



CEC submission to Attachment B: Request for Information (Public Version)

The CEC provides this submission to the ACCC's Request for Information dated 17 September 2020 (Attachment B).

Code Administration issues

1. For the role of the Code Administrator please explain:

a. How the Code Administrator is selected;

As per Section 3.1, specifically 3.1.2 of the Solar Retailer Code, the Code is administered by the Code Administrator. The Code Administrator is defined as the CEC under Glossary and Definitions and the CEC selects candidates that have:

- High-level analytical, oral and written communication skills
- Problem solving skills and strong attention to detail
- Customer service experience to provide assistance and advice to signatories over phone and email
- Reporting and process improvement experience
- An understanding of the solar industry and/or consumer protection legislation (for example, the Code Administrator consists of staff who were formerly from consumer protection agencies, government agencies, energy retailers and solar PV retailers)
- A mix of experience and qualifications (Masters in Environments in Governance and Policy, Bachelor of Arts, Masters of Environmental Science and Law)
- Demonstrated experience within the solar PV industry, particularly within a regulatory area

The precise criteria for selection for individual roles within the Code Administrator will depend on the individual role.

b. Whether the Code Administrator is separate from the CEC Board;

The Code Administrator function sits within the organisational structure of the CEC, and does not report directly to the CEC Board. There is no commonality between members of the CEC Board and persons within the Code Administrator function (ie, Code of Conduct Team). As part of the requirements of the Code and its Terms of Reference, the Code Review Panel has oversight and monitoring of the Code Administrator. The CEC Board provides strategic oversight and direction to the CEC and has its own Chairperson and deputy Chairperson. The Code Administrator carries out day to day operations relating to the Code.

c. What experience the Code Administrator has in investigating complaints or breaches of the Solar Code; and

The Code Administrator (that is, in particular, the Code of Conduct Team) includes a number of staff who have experience in compliance, inspections and dispute resolution. The experience and qualifications of various staff members includes, by way of example:

- Certificate IV in Government Investigations (Regulatory Compliance) or similar combined with relevant experience in the field of inspections (Certificate III in Investigative Services, and a Victorian Private Security Individual Licence in the category of Investigator)
- Experience in investigating claims for personal injuries, and the process of complaint investigation including interview of stakeholders, collecting information, and assembling relevant documents for reporting
- Experience in conducting investigations of errors in currencies with an investment bank and reporting on regulatory breaches in the financial services sector
- Prior experience as a licensing agent which included negotiations to ensure commitment to licensing terms and conditions
- Demonstrated prior experience with other CEC programs such as the Accredited Installer program with notification to installers and allocation of demerit points
- Experience in assessing complaints and provided reports on whether a matter was substantiated or not
- Experience in quality assurance programs including inspection of works according to regulations, contract administration and providing reports in construction management
- Experience in consumer dispute resolution, including coordination of cases and information gathering, verification and review of information with appropriate document controls
- Experience in the carrying out of technical assessments of solar PV and in monitoring compliance with guidelines

d. What training the Code Administrator undertakes to assist it in investigating breaches of the Solar Code.

All members of the Code of Conduct Team are “on boarded” with in-house training and mentoring from experienced staff regarding the Complaints Procedure and the Code. Specific training has been provided to the members of the Code of Conduct Team from appropriately qualified staff on the steps of an investigation, and advice sought from legal representatives on the provision of written statements and the use of call recordings in sales phonecalls conducted by signatories.

Regulators and government agencies have given presentations to the Code Administrator (for example, ASIC) and members of the Code of Conduct Team have also attended presentations conducted by Choice, ACMA, Consumer Affairs Victoria and ACCC. The CEC in its capacity as Code Administrator will, as resources allow, provide further formal training to Code of Conduct Team members to further enhance the compliance and investigation skills of the Code Administrator.

2. Under both the Solar Code and Complaints Procedure, in what circumstances can a signatory be suspended or cancelled? How much warning is a signatory given when a suspension or cancellation will apply? Can the Code Administrator and the Code Review Panel impose a suspension or withdrawal on a signatory?

The Code Administrator follows clause 3.6.5 of the Code. The Complaints Procedure addresses the issue of suspension, providing that where three severe and/or major breaches are formally substantiated (and in respect of which sanctions have been issued) in a 12 month period, suspension is automatic.

