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Our ref: AA1000439  
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14 June 2019

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

By email: [MLim@cleanenergycouncil.org.au](mailto:MLim@cleanenergycouncil.org.au)

Dear Ms Lim

**Re: Clean Energy Council & Ors application for authorisation [AA1000439] - interested party submissions**

I refer to the above application for authorisation lodged with the Australian Competition and Consumer Commission (the **ACCC**) on 30 April 2019.

As you are aware, on 13 May 2019 the ACCC wrote to interested parties seeking submissions in relation to the application by 22 May 2019. The ACCC granted extensions to this deadline following requests by a number of interested parties.

The ACCC has received public submissions from the following interested parties:

- Stephen Breheny, SB Solar Battery Pty. Ltd.
- Adrian Luke, DMS Energy
- Michael Berris
- Origin Energy
- Matthew Richens, Richens Electrical Services
- Consumer Action Law Centre
- Joe McMahon
- An Interested Party
- Ralph de Lautour, E.M.D.O.W. Energy
- Warren Bacon, Waztec Services
- Tesla Motors Australia
- Ronald Brakels, SolarQuotes
- Energy & Water Ombudsman Queensland
- AGL

- Energy Australia
- Neal Nugent, Neal Nugent Electrical + Solar
- CHOICE & Ors
- Heuson Bak, Solar Naturally
- Uniting Vic. Tas.
- Brighte
- FlexiGroup
- Department Energy and Mining, South Australia

All publicly available submissions are available on the ACCC internet site at [www.accc.gov.au/AuthorisationsRegister](http://www.accc.gov.au/AuthorisationsRegister).

### **Key issues raised by submissions**

#### *Effective administration of the New Energy Tech Consumer Code*

A number of submissions raised concerns regarding the administration of the proposed New Energy Tech Consumer Code (**NETCC**). Some of these submissions specifically raised concerns about the Clean Energy Council's (**CEC**) ability to effectively administer the NETCC, given previous experiences with the CEC's administration and enforcement of the provisions of the Solar PV Retailer Code of Conduct (**Solar Code**).

Effective administration and enforcement of a code is critical to the ACCC's assessment of any claimed public benefits said to arise from that code. In assessing the claimed public benefits of the NETCC, the ACCC will consider the likelihood that the NETCC will be effectively administered and that appropriate sanctions will be imposed on signatories for any breaches of the NETCC.

The ACCC understands that although there is a draft governance framework proposed for the NETCC you are unable to confirm who is likely to be appointed administrator of the NETCC until after the ACCC's final determination is made, but that the CEC intends to apply for the roles of steward and administrator of the NETCC.

The identity and expertise of the administrator of the NETCC are important factors in the ACCC's assessment of whether the NETCC is likely to be administered and enforced effectively, including whether they have relevant expertise in relation to consumer protection issues.

### Request for information

1. In this regard, we invite the Applicants' response to the concerns raised by interested parties in relation to the CEC's administration of the Solar Code. In doing so, please provide a full record of complaints received by the CEC under the Solar Code, how those complaints were handled and the outcome of those matters, including any sanctions imposed.
2. The ACCC requests any additional information or further clarity that the Applicants can provide on this issue, including a shortlist of likely candidates for the position of steward and administrator if it is available, along with their credentials.

### *Exclusion of buy now pay later (BNPL) arrangements*

A number of submissions expressed concerns regarding clause 24 of the NETCC, which effectively prevents signatories from offering buy now pay later (**BNPL**) arrangements, as they are not regulated by the *National Consumer Credit Protection Act 2009* (Cth).

The submissions highlight the potential lessening of competition between finance providers that may result from the conduct prescribed by clause 24 of the NETCC, particularly if State Governments continue to require retailers to be signatories to such codes in order to access government grants or rebate schemes.

These submissions also question the extent of the claimed public benefits said to arise from clause 24 of the NETCC, noting that BNPL arrangements do not necessarily result in the negative consumer outcomes as claimed. They also submit that consumer protections for BNPL arrangements are available under other legislation such as the ASIC Act and the Australian Consumer Law, as well as internal BNPL provider policies.

We note that a number of submissions were also very supportive of clause 24 of the NETCC. These submissions argue that clause 24 of the NETCC is necessary in order to protect consumers.

If you wish to comment on the submissions, please do so by **COB 28 June 2019**.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact David Wang on (03) 9658 6587.

Yours sincerely



Joanne Palisi  
Director  
Coordination and Strategy  
Merger and Authorisation Review