those products regulated by the NCCPA. In addition, Brighte and FlexiGroup submit that BNPL arrangements are an important financing option for purchases of New Energy Tech products and services. For example, FlexiGroup estimate that it has provided finance for the purchase of more than 180,000 solar installations, which represents about 10% of all installed grid-connected solar systems in Australia.
- 4.18. In November 2018, ASIC released a report on BNPL arrangements.¹¹ ASIC found that the BNPL industry is rapidly growing and there is a diverse range of arrangements available. ASIC noted that BNPL arrangements can create some risks for consumers if they take on debt that they may have difficulty paying back. ASIC also found that some providers take steps to help consumers make informed decisions about their purchases and repayment, but in some instances more could be done. ASIC considered that its proposed product intervention power should be extended to all credit facilities, including BNPL arrangements, regulated under the ASIC Act. ASIC's product intervention powers have since come into force from April 2019.
- 4.19. The ACCC recognises that the protections available under the NCCPA and NCC are likely to reduce harm to consumers from unsuitable and/or unregulated finance arrangements.
- 4.20. However, this benefit is likely to be (at least partially) offset by a public detriment if adoption of the Consumer Code will also result in preventing some consumers from accessing finance arrangements that include appropriate safeguards, despite not being regulated under the NCCPA and NCC. In some cases, such finance arrangements may meet consumer needs and allow them to purchase New Energy Tech products and services which could reduce their energy consumption, and therefore provide savings over time.
- 4.21. The ACCC is therefore seeking submissions about the feasibility and desirability of amendments to the Consumer Code that may allow for BNPL arrangements to be offered if providers are able to demonstrate that they are properly regulated and offer consumers adequate protections similar to those available under the NCCPA and NCC.

Effective administration and enforcement of the Consumer Code

- 4.22. Effective administration and enforcement of a voluntary code is crucial to the realisation of the claimed public benefits under the code. However, key roles under the Consumer Code are yet to be filled and the identity of the relevant appointees won't be

¹¹ Australian Securities and Investment Commission, '*Report 600 – Review of buy now pay later arrangements*' (November 2018).

decided until after the Consumer Code comes into effect (should authorisation be granted).

- 4.23. The Consumer Code is administered in accordance with the Memorandum of Understanding, agreed to on 24 January 2019 by various members of the BTM Working Group: ECA, ENA, PIAC, CEC, SEC, AEC and Renew (**MOU**).¹² The MOU specifies that the Consumer Code will be governed and administered by:¹³
- 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
 - c) the Code Administrator, appointed by the Council and responsible for day to day administration of the Code, and
 - d) the Code Monitoring and Compliance Panel (the **Panel**) appointed by the Council and comprising industry and consumer representatives and independent persons with relevant expertise.
- 4.24. None of the Council, Steward, Code Administrator or the Panel positions have been filled.
- 4.25. A number of submissions raised concerns regarding the CEC's ability to effectively administer the Consumer Code, should it be appointed to the role. This concern appears to be largely based on the experiences of those interested parties with the CEC as the administrator of the Solar Code.
- 4.26. The ACCC expresses no view on the concerns raised in these submissions but notes that they are available on the ACCC's Public Register, and it will be open to Council members to consider them when deciding who to appoint as Code Administrator.
- 4.27. Irrespective of whether the CEC is ultimately appointed Code Administrator, a key determinant of effective administration is a robust system of checks and balances within the Consumer Code rules, and the criteria to be used for appointing the Code Administrator.
- 4.28. The ACCC considers that the Consumer Code sufficiently outlines the roles and responsibilities of the Code Administrator and provides for a process to ensure the Code Administrator is qualified and performing its duties appropriately.¹⁴
- 4.29. Under the MOU, the Chair of the Council must be a person of high standing and with an extensive understanding of consumer protection issues. They must be able to demonstrate that they are capable of reflecting the viewpoints and concerns of consumers, have expertise in consumer affairs and the confidence of consumers, consumer organisations, industry and other key stakeholders and have knowledge of the industry and the issues involved in the Consumer Code. The Chair of the Council

¹² Application for ACCC Authorisation - New Energy Tech Consumer Code (April 2019), Attachment C – The Consumer Code Journey, Attachment B – Memorandum of Understanding – Governance.

¹³ Application for ACCC Authorisation - New Energy Tech Consumer Code (April 2019), Attachment B – Draft for ACCC – New Energy Tech Consumer Code, Annexure – Code Administration, section 2.

¹⁴ The Administrator's duties are clearly set out in the Consumer Code, Annexure – Code Administration and include assessing membership applications, annually reviewing the fees payable by signatories, determining whether to grant exemptions to provisions of the Consumer Code, monitoring compliance with the Consumer Code (including through investigating complaints, conducting audits and analysing repeat offences), and determining remedial actions or sanctions for Consumer Code breaches.

will appoint the Council members, whom will then appoint the Code Administrator after agreeing appropriate criteria. The Code Administrator will be subject to an initial review after 12 months into the three-year term.

