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Submission: Clean Energy Council – application for revocation of authorisations A91495 and A91496 and substitution of AA1000514 (Solar Retailer Code)

In response to your letter of 26 May 2020, the Smart Energy Council (SEC) is pleased to provide a submission as an “interested party” on the application by the Clean Energy Council (CEC) for revocation of authorisations A91495 and A91496 and substitution of AA100051 – the Solar Retailer Code (SRC).

The Smart Energy Council is a peak national body for the solar and battery storage industry, with more details outlined below.

Executive Summary

The Smart Energy Council is committed to building a strong, safe and sustainable solar and storage industry. We support the need for an industry-wide Code of Conduct.

The Clean Energy Council Solar Retailer Code of Conduct (the Code) is anti-competitive and not fit for purpose.

There are a number of peak industry and stakeholder bodies that operate within the solar and battery storage industry. These bodies should all be involved in the development and administration of an industry-wide code.

That is exactly what has happened in the solar and storage industry, with all major stakeholders coalescing, and conducting an extensive process over several years to develop the New Energy Technology Consumer Code (NETCC) Code. The SEC is a joint applicant for the proposed NETCC, which will be administered by representatives from across the industry.

The Clean Energy Council Solar Retailer Code of Conduct is the opposite of the NETCC. It has been developed, branded, and is administered by the CEC with all



funds directed to the CEC, to the exclusion of other industry peak bodies and stakeholders. It is inherently anti-competitive.

As a result, the Code does not enjoy the confidence or support of a significant section of the solar and battery storage industry in Australia and is not delivering optimal consumer protection. Rather, it is widely seen to be an extension of an existing CEC regulatory monopoly through Commonwealth Renewable Energy Target legislation, (Renewable Energy (Electricity) ACT & Regulations 2001 as amended).

This situation is compounded because the Code is no longer voluntary in some jurisdictions. In South Australia, Queensland, and particularly in Victoria, state governments require any company that wishes to access solar and battery subsidy programs in those states to be a signatory to the Code.

This situation is worsened by the fact the Code is not fit for purpose in relation to several of these schemes, as outlined below. The Code used ostensibly to offer greater assurance to consumers in the solar battery support programs even though the Code makes no reference to batteries.

Companies strongly object to being compelled to participate in the Code, and many companies would not participate in the Code if they had any reasonable way to avoid participation – they are compelled to participate in a “voluntary” code.

In our view that is not the sign of a successful, responsive, and well designed and administered industry wide Code of Conduct or a useful instrument to increase competition and enhance consumer outcomes.

The CEC uses its monopoly position and additional market power as the sole administrator and owner of the Code to offer discounts for its regular membership to Retailer Code signatories. This blurring between the Code and peak body membership is an abuse of their monopoly accreditation power, is anti-competitive and disadvantages consumers. The Smart Energy Council can provide specific examples of this.

As applied the Code requires signatories to disclose detailed confidential and commercial in confidence information about the most sensitive aspects of their business operations, including market share, margins and other very sensitive information.



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In short the problems created by the Code are significant and cannot be remedied through simple amendments, which in any case are superseded by the NETCC already subject of an ACCC Determination. It is for this reason that the Smart Energy Council opposes any extension to the Code.

About the Smart Energy Council

The Smart Energy Council is the largest peak body for the smart energy industries in Australia. Its member companies cover all renewable technologies such as solar, wind & pumped hydro at all scales, energy storage of all types and scales, IT smart energy control systems, electric vehicles and renewable hydrogen.

With foundations going back to 1954, today we are a not for profit public company limited by guarantee. We have around 1000 members nationwide, including solar and storage manufacturers, distributors, retailers and installers, renewable energy project developers and investors, academics, analysts and consultants.

The Smart Energy Council is governed by a volunteer Board, elected from among our membership. By membership numbers we are the largest solar and battery related industry group in Australia.

The Smart Energy Council participates in a range of advisory and expert reference committees and boards across the energy sector, in government agencies such as AEMC, AEMO, the Energy Security Board, State and Federal Governments and non-government bodies such as Standards Australia. The SEC also participates internationally in similar roles and was foundation member of the Global Solar Council

The Smart Energy Council is an applicant for the New Energy Tech Consumer Code (NETCC).