The Code Administrator also assembles an internal panel of CEC staff (external to the Code Administrator) as per Clause 2.4 of the Complaints Procedure to assess the alleged breaches and recommended course of action.

A suspension might also occur (per 3.6.5(b) of the Code) where the signatory has failed to provide evidence that they have performed the required rectification within a reasonable timeframe, in respect of a determined breach of the Code. The suspension would then usually be lifted by the Code Administrator as soon as evidence has been provided to it that the remediation actions have been completed.

If a signatory fails to provide evidence they have addressed a breach of the Code within a reasonable timeframe (for example, in the latest cancellations the Code Administrator has attempted to contact the signatory over a period of 12 weeks with no response), their status may be cancelled by the Code Administrator.

In the cases of serious, wilful or systemic non-compliance that is detrimental to consumers a signatory may be removed with immediate effect as per clause 3.6.4 of the Code. Examples of this conduct might include, by way of hypothetical example, the practice of forging consumer signatures or employing unlicensed tradespeople to perform electrical work with findings validated by the relevant agency. It is the practice of the Code Administrator to consult with the Code Review Panel prior to invoking clause 3.6.4.

As to process, where a determination has been made of the suspension of a signatory, the Code Administrator notifies the retailer in question and the suspension takes effect the next day and this is reflected on the CEC's website. The Code Administrator provides further details of suspensions and cancellations in the **attached** Quarterly Compliance Update issued on 25 September 20 **(restriction claimed)**.

a. When does the Code Administrator / Code Review Panel inform the general public and interested party that a signatory has been suspended or withdrawn from the Solar Code (as provided for in clause 3.6.6 of the Solar Code)?

This is amended on the CEC website

<https://www.cleanenergycouncil.org.au/industry/retailers/compliance-activity>

after the Code Administrator notifies the signatory in question. The Code Administrator also communicates this in the Quarterly reports.

b. If the Code Review Panel makes a different decision to the Code Administrator, how does the Code Administrator inform the general public of the Code Review Panel's decision?

The Code Administrator would, immediately upon being provided by the Code Review Panel with notice of such decision, amend the relevant information on the CEC website

<https://www.cleanenergycouncil.org.au/industry/retailers/compliance-activity>

c. Clause 3.5.2(d) of the Solar Code provides that where a breach is found to have been made, depending on the severity of the breach, the Code Administrator will either allocate a sanction in accordance with section 3.6 of the Solar Code or provide documentation relating to the breach along with a recommended course of action to the Code Review Panel for consideration. Please explain the

circumstances where the Code Administrator decides to impose a sanction and the circumstances where the Code Review Panel makes the decision on the sanction to be imposed.

The Code Administrator will impose a sanction in accordance with section 3.6 where the breach has been substantiated, and in the Code Administrator's experience, it rarely exercises the power in Clause 3.5.2(d) of the Code and the signatory does not dispute that the breach has occurred.

If any breach is disputed, the signatory has a right of appeal to the Code Review Panel who consider all materials in relation to the issue, including reasons for the appeal. The Code Review Panel decide if the breach is upheld or not and the breach is either withdrawn or a sanction is issued according to the severity level of the breach accompanied by reasons for the determination.

d. What are the factors the Code Administrator would take into account in deciding to lower a sanction for a breach?

This provision has been added (at 3.5.3 of the proposed code) to account for the different ways in which a particular breach can occur – e.g. if a signatory contravenes the Code in circumstances which are of low impact to consumers or to the program integrity and the strict application of the Code would see a sanction imposed which is impractical or excessive under those circumstances. The Code Administrator would also consider the extent to which the evidence showed that this was an isolated event and the extent to which the signatory had already taken steps and corrective action to address the breach and prevent its reoccurrence.

As the ASR program has continued to evolve, the Code Administrator has continued to refine its approach to encouraging compliance with the Code.

A “support to comply” approach, within the terms and provisions of the Code, will be preferred by the Code Administrator where the signatory acknowledges the breach and is proactive in rectifying the problem, provided there is no substantial consumer harm and the breach does not reflect or indicate blatant non-compliance (for example, issuing outdated contract documentation that was rejected by the Code Administrator at application stage, or if there is evidence that the signatory was aware of the issue prior to Code Administrator engagement and did not take action to rectify the problem).

