

Your ref: AA1000439

1 July 2019

Joanne Palisi  
Director – Coordination and Strategy  
Merger & Adjudication Review Division  
Level 17 Casselden Place  
2 Lonsdale Street, Melbourne 3000

Sent by email to: [david.wang@accc.gov.au](mailto:david.wang@accc.gov.au)

Dear Ms Palisi

**Re: Request for information**

I refer to correspondence from the Australian Competition and Consumer Commission (the ACCC) dated 14 June 2019 and thank you for granting the extension from 28 June 2019 until 1 July 2019. As requested, this paper is a response to the concerns raised by interested parties in relation to the CEC's administration of the Solar Retailer Code of Conduct ("the Code").

**Background**

The Clean Energy Council (CEC) administers the Code and has done so in its capacity as Code Administrator since the ACCC authorised the Code in 2013.

The Code aims to promote best practice measures for retail businesses selling solar PV systems. In addition, the CEC also administers an accreditation scheme of individual installers, working with the Clean Energy Regulator to ensure continued compliance with solar installation work.

To date, there are an estimated 4000 solar PV retailers and more than 6000 CEC-Accredited installers in the marketplace. The Code Administration currently has a 30 to 40% rejection rate of all retailer applicants<sup>1</sup>, and approximately 160 individual installers were sanctioned for non-compliant work utilising a demerit point system.

The Code Review Panel is the oversight and monitoring body of the Code, which consists of three representatives independent of the CEC and independent of signatories. The Code specifies that the representatives must have relevant expertise in consumer

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<sup>1</sup> The key reasons are:

- (a) Non-compliant terms in documentation submitted- specifically:
- on refund provisions as the Code outlines specific situations where customers are entitled to a refund,
  - passing the warranty responsibilities back to the manufacturer when the Code states a signatory must provide a minimum 5-year warranty, and
  - the Site-Specific system design being non-compliant such as not providing a roof plan;
- (b) Non-compliance with a number of the contract provisions as outlined by the Code, such as not providing values of STCs, not providing a timetable for supplying and installing the system or not stating the specific model being supplied;
- (c) Advertising practices - not including adequate disclaimers on pricing on advertisements/promotions;
- (d) Potentially misleading wording around government schemes on advertisements/promotions and;
- (e) Non-disclosure of relevant background information - such as being a director or manager of a failed or insolvent solar business or non-disclosure of previous tribunal claims or court actions.

advocacy, industry experience and knowledge of regulation or administration of consumer law. The panel is currently chaired by Gerard Brody, the Chief Executive of the Consumer Action Law Centre along with Damien Moyse, the Policy and Research Manager at the Alternative Technology Association and Melanie Robertson, the Chief Executive of the Committee for Ballarat.

The Code Review Panel meets quarterly to ensure independent arbitration of matters referred by the Code Administrator, provide an avenue of appeal for signatories and to review policy changes to the Code.

### **Comment on public submissions**

Given the considerable number of stakeholders and interested parties, I note the small number of critical submissions. I also note that a handful of submissions from interested parties appear to be duplicates of one template and would submit that the assertions made in the template are not validated or supported. The Code Administrator relies on the information provided in this letter to refute the criticisms made of the Code and its administration in submissions.

### **Complaints received by the Code Administrator**

The number of complaints received by the Code Administrator is proportionate to the number of signatories to the Code. At its launch in November 2013, there were five founding signatories. As of 28 June 2019, there are 400 signatories to the Code.

The CEC re-examines compliance with the Code when a signatory seeks renewal of its status on each anniversary of its approval by requiring signatories to re-submit their documentation and complaints data received for assessment.

The Code Administrator's complaints procedure was recently updated in March 2019 after a mandatory period of consultation of three months with Code signatories and approval by the Code Review Panel. I have attached the complaints procedure (Attachment A) and a complaints process map for your reference (Attachment B). By way of background, the complaints procedure was previously updated in 2015 and included with the CEC's application for revocation of an authorisation and the substitution of a new authorisation.

As requested, the record of complaints in relation to the signatories received by the CEC is attached for your reference (Attachment C).

This information is provided in-confidence and we request that this information not be displayed on the public register as the spreadsheet of complaints contains identifying information of complainants and signatories to the Code.

### **Key outcomes**

The Code Administrator assesses and investigates complaints in line with the process set out by the Code and determines when alleged breaches of the Code have occurred, along with the appropriate rectification action. The Code prescribes the breach level<sup>2</sup> in accordance with the sections of the Code with a minor, medium, major and severe classification which can be altered at the discretion of the Code Review Panel<sup>3</sup>. Although the Code Administrator is not a dispute resolution body,<sup>4</sup> in some instances the Code Administrator has resolved disputes on behalf of complainants as indicated below.