The Smart Energy Council objects to any extension of the Solar Retailer Code due to a range of issues outlined below.

Not Representative

The Clean Energy Council Solar Retailer Code of Conduct is managed and marketed as the CEC code, administered by the CEC, overseen by the CEC, with all revenue going to the CEC and determinations made by the CEC.



As a result the broader industry has been resentful of what they see as a unilateral move by the CEC to impose greater monopoly control over the industry.

The CEC is listed in federal legislation as an accreditation provider for solar PV installers along with two other named groups. Over time, one of those groups has ceased trading and the other merged with the Clean Energy Council. While it was never the legislative intention, the practical result of this is a single monopoly accreditation provider, namely the CEC. This non-government monopoly means that the Clean Energy Regulator (CER), agency with legislative responsibility for administration of the RET legislation defers to and is dependent upon the CEC. The majority of the PV & energy storage industry believes the CEC is the regulator, many think it is a government agency.

The Smart Energy Council agrees with the ACCC that monopolies represent poor policy and inevitably lead to poor outcomes for stakeholders and consumers.

Consumers are best served by genuine broad based industry wide codes that have the support of all of the major stakeholders and the confidence of reputable professional industry participants. That is not the case with the Clean Energy Council Solar Retailer Code of Conduct.

The Code as it has been implemented is not fit for purpose, and has resulted in reduced competition and anti-competitive behaviours by the CEC that should not be allowed to continue.

The ACCC [Guidelines for Voluntary Industry Codes](#) says Industry Codes should be supported industry wide, and be owned and controlled by an entire industry, not just one body. Effective codes get the support of the full industry, and therefore protect the largest number of consumers. The CEC Solar Retailer Code does not meet this test.

An exemption should only be considered by the ACCC when no viable alternative exists. That is not the case in this instance. A viable industry wide alternative exists, and is supported by a wide array of industry peak bodies and stakeholders (including the CEC), which have coalesced around the NETCC code.

Since its authorisation, it has been branded and marketed strongly as the “CEC Solar Retailer Code” misleadingly suggesting it is representative of the majority of the industry. The CEC Code has been developed, controlled, administered by the CEC. The continued references to the “CEC Approved Solar Retailer Code”,



the pervasive CEC branding and the persistent claim by the CEC that it holds IP over the content of the Code confirms that this has never been an industry code as defined under the ACCC Guidelines even though the ACCC has endorsed that code.

It is untenable that that be allowed to continue.

Poorly Applied

Over the first period of the code the SEC has received numerous complaints from its members about the arbitrary nature of adverse rulings and the lack of natural justice when appealing decisions made by the CEC under the Code.

Very few, if any, are prepared to publicly criticise the Code or the Code administrator for a perceived fear of retribution or excessive costs that could make it simply unviable for them to continue trading. It is a significant disincentive that almost all companies face when confronting process and natural justice concerns under the CEC Solar Retailer Code.

Not Voluntary

Recent State & Territory government programs to support batteries have mandated the CEC Solar Retailer Code of Conduct as a compulsory pre-requisite for participation by installers. This has perverted the SRC such that it is not fit for the purposes intended for example: It does not mention batteries **at all** – it is solely aimed at PV installations.

Until State Governments began to mandate the “voluntary” SRC, it had not been a widely supported code. The number of signatories to the current Retailer Code remains a minor proportion of CEC Members and an even smaller proportion of CEC non-members and retailers generally. In five years until 2018 the CEC Solar retailer Code of Conduct Membership has been as follows:

2013	3
2014	10
2015	15
2016	27
2017	45
2018	120
2019	660



Up until end 2016, there were just 27 signatories – half joined in 2016. In 2017 and 2018 the Queensland government indicated it would be requiring CEC Solar Retailer Code for anyone wanting to participate in its scheme. The SA government also advised it would be doing the same and has done so. So has the Victorian government.

In short, the voluntary code was unsuccessful in attracting a meaningful percentage of the industry to participate. It was only when the code became a mandatory requirement by state governments that the numbers of signatories increased, not because they saw inherent value in the scheme, but simply because they could not trade if they did not sign.