- 4.30. In addition, the Code Administrator is required to consider specific matters when assessing applications from those wishing to become a signatory to the Consumer Code. Further, decisions made by the Code Administrator requiring a signatory to rectify a breach are reviewable by the Panel if the signatory requests such a review. Also, matters of expulsion or suspension are to be referred by the Code Administrator to the Panel for decision. The Panel is required to publish on-line an annual report about the Consumer Code's operation, including information about each finding of breach and the remedial action or sanction imposed on the relevant signatory. As such, the ACCC considers it is unlikely that the Code Administrator will be able to inappropriately refuse membership or impose improper sanctions on signatories.
- 4.31. The Consumer Code also provides for three-yearly independent reviews of its governance framework, including by seeking the views of stakeholders and revising the Consumer Code in light of that review.
- 4.32. On balance, the ACCC is satisfied that the Consumer Code has sufficient mechanisms in place to ensure its effective administration and enforcement and that it is not critical for the identity of the Code Administrator (or the other key roles identified above) to be known before the ACCC issues a final determination on this authorisation application.

ACCC conclusion on public benefit

- 4.33. The ACCC considers that adoption of the Consumer Code is likely to result in the following public benefits:
- The commitments by signatories to provide additional information disclosures reduces information asymmetry. Consumers are more likely to be better informed and better placed to make purchasing decisions better suited to their needs, and
 - Key commitments by signatories to take proactive steps to ensure products and services are fit for purpose will increase consumer protection beyond what is required under the law. Recording a description of the customers' circumstances and purchase will also make it easier for any consumer guarantees claims to be made under the ACL if product or service failures occur.
- 4.34. The ACCC notes that the Consumer Code does not supersede existing legal consumer protections (i.e. it is additional to existing protections).
- 4.35. The ACCC is satisfied that provisions in the Consumer Code provide mechanisms to ensure its effective administration and enforcement.

Public detriments

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

...any impairment to the community generally, any harm or damage to the aims pursued by the society including as one of its principal elements the achievement of the goal of economic efficiency.¹⁵

¹⁵ Re 7-Eleven Stores (1994) ATPR 41-357 at 42,683.

4.37. The ACCC has considered the following public detriments:

- A lessening of competition in the supply of New Energy Tech products and services.
- A lessening of competition in the supply of finance arrangements between finance providers, and a lessening of consumer choice, due to the exclusion of BNPL providers.

Reduction in competition between suppliers of New Energy Tech products and services unlikely

Increased cost of supply for signatories may raise barriers to entry

4.38. The Applicants recognise that signatories to the Consumer Code are likely to face additional costs as a result of signing on to the Consumer Code, including:

- a) administration fees charged to signatories by the Code Administrator, and
- b) added costs incurred in order to comply with the commitments and higher standards required under the Consumer Code, including increased operating costs for training, documentation, disclosures and consumer protection provisions.

4.39. The ACCC considers that costs arising from the additional disclosure commitments and consumer protections, are likely to reflect a corresponding increase in the quality of the goods and services supplied, for example as a result of the additional product information disclosures and requirement for the signatory to provide site design and development plans.

4.40. In relation to the compliance costs for signatories directly resulting from the Consumer Code's implementation and administration, the ACCC considers that the compliance requirements imposed are necessary in order for the Consumer Code to be effective. The ACCC notes that it is currently unclear what the fees for the Consumer Code will be and agrees with Tesla's submission that these will need to be clearly articulated.

Expulsions and denied membership to the Consumer Code as a barrier to entry

4.41. Membership to the Consumer Code may provide an advantage to suppliers of New Energy Tech products and services over those that choose not to become members because consumers may perceive that signatories uphold better business practices and offer greater consumer protections than non-signatories. This advantage may be further increased if governments link supplier access to rebate or incentive schemes, or government tenders to membership of the Consumer Code. The ACCC notes it is a matter for governments to determine the appropriate eligibility criteria for their programs.

4.42. This may make Consumer Code signatories more attractive to consumers than non-signatory suppliers of New Energy Tech products and services. If signatories are inappropriately expelled or suppliers are not accepted as signatories this may impact on their ability to compete to provide New Energy Tech products and services.

4.43. The ACCC considers the Consumer Code administrative framework under the MOU contains sufficient rules, checks and balances to ensure that the Administrator and the Panel will be sufficiently qualified and will appropriately assess applications for membership and the level of sanctions against signatories for non-compliance.

Reduced consumer choice for finance arrangements

- 4.44. As noted in paragraph 4.14, BNPL arrangements are excluded as a financing option for the purchase of New Energy Tech products and services supplied by signatories to the Consumer Code. For example, Brighte and FlexiGroup submit that their BNPL arrangements have assisted a large number of consumers by providing finance to assist with the purchase of solar installations.
- 4.45. As already noted, the ACCC recognises that there is some detriment from preventing some consumers from accessing finance arrangements that include appropriate consumer safeguards and information requirements, despite not being regulated under the NCCPA and NCC, and invites further submissions on this issue.

ACCC conclusion on public detriment

- 4.46. The ACCC considers that adoption of the Consumer Code is unlikely to result in a reduction of competition between suppliers of New Energy Tech products and services. There are appropriate safeguards in place to ensure that signatories will not be inappropriately excluded or expelled.