A “support to comply” approach will be used for first time breaches of advertising provisions under clause 2.1.1 if the signatory does not have a history of advertising non-compliance, and will be used for minor or medium non-compliances as per the breach matrix. The Code Administrator also utilises a similar approach when the consumer harm is minimal (for example for grid connection issues), and where the signatory is willing to cooperate and has pre-emptively addressed the issue.

e. For the last 2 financial years, please provide details of the appeals which have been conducted by the Code Review Panel, what the outcome of the Code Review Panel was (including the reasons for the decision) and whether the decision was different to the Code Administrator.

Please refer to the attachment marked ‘Appeals data for 30 June 2018- 30 June 2020’ (**restriction claimed**).

3. Appeals mechanism for rejected applicants and exclusion period:

a. Could the CEC include the one, two and three month exclusion periods in the Solar Code?

The CEC could include this into the Solar Code at Section 4.1 of the Code.

b. At what stage can an applicant choose to appeal a CEC decision to reject their application to the Code Review Panel? For example, can they do so after any rejection of their application, or only after their application has been rejected a third time?

The Code Administrator would anticipate that applicants could do so at any stage.

c. Amended clause 4.2.5 of the Solar Code states that "...applicants will be allowed a maximum of one appeal to the Code Review Panel, or its appointed delegate." We understand this to mean that once a retailer chooses to appeal a CEC decision to reject their application, they lose that right (regardless of how many subsequent times they choose to apply). Please confirm if this is correct.

Yes, this proposed provision mirrors the existing appeal mechanism in the Code and rejected applicants would be allowed one appeal to the Panel per application. For clarity, the Code Administrator confirms that an applicant would have a single right of appeal in respect of each application it may choose to undertake.

d. Amended clause 4.2.3 states that "appeals must be lodged within 15 days of the original Code Administrator's decision..." Please explain why the period for submitting an appeal has been reduced from 30 to 15 days.

This has been done in response to the ACCC's draft determination which has suggested that the CEC consider the ACCC's feedback¹ on the reduction of the exclusion periods. The ACCC has considered that exclusion periods should be reduced to one, two and three months respectively for rejections (paragraph 4.93 of the draft determination). The Code Administrator will accept the proposed changes to appropriately balance the Code Administrator's concerns with detriment to applicants.

The CEC considers that in order to give effect to the now reduced exclusion period, the time period for the exclusion period should run from, if the applicant elects not to appeal, the date of notice of the CEC's rejection of the application or, if the applicant elects to appeal, and the Panel rejects the appeal, then the exclusion period ought to run from the date the applicant receives notice of the CRP's decision. Upon further consideration, the appeals period would continue at 30 days.

4. Amended clause 4.2.4 of the Solar Code states the Code Review Panel, or its appointed delegate, will consider and provide a ruling on the appeal in writing, along with reasons for the determination, as soon as reasonable practicable. Please outline:

a. Who the appointed delegate will be and how they will be selected;

The Panel will discuss a number of potential candidates which fit the selection criteria (outlined below) and inform the Code Administrator regarding the preferred candidate.

b. In what circumstances the Code Review Panel will choose to use an appointed delegate, rather than hearing an appeal themselves; and

The Panel would only seek to appoint a delegate if the volume of appeals became over-whelming.

c. What experience the delegate will have

¹ Paragraphs 4.58, 4.60 and 4.87 of the ACCC draft determination dated 13 August 2020



Appropriate qualifications (technical solar PV or legal) and administrative decision-making experience would be mandatory requirements for the appropriate candidate.

The delegate should have no conflict of interest, be independent of Code signatories and Code Administrator and suitably qualified to hear appeals, which would replicate the requirements in Clause 3.2.2 of the Code.

Fees

5. On page 3 of the CEC submission, it states that the Code Administrator is also considering making further increases to the subsequent application fees due to the changes in exclusion periods. Based on the CEC’s website, there is an application fee of \$200 and a franchisee application fee of \$100, and a review fee of \$200 applies if an application needs to be reviewed for a third or subsequent time. Please explain the rationale for the proposed fee increases for subsequent applications and what the fee increase would be.

Rationale

- The CEC has run the ASR program at a loss for a number of years (see deficits of [REDACTED] recorded for the last 3 financial years) and need to increase fees to cover its costs. We submit that it is reasonable to do so as there has been no fee increase since 2015 and are proposing a modest increase.