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<sup>2</sup> See section 3.5.3 of the Code

<sup>3</sup> Refer case number 4870 where a breach was downgraded by the Code Review Panel from severe to major.

<sup>4</sup> See section 3.1.3 of the Code

Some outcomes obtained by the Code Administrator in relation to the complaints from 2014- 2015 included:

- Submission of an action plan to rectify issues;
- Suspension of a signatory from the program and;
- Rejection of a signatory as an approved solar retailer.

In 2016-2017, outcomes obtained by the Code Administrator in relation to the complaints included:

- Referral to the CEC Accredited Installer team for further assessment;
- Further training undertaken by sales representatives of the signatory and;
- Provision of an audit to show that accurate performance estimates of the PV system was being provided to the consumer.

In 2018-2019, outcomes obtained by the Code Administrator in relation to the complaints include:

- Compensation paid to consumers regarding down time of the PV system;
- Refund of monies for incorrect direct debits of a purchase;
- Warning to signatory to cease potentially misleading advertising;
- Suspension of a signatory due to repeated complaints of misleading advertising and;
- Amendment of website in relation to potentially misleading information displayed.

#### Compliance outcomes to date

Year	No. Complaints	No. Signatories	Breaches	Rectifications	Dismissed	On Hold	Under Investigatio
2013	1	5		1			
2014	2	18	1	1			
2015	7	22	3	3	1		
2016	5	39	1		4		
2017	12	55	3	2	7		
2018	35	184	3	13	17	2	
2019	71	400	6	13	23	11	18
<b>Total</b>	<b>133</b>	<b>400</b>	<b>17</b>	<b>33</b>	<b>52</b>	<b>13</b>	<b>18</b>

### **Independent review**

In line with the requirement that the Code and its administration be independently reviewed every three years, a 2016 review was conducted by Cameron Ralph Navigator (now known as Cameron Ralph Khoury), a private consultancy firm that specialises in industry codes and complaints handling. The review took 5 to 6 months and the findings of Cameron Ralph Navigator were as follows:

“Our Review of these complaints satisfied us that the new complaints procedure is being appropriately applied and the Code Administrator is handling complaints efficiently and fairly. The Code Review Panel’s role provides an independent oversight to the process and clear mechanism where there is dissatisfaction with the Code Administrator’s complaints handling. We spoke with a couple of Code signatories that had experienced these procedures, either as complainant or as the subject of a complaint, and these interviewees were supportive of the new procedures.”<sup>5</sup>

### **Auditing strategy**

By signing the Code, signatories agree to be subject to regular monitoring and to allow audits on their compliance with the Code.<sup>6</sup> In previous years, auditing of signatories has been primarily complaint-driven and intelligence led. The Code Administrator also relies on analysis of complaints data submitted by signatories upon renewal to detect emerging trends and any systemic issues within the industry.

The Code Administrator employs various monitoring and auditing measures<sup>7</sup> such as compliance checks at signatories’ premises, desktop reviews of advertisements on websites of signatories, and mystery shopping checks. We are in the process of refining the audit program by engaging a Melbourne based marketing agency to run several mystery shopping checks in order to achieve an audit target of five percent of all signatories to the Code.

We hope that this information allows the ACCC to understand the rigorous and comprehensive approach the CEC takes to administering the Code, and our strong track record in ensuring compliance with the program. Should you have further queries on the content of this submission, please do not hesitate to contact me on [mlim@cleanenergycouncil.org.au](mailto:mlim@cleanenergycouncil.org.au) or on 03 9929 4153.

Sincerely,



Mindy Lim  
Code of Conduct Manager

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<sup>5</sup> Page 10 of the 2016 Independent Review Solar Retailer Code of Conduct. A full copy of the Report can be made available upon request.

<sup>6</sup> See section 3.4 of the Code

<sup>7</sup> See section 3.4.2 of the Code



# SOLAR RETAILER CODE OF CONDUCT

## COMPLAINTS PROCEDURE

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This document details the process by which the Code Administrator will respond to alleged breaches of the Solar Retailer Code of Conduct (the Code).

There are 2 types of non-compliance that the Code Administrator will action:

**Alleged Breach** – Any serious non-compliance of the Code

**Rectification** – Any Signatory that receives 3 requests to rectify minor non-compliance of the Code within 12 months will have their 3<sup>rd</sup> issue treated as a breach and these procedures should be followed. Please refer to the Complaints Procedure for Rectifications document on how to process rectifications.

The Code Administrator, as