The signatories represent around 20% of retail sales, so ~80% of the industry have not signed onto the Code even with massive pressures to do so. A claim that those who have signed on offer better value or higher quality services to consumers is unsupported. The Victorian PV subsidy exacerbates the mandatory nature in that State. There are more than 6500 installers under the monopoly accreditation scheme run by the CEC – the Code covers a tiny proportion. We believe the Smart Energy Council has around twice the number of industry members as does the CEC and twice the number of installer members as the CEC.

The CEC claims to speak for more than 6000 PV installers, but that is based on the legislated monopoly they have on accreditation for the RET Scheme. They actually have fewer than 10% of total installers as CEC members, (and fewer than the number of installers who are members of the SEC).

The effect of the mandating of the SRC as a condition of participating in Government is to add costs of between \$600 and \$6,000 of fees simply to tender for Government business – one way or another those costs are passed through to consumers. The businesses who do so are primarily those who already comply with the highest levels of quality, value & services to consumers.

The CEC is named in regulations as the single solar PV installer accreditation body. Increasingly the CEC is seeking to extend these monopoly provisions into energy storage design, installation, maintenance and approved product lists in the energy storage space.

This monopoly accreditation process has led to widespread concern among solar PV installers, as the CEC have failed to deliver high levels of customer focused service to installers and customers, but rather acted as a scheme monopolist.



One indication of the discontent with the CEC within the industry was highlighted in 2018 when in a single day over 350 solar and energy storage industry companies wrote to State Energy Ministers opposing any extension of the monopoly role of the CEC (attached).

Monopolies deliver poor public policy outcomes. The extension of the SRC would reinforce that monopoly position of the CEC.

Not Fit For Purpose

Compounding the issue that the code is not voluntary, as outlined above, is the fact that it is not fit for purpose when referenced by regulators.

South Australian government made the code a mandatory requirement for its battery rollout scheme. Both the Queensland and Victoria and governments have battery rollout requirements under the schemes that require signatory to this code. The Code does not reference batteries at all.

State governments are attempting to regulate via an instrument that is not fit for purpose, namely this Code, which, as its title implies, applies to solar PV retailers.

Commercial in Confidence Material Required

One of the requirements in determining fees under the code is that signatories provide detailed revenue information to the CEC.

This provides the CEC detailed commercial-in-confidence information about all signatory businesses. As the Code is now mandatory in multiple states, in effect, this means that the CEC has a real time detailed commercial view of the proprietary and confidential activities of, in some cases, all market participants in the sector. This should be replaced by a less commercially sensitive mechanism for fee determination and that is the intention of the NETCC.

This been a strong point of significant contention throughout the industry in relation to the application of the Code, and should not be permitted to continue.

NETCC Code: CEC is Conflicted in the Transition



The multitude of anticompetitive, and inappropriate aspects of the code, its administration and application mean that the code is simply not fit for purpose and not able to be simply modified to alleviate these concerns.

The vast majority of consumers, more than 85%, are using installers who are not members of the Code so cannot avail themselves of the advantages the Code might bring.

The primary goal must be to get the NETCC industry wide code in place as soon as possible.

The SEC was a founding and active member of the Behind The Meter Working Group (BTMWG) established at the request of COAG in September 2017, which worked from that time until joining with other parties to seek authorisation for the NETCC in 2020. The CEC, SEC and others developed a new industry wide code. The SEC worked in good faith with that group and strongly supported the adoption of a new single Code since the formation of the BTMWG.

[REDACTED]

[REDACTED] That letter said inter alia:

- 1) The following proposed principles for engagement are aimed at underpinning the framework for the Behind the Meter Working Group (BTM WG) and the Clean Energy Council (CEC) working together to develop the proposed single industry code (the Industry Code) through revisions to the existing *Solar Retailer Code of Conduct (SRC)*:
 - a) The CEC, through its review of the current SRC, and BTM WG agree to develop Industry Code with broad industry and stakeholder support. This accords with the COAG Energy Council's request outlined in its letters to industry stakeholders of 16 August 2017 which established the BTM WG (Attachment 1)
 - b) The BTM WG has made significant progress on developing consumer focussed aspects of a contemporary code, the CEC agrees to take as a starting point for SRC revisions the principles agreed by the BTM WG as outlined in Attachment 2 (BTM WG updated principles doc).