Proposal

The Code Administrator estimates 10 hours for processing an application and this would cost approximately [REDACTED]

- 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 phone and email to signatories.
- In the alternative, the Code Administrator would seek to increase the annual fees from 0.8kW to \$1.00kw

6. On page 2 of the CEC submission, it states that the CEC intends to introduce a corresponding appeals fee for signatories for consistency across both appeal mechanisms and the need to cover its costs as the fees for signatories have not increased since 2015. Please outline:

a. How many appeals the Code Review Panel considers each year and the cost of the appeals process for the CEC for the last 2 financial years, and

The number of appeals can vary each year and the approximate cost for the appeals in the last 2 financial years have been approximately [REDACTED] based on the quarterly meetings held by the Code Review Panel.

b. How much income the CEC has received from ongoing annual fees paid by signatories over the last 2 financial years.

[REDACTED]
[REDACTED]
[REDACTED]



Estimate 1: Utilising the existing CEC branded website

Website / Front End Requirements: \$50,000

- Design and development of new NETCC pages
- Expanded NETCC related features and enhancements
- Existing CMS support

CRM / Back End Requirements: \$115,000

- Application form and CRM connector build,
 - NETCC application workflow process, inc. payments and invoicing
- CRM email templates, time based workflows and renewal process
- CRM Account object support for NETCC organisations
- New technologies record types
- CRM Case management for complaints & breaches
- CRM based reporting
- API endpoint updates

Total for Estimate 1: \$165,000 and a minimum build time of 6 months

Estimate 2: A new “white labelled” NETCC branded website

Website / Front End Requirements: \$153,000

- Discovery and Analysis
- CMS and Hosting setup
- Core site build
- Design and development
- Expanded NETCC related features and enhancements
- Design of white labelled email templates
- Support of above templates via email marketing solution

CMS / Back End Requirements: \$115,000

- As Above in Estimate 1

Total for Estimate 2: \$268,000 and a minimum build time of 8 months

Note: Annual application maintenance and support costs of around \$20,000 should also be accounted for (due to server costs of new website).



QUARTERLY COMPLIANCE UPDATE

Welcome to the Clean Energy Council's quarterly compliance update, providing information about compliance activities in the Approved Solar Retailer program.

Please refer to the [compliance activity page](#) on our website for the latest information on what compliance activity has taken place in the previous quarter, including information on suspensions and cancellations.



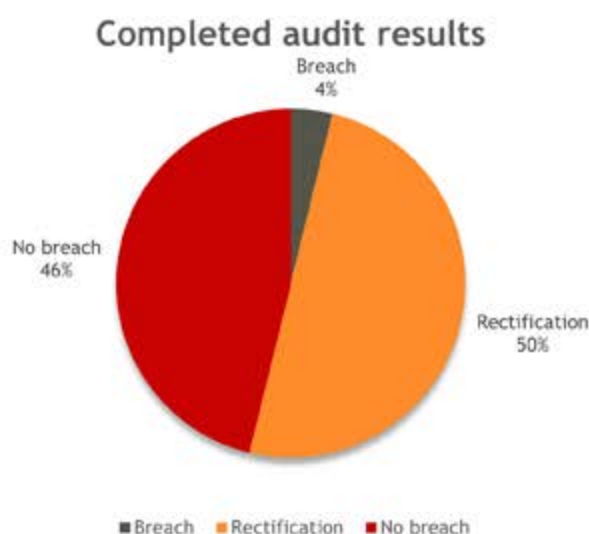
Audit activities

Each year, 10 per cent of signatories will be audited by the Code Administrator. Signatories are identified for auditing through various methods, which are listed in Section 3.4.2 of the Code. The signatories who are selected will have their sales and contract documentation, along with their online content audited.

The Code Administrator is pleased to report that of the audits conducted so far:

- 46 per cent have resulted in no breaches of the Code being found
- 50 per cent have resulted in some rectification work by the signatory
- 4 per cent have resulted in a breach of the Code.

These results are very encouraging and show that the majority of signatories understand their obligations under the Code.



Closed cases resulting in sanctions: 1 May - 31 July 2020

The Code Administrator is satisfied that the required audit and remediation tasks have been completed for the breaches recorded in the table below. In accordance with Section 3.5 of the Code of Conduct, the signatory had the appropriate breaches recorded against

them.