Balance of public benefit and detriment

- 4.47. The ACCC considers that adoption of the Consumer Code is likely to result in significant public benefits in the form of:
- Reduced information asymmetry
 - Increased consumer protections.
- 4.48. The ACCC considers that adoption of the Consumer Code is unlikely to result in public detriment from a lessening of competition in the supply of New Energy Tech products and services.
- 4.49. The ACCC is seeking submissions about the feasibility and desirability of amendments to the Consumer Code that may allow for BNPL arrangements to be offered if providers are able to demonstrate that they are properly regulated and offer consumers adequate protections similar to those available under the NCCPA and NCC.

Length of authorisation

- 4.50. The Act allows the ACCC to grant authorisation for a limited period of time.¹⁶ This enables the ACCC to be in a position to be satisfied that the likely public benefits will outweigh the detriment for the period of authorisation. It also enables the ACCC to review the authorisation, and the public benefits and detriments that have resulted, after an appropriate period.
- 4.51. In this instance, the Applicants seek authorisation for five years.
- 4.52. The ACCC considers this period is appropriate given the evolving nature of the New Energy Tech Sector and the need to test the effectiveness of the administration arrangements and any sanctions taken under the Consumer Code during that period.

¹⁶ Subsection 91(1)

5. Draft determination

The application

- 5.1. On 30 April 2019, the Applicants lodged application AA1000439 with the ACCC, seeking authorisation under subsection 88(1) of the Act.
- 5.2. The Applicants seek authorisation for the Consumer Code. Subsection 90A(1) of the Act requires that before determining an application for authorisation, the ACCC shall prepare a draft determination.

The authorisation test

- 5.3. Under subsections 90(7) and 90(8) of the Act, the ACCC must not grant authorisation unless it is satisfied in all the circumstances that the Proposed Conduct is likely to result in a benefit to the public and the benefit would outweigh the detriment to the public that would be likely to result from the Proposed Conduct.
- 5.4. For the reasons outlined in this draft determination, the ACCC is satisfied, in all the circumstances, that the Proposed Conduct would be likely to result in a benefit to the public and the benefit to the public would outweigh the detriment to the public that would result or be likely to result from the Proposed Conduct, including any lessening of competition.
- 5.5. Accordingly, the ACCC proposes to grant authorisation.

Conduct which the ACCC proposes to authorise

- 5.6. The ACCC proposes to grant authorisation AA1000439 to enable the Applicants and future signatories to the Consumer Code¹⁷ to agree, sign up to and comply with (give effect to) provisions of the Consumer Code:
 - a) according to which signatories will commit to abide by minimum standards of good practice as set out in the Consumer Code, which intended to cover all aspects of the customer experience
 - b) for monitoring and sanctioning non-compliance, where the Code Administrator has powers requiring a signatory to rectify issues giving rise to a breach of the Consumer Code, and, where there is serious non-compliance, the Code Administrator may propose to the Code Monitoring and Compliance Panel that the signatory should be suspended or expelled, and
 - c) requiring signatories to only offer deferred payment arrangements that are regulated by the NCCPA and NCC and provided by credit providers licensed under the NCCPA.
- 5.7. This conduct may involve a cartel provision within the meaning of Division 1 of Part IV of the Act, or may substantially lessen competition within the meaning of sections 45 or 46 of the Act, or may constitute exclusive dealing within the meaning of section 47 of the Act.
- 5.8. This authorisation is limited to the conduct described in paragraph 5.6 above (that is merely agreeing, signing up to and complying with (giving effect to) those provisions of

¹⁷ Pursuant to section 88(2) of the Act.

the Consumer Code). The authorisation does not extend to any other conduct, particularly any other conduct that may contravene section 46 or other provisions of Part IV of the Act.

5.9. The ACCC proposes to grant authorisation AA1000439 for five years.

5.10. The proposed authorisation is in respect of the Consumer Code as it stands at the time of authorisation is granted, a copy of which is annexed to the draft determination. Any changes to the Consumer Code during the term of the proposed authorisation would not be covered by the proposed authorisation.

6. Next steps

6.1. The ACCC now invites submissions in response to this draft determination. In addition, consistent with section 90A of the Act, the Applicants or an interested party may request that the ACCC hold a conference to discuss the draft determination.

Annexure – New Energy Tech Consumer Code

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.

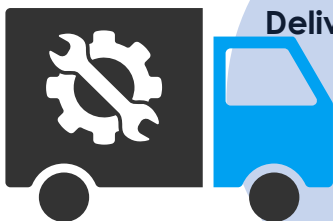


Contracts

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

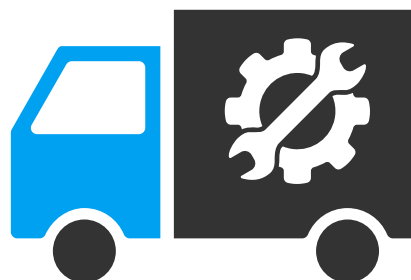


you are experiencing financial hardship, including by advising you of any relevant government assistance schemes and by offering you a payment plan.

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.