The role of the CEC in the SRC and the financial advantages of that and its broader monopoly under the Renewable Energy Target means that any delay is to the significant advantage of the CEC and to the detriment of consumers. The SEC sees the fast tracked adoption of the NETCC as the best path to offer benefits to consumers. There should be few barriers for the establishment of the NETCC as a replacement Code as the parties had already agreed that the CEC would continue as Administrator, already appointed a Chair, and have committed to assist the adoption of the NETCC.

Extension Period Opposed

The period of extension is not appropriate. The SEC encourages the ACCC to:

- Not extend the code; or
- If the code is authorised for extension, the extension period should not exceed the minimum necessary to achieve the transition to the NETCC.

Member Feedback

A number of comments received from Smart Energy Council members in response to this review, are outlined below. The companies have done so in confidence because they are concerned about ramifications & possible consequences of speaking openly. We have provided the direct quotes, but redacted the personal & company details as the submission will be published. Some members have made direct submissions. The SEC can provide the original responses in-confidence to ACCC.

Member A

“Dear ACCC... here is my submission:

I don't think the Clean Energy Council's Approved Solar Retailer Scheme should be reauthorised by the Australian Competition and Consumer Commission in its current form on account of how the past operation of the CEC Approved Retailer Scheme has...

1. Not been voluntary in practice.
2. Reduced competition which has been against the public interest.
3. Has resulted in the CEC acting to the detriment of solar installation companies that are not Approved Solar Retailer members.



Not Voluntary: Various subsidy schemes — most notably the Victorian Solar Homes Scheme — have required participants to be CEC Approved Retailers to access the state solar rebate. If you are not a CEC Approved Retailer in Victoria, your solar systems will be about \$2,000 more expensive. Because of this, membership was clearly not voluntary but a prerequisite of remaining in the residential solar business in Victoria.

In SA you cannot access the SA Home Battery scheme rebate (about \$4000) unless you are an Approved Solar Retailer. If you want to be in the residential storage installation business in SA you are forced to be an Approved Solar Retailer.

Reduced Competition: Subsidy schemes that require CEC Approved Retailer membership reduce consumer choice and are anti-competitive.

Does Not Represent the Industry: The CEC claims to represent the rooftop solar installation industry but has taken actions to promote members of its Approved Retailer scheme to the detriment of installation companies that were not members. This has resulted in installers being driven out of the residential business in Victoria, not for the quality of their work but simply because they were not members of a group the CEC describes in its application or authorization as “voluntary”. There was obvious potential for conflict of interest in the organization in charge of setting standards and accreditation creating the Approved Retailer group and in practice, it has been glaring. The current CEC Approved Retailer Scheme should either be wound down or altered significantly from its current state. I can make a few suggestions, but the issue needs more consideration than I’ve given it so far:

1. Wind down the CEC Approved Retailer scheme in a way that causes minimal disruption and inconvenience for existing members.
2. Completely separate the existing Approved Retailer scheme from the CEC.
3. Replace it with a robust, independent, inspection and mystery shopper scheme with publicly available results that provides consumers with clear information on the quality of installations.

Member B

“The truth is - if the industry was regulated correctly it wouldn't need a code of conduct.

There is no code of conduct to be an electrician - it is just regulated by legislation.



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The ACC should actually take some action against companies doing the wrong thing - it might deter fraudulent "cowboy" companies if there were ever a infringement issued.

The Code of Conduct appears to be nothing more than another cash cow for the CEC.. It's extremely difficult to even register as a CEC Approved Retailer without purchasing their "in house" T&C's.

We attempted to use our own T&C's and they denied us accreditation, had to purchase their version to comply with their "standards".....

Member C

"Dear John,

We believe giving the CEC a monopoly is not appropriate and there should be an offer to the Smart Energy Council of a similar scheme or a co-management.