	Behaviour	Section of Code	Clause reference	Breach level
Retailer 1	Online content contained misleading advertising and information relating to system performance	Advertising and promotions	2.1.1	Severe
	Employed badgering techniques	Sales and quoting practices	2.1.2	Major
	Used the CEC's corporate logo unlawfully and without authorisation	Compliance with the law	2.4.1	Severe
Retailer 2	Failed to provide a compliant contract	Point of contract	2.1.6	Severe
	Consumer contract was not legible	Point of contract	2.1.7	Severe
	Failed to provide a comparative cost of the system - finance vs cash price	Finance and alternative purchasing arrangements	2.1.22	Medium
	Failed to facilitate grid connection within a reasonable time	Connection to the electricity grid	2.2.7	Medium
	Failed to keep consumer informed of issues that arose during grid connection application	Connection to the electricity grid	2.2.8	Medium
Retailer 3	Failed to provide compliant contract	Point of contract	2.1.6	Severe

	Behaviour	Section of Code	Clause reference	Breach level
Retailer 4	Engaged in misleading and deceptive conduct by making untruthful claims about their business capacity and previous work completed. Also made misleading claims that failed to refer to a reputable source	Advertising and promotions	2.1.1	Severe
Retailer 5	Failed to provide a compliant site-specific performance estimate	Point of contract	2.1.6	Severe
	Failed to have the product variation documented and signed off by the consumer prior to installation	Refunds	2.2.3	Major
Retailer 6	Failed to provide a compliant contract	Point of contract	2.1.6	Severe
Retailer 7	Failed to provide a compliant site-specific performance estimate	Point of contract	2.1.6	Severe
	Did not install the system as per the contract and failed to have the substitution of products documented and signed off by the consumer prior to installation	Refunds	2.2.3	Major

	Behaviour	Section of Code	Clause reference	Breach level
Retailer 8	Provided a quotation to the consumer that made promises or claims that were known to be untrue or incorrect	Advertising and promotions	2.1.1	Severe
Retailer 9	Advertised a new offer without including disclaimers. Failed to advertise the total price as prominently as they advertised a component of the price	Advertising and promotions	2.1.1	Severe
Retailer 10	Failed to provide a compliant site-specific performance estimate	Point of contract	2.1.6	Severe
Retailer 11	Failed to provide a compliant site-specific performance estimate	Point of contract	2.1.6	Severe
	Failed to provide required information for a finance purchase	Finance and alternative purchasing arrangements	2.1.22	Major
	Required documentation was not provided to consumer post installation	Documentation	2.3.1	Medium

Suspensions

Signatory name	Start date	End date
iGreen	17/06/2020	Current
Pedley's Solar	23/04/2020	07/07/2020
United Solar Energy	10/06/2020	15/06/2020

Signatory name	Start date	End date
Genpac Energy	25/06/2020	14/08/2020

iGreen

iGreen sent multiple advertising/generic quotation emails to a consumer that contained false statements and claims. The nature of the statements and claims were considered by an internal CEC panel to be false, and no alternative interpretation of the material could be drawn. The nature of the breach was deemed serious and wilful, causing Section 3.6.4 of the Code to be invoked and iGreen to be suspended. The mandatory audit steps required of the signatory are yet to be completed, and as such, the suspension remains in place.

Pedley's Solar

Pedley's Solar had its status as an Approved Solar Retailer suspended due to online content that was misleading to consumers. Consumers who provided their contact details to Pedley's Solar were subjected to badgering techniques. Pedley's Solar were also using the Clean Energy Council corporate logo unlawfully and without authorisation. This resulted in three breaches at the severe and major levels that led to the company's suspension. Pedley's Solar was required to engage an independent auditor to audit its advertising and marketing procedures. Ongoing strategies have been implemented on the audit findings and the Code Administrator is working with Pedley's Solar to assist it with complying with Code advertising requirements.

United Solar Energy

United Solar Energy failed to provide a site-specific performance estimate at the point of contract. Two severe breaches had been previously recorded against United Solar Energy. The failure to provide a site-specific performance estimate resulted in a third severe breach being issued and United Solar Energy being suspended. United Solar Energy undertook an audit of its business processes and implemented strategies to prevent the breach from reoccurring. The results of the audit satisfied the Code Administrator, and the suspension was subsequently lifted.

