



Level 17, 2 Lonsdale Street  
Melbourne Vic 3000

GPO Box 520  
Melbourne Vic 3001

tel: (03) 9290 1800

[www.accc.gov.au](http://www.accc.gov.au)

Our ref: AA1000514  
Contact officer: Miriam Kolacz  
Contact phone: (03) 9658 6476

22 October 2020

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

By email: [REDACTED]

Dear Ms Lim

**Clean Energy Council Limited application for re-authorisation AA1000514 – outstanding issues**

Thank you for the submissions and responses to the ACCC's requests for information that the CEC has provided to date (namely on 22 July, 3 September and 5 October).

The purpose of this letter is to outline what the ACCC considers to be the outstanding issues for the CEC to consider and respond to, prior to the ACCC making its final determination.

**Outstanding issues**

*Provisions of the Code which relate to Buy Now Pay Later finance*

In its submission responding to interested party submissions (22 July 2020), the CEC stated that the Code Administrator is actively reviewing alternative finance providers who are not subject to the provisions in the pro forma. It noted that signatories will not be required to use the pro forma in relation to a finance provider if that provider has in place a statement that is in line with requirements under Clause 2.1.24 (that is, the arrangement is not regulated by the *National Consumer Credit Protection Act 2009* (Cth), has dispute resolution procedures, hardship variation policies and default payment arrangements for consumers).

On 15 September 2020, the Australian Competition Tribunal (**Tribunal**) made its determination in respect of the New Energy Tech Consumer Code (**NETCC**). The Tribunal's determination outlines a number of conditions that it has imposed amending provisions of the NETCC related to requirements that 'buy now pay later' (**BNPL**) finance providers must meet in order for signatories to offer such finance arrangements under the NETCC. Annexure B of the Tribunal's determination sets out these conditions. Please advise whether CEC has considered the Tribunal determination with respect to BNPL finance providers and considered whether any provisions in the Solar Retailer Code relating to BNPL providers need to be amended in light of that determination.

## *Fees*

In its application for re-authorisation, the CEC did not raise the prospect of increasing fees for signatories who choose to appeal sanctions imposed by the Code Administrator, but in its letter of 3 September 2020 CEC advises that it proposes to introduce a \$750 fee. The rationale and need for this fee is unclear to the ACCC; the CEC is not introducing any new appeals processes or services for existing signatories; and the new \$750 fee the CEC intends to introduce for rejected applicants already appears to cover the cost of that new appeals mechanism. Please respond to this issue, including outlining why the imposition of a \$750 fee for appeals by signatories to appeal decisions of the Code Administrator in applying sanctions would not lead to public detriment by acting as a barrier to signatories seeking to exercise the appeal option, in the context where that ability to appeal is an important check to minimise the risk of sanctions being imposed incorrectly.

In its response dated 3 September 2020, the CEC advised that the Code Administrator is considering making further increases to the subsequent application fees due to the changes the ACCC had proposed to the exclusion periods as a condition in its draft determination. In response to the request for information (dated the 5 October 2020) the CEC stated that the Code Administrator would seek to add \$100 to the application fee to cover some of the costs of processing applications and providing advice over the phone and email to signatories. We understand that the CEC intends to increase the application fee from \$200 to \$300. The rationale for increasing the application fees because of the proposed reduction in the exclusion periods is unclear to the ACCC, particularly when an application fee already exists each time an applicant lodges an application. Please respond to this issue.

## *Length of authorisation*

When the CEC lodged its application for re-authorisation, it sought authorisation for three years which provided for a two year transitional period and a one year period to allow time for the Tribunal to make its decision in the NETCC matter. In its draft determination, the ACCC proposed to grant authorisation for two years. Since the draft determination was released, the Tribunal has made its decision in respect of the NETCC (i.e. on 15 September 2020).

While the CEC has provided information about what actions need to be undertaken to transition signatories across to the NETCC, no information has been provided on the timeframe or project plans. To support CEC's request for a three year duration of authorisation, we request that the CEC provide the ACCC with a timeframe and/or project plan which outlines the proposal for transitioning signatories to the NETCC.

## *The CEC's ability to change the Solar Retailer Code*

Clause 2.4.26 of the Solar Retailer Code provides:

*The Code Administrator/Code Review Panel may need to modify both the Code and supporting documentation to reflect the changing industry and ensure the Code standards continue to meet the stated objectives of the Code. Changes required may be identified through regular reviews of the Code which will assess the Code's effectiveness and possible areas for improvement (see section 3.8). Any major changes will be undertaken in consultation with the key stakeholders including signatories, industry, ACL regulators and consumer protection agencies. Signatories are obliged to comply with the most current version of these documents at all times. Code signatories will be notified by email of any changes to these documents, and will be given three months' notice of any significant changes.*

The ACCC is seeking to better understand the scope of this provision. Please outline under what circumstances the CEC has sought in the past, and may seek in the future, to amend the Solar Retailer Code and supporting documentation under clause 2.4.26.

*Amendments to Solar Retailer Code to reflect changes CEC has proposed in its submissions*

There a number of changes which the CEC has stated it will make to the Solar Retailer Code in its submissions provided to the ACCC since the draft determination. In providing the final updated version of the Solar Retailer Code for which authorisation is sought, please indicate whether the following changes have been reflected in the Code:

- Retaining the 30 day period for which a retailer can submit an appeal (as outlined in CEC's response to the ACCC's request for information on 5 October 2020)
- The process for appointing a delegate for the Code Review Panel (as noted in CEC's response to the ACCC's information request, dated 5 October 2020)
- The exclusion periods which will be applied to a prospective applicant seeking to become a signatory (as noted in CEC's submission dated 3 September 2020)
- The CEC's statement that in practice, the Code Administrator consults with the Code Review Panel prior to invoking clause 3.6.4 (as noted in CEC's response to the ACCC's information request for information dated 5 October 2020)
- Any other changes to the provisions of the Solar Retailer Code which may flow from considering the issues outlined in this letter.

**Next Steps**

Please provide a response to these issues, and a copy of the final version of the Solar Retailer Code in respect of which authorisation is sought, by 5 November 2020.

A copy of this letter and your response (subject to any request for material to be excluded) will be placed on the ACCC's public register.

If you wish to discuss this letter, please contact Miriam Kolacz on 03 9658 6476.

Kind regards



Danielle Staltari  
Director  
Adjudication