



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

**Clean Energy Council –
Application for revocation of A91495 & A91496 and the substitution
of authorisation AA1000514
Interim authorisation decision
1 October 2020**

Decision

1. The Australian Competition and Consumer Commission (**ACCC**) has decided to suspend the operation of authorisations A91495 & A91496 and grant interim authorisation in respect of the application for authorisation AA1000514 in substitution for the suspended authorisations.
2. Interim authorisation is granted on the same terms authorised by the existing authorisations A91495 & A91496. This will enable the Clean Energy Council (**CEC**) and current and future retailer signatories to continue to make and give effect to the Solar Retailer Code of Conduct (the **Solar Code**) on the same terms as authorised in 2015 while the re-authorisation process continues.
3. Interim authorisation commences immediately and remains in place until it is revoked or the date the ACCC's final determination comes into effect.

Background

4. On 15 May 2020, the CEC lodged an application for revocation of authorisations A91495 & A91496 and substitution of authorisation AA1000514, which sought re-authorisation of an amended version of the Solar Code dated March 2020.
5. The ACCC decided to grant authorisations A91495 & A91496 in a determination dated 23 September 2015. Authorisation was granted for five years and came into force on 15 October 2015, and is due to expire imminently.
6. On 13 August 2020, the ACCC issued a draft determination proposing to grant conditional re-authorisation in relation to the March 2020 version of the Solar Code for two years, subject to proposed conditions that the Solar Code is amended to:
 - include an appeals mechanism for retailers who seek to become signatories but are rejected, and
 - reduce the exclusion periods that retailers who have been rejected must wait before they are able to re-apply.
7. The ACCC invited submissions on the draft determination, and subsequently invited further feedback after an amended version of the Solar Code dated 3 September 2020 was submitted by the CEC.
8. On 22 September 2020, the CEC amended its application for re-authorisation to include a request for interim authorisation. The CEC seeks interim authorisation for the version of the Solar Code the ACCC authorised on 23 September 2015.

The CEC

9. The CEC is a not-for-profit membership-based organisation for the clean energy industry in Australia. It represents over 800 businesses in the renewable energy industry

(such as solar, wind, hydro, bioenergy, geothermal and marine) and energy storage, and over 6,500 solar installers.

10. The Solar Code is a voluntary code intended to improve consumer protection and promote best practice for retail businesses selling solar photovoltaic systems. The Solar Code was first authorised in 2013 and was re-authorised in 2015.

The authorisation process

11. Authorisation provides protection from legal action for conduct that may otherwise breach the competition provisions of the *Competition and Consumer Act 2010* (Cth) (the **Act**). Broadly, the ACCC may grant authorisation if it is satisfied that the benefit to the public from the conduct outweighs any public detriment, including from a lessening of competition. The ACCC conducts a public consultation process to assist it to determine whether proposed conduct results in a net public benefit.

Interim authorisation

12. The ACCC may, where it considers it appropriate, grant interim authorisation which allows parties to engage in conduct while the ACCC is considering the substantive application.
13. Given the imminent expiry of authorisations A91495 & A91496 (authorising the current Solar Code), the CEC requested interim authorisation to enable those authorisations to remain in effect while the application for re-authorisation is considered.
14. The CEC submits that:
 - the public benefit of the Solar Code has already been established in the ACCC's draft determination of 13 August 2020
 - without interim authorisation, there is a risk that the Code Administrator along with current signatories to the Solar Code will be left without the legal protection, given authorisations A91495 & A91496 are due to expire imminently
 - without this protection, the Solar Code could not serve its function to provide increased consumer protections in the small-scale solar industry, and
 - in order to maintain the status quo, the CEC requests that the ACCC grant interim authorisation while the public submissions and related issues are considered in authorisation AA1000514.

Consultation

15. The ACCC has not conducted a public consultation process in respect of the request for interim authorisation. This is due to the urgency of granting interim authorisation to avoid the expiry of the current Solar Code authorisation, and also the reasons for decision set out in the next section.
16. The ACCC has conducted a public consultation process on the substantive application for re-authorisation and is examining the public benefits and detriments likely to result from the Solar Code during that process.

Reasons for decision

17. In granting interim authorisation, the ACCC recognises the urgency of the request for interim authorisation with the approaching expiry of the current authorisation of the Solar Code.
18. Although the ACCC's assessment of the application for re-authorisation is well advanced and a final determination will be made in the near future, the final determination will not come into effect before the existing authorisations expire.

19. Granting interim authorisation allows the ACCC to continue with its assessment of the application for re-authorisation. It also enables the CEC and current and future retailer signatories to make and give effect to the Solar Code on the same terms as authorised in 2015, and continue the operation of the Approved Solar Retailer scheme, while the re-authorisation process continues. Interim authorisation will maintain the status quo, until the final determination on the re-authorisation application is made and comes into effect.
20. The ACCC previously granted re-authorisation in relation to the current version of the Solar Code in 2015. The ACCC had also granted authorisation in relation to an earlier version in 2013. On both occasions, the ACCC concluded that the likely public benefits outweighed any likely public detriments.

Reconsideration of interim authorisation

21. The ACCC may review a decision on interim authorisation at any time, including in response to feedback raised following interim authorisation.
22. The ACCC's decision in relation to the interim authorisation should not be taken to be indicative of whether or not the final authorisation will be granted.