Genpac Energy

Genpac Energy failed to provide compliant contractual documentation to a consumer. The contracted system design was altered on the day of installation without consumer consent. Additionally, the system designs did not comply with the Clean Energy Council's Accreditation Install and Design Guidelines. This resulted in two severe and one major breach of the Code and Genpac being suspended. The Code

Administrator provided Genpac with detailed steps to rectify the non-compliance. Genpac failed to complete the remediation work. This failure resulted in the cancellation of Genpac Energy's status as an Approved Solar Retailer. This will be documented in the next Compliance Quarterly Report.

Cancellations

No Approved Solar Retailers were cancelled this quarter.

Appeals

No appeals were made against the Code Administrator's findings this quarter.

From the Code Administrator

Applying STCs correctly

A reminder to signatories that they must provide consumers with the applicable number of Small-scale Technology Certificates (STCs) at the point of contract as required under relevant regulations.

When deducting the STC incentive from the system price, the maximum quantity of STCs that can be created must be applied. The quantity of STCs included in the completed STC form cannot be different to the quantity applied at the point of sale. The number of STCs that can be created per system is based on its location, total solar panel capacity in kilowatts and years left in the Small-scale Renewable Energy Scheme as defined in the Renewable Energy (Electricity) Regulations 2001 and the Clean Energy Regulator (CER) guidelines.

The CER has an [online calculator](#) to assist signatories calculate the maximum number of applicable STCs that a system is eligible for. This requirement is set out under Section 2.1.6(c) of the Code, and identified breaches will have sanctions applied accordingly.

GST and STCs

The Code Administrator has observed some signatories calculating GST on STCs incorrectly. GST is applied to STCs only in certain circumstances. Signatories must follow the advice provided on the [ATO website](#). A summary of this advice is:

- GST is not applied to STCs if the system is not used for business purposes
- GST is applicable on STCs if the business owner is registered or required to be registered for GST and the installed system is used for business purposes.

Export limitations – installing a system without pre-approval

There has been an increase in the amount of complaints received by the Code Administrator regarding export limitations. If a pre-approval to connect to the grid was granted and conditions were changed by the distributor, the consumer must be advised of the changes. This includes an explanation of the new site conditions and their consequences. A new contract, including a site-specific performance estimate, must be created to document the new site conditions, and the consumer's written approval must be obtained before the installation can proceed.

Should the consumer not consent to the new site conditions, they are entitled to cancel the contract and receive a full refund.

Approved Solar Retailers that install solar systems without pre-approval (when required) or do not correctly document a change in site conditions may be breached and sanctioned. The breach level assigned to this is major to severe (depending on the circumstances).

Responsibilities for individuals or businesses acting on behalf of a signatory

Approved Solar Retailers will be held responsible for the actions of their employees, contractors, agents and any other individuals or businesses acting on the signatory's behalf, as per Section 2.4.24 of the Code. As the contracted party to the consumer, the signatory is responsible for the goods under the contract. Put simply, if the installer or sales agent fails to comply with the Code, the signatory will be breached for that non-compliance. Please ensure you have the processes in place to oversee the work of any individuals or businesses that act on your behalf. Subcontracting the work will not subcontract your risk as the Approved Solar Retailer.

Items covered under the five-year whole of system warranty

A five-year warranty must be provided on the operation and performance of the whole solar PV system, including workmanship and products (refer to Clause 2.2.10 of the Code). There are items

that are not considered part of the 'whole solar PV system' and are considered 'add-on' items that do not affect the operation and performance of the system. These add-on items are not required to be warranted for five years, and it would not be expected that you replace any of these products as part of the five-year retailer's warranty. Such items include:

- monitoring devices (that are not built into the inverter)
- switchboard upgrades
- smart meters (including Fronius smart meters).

Componentry is still considered to be part of the 'whole solar PV system' and must therefore be warranted for five years by the Approved Solar Retailer.

Door knocking is still a hazard

A reminder that door knocking puts workers and customers at high-risk of spreading COVID-19. If your business is still door knocking, stop now. Approved Solar Retailers who are reported to the Code Administrator for door knocking activities may be breached under Section 2.4.26 (a) of the Code and the appropriate sanctions will apply.

Feedback

We value your input as an Approved Solar Retailer and welcome any suggested topics or issues that you would like to have covered in these reports.

Under Section 2.4.10 of the Code, signatories must undertake to inform the Code Administrator of any breaches to the Code made by other signatory companies.

Please submit any suspected breaches of the Code via our online [complaint form](#).

Please contact codeofconduct@cleanenergycouncil.org.au if you would like further information or wish to discuss this report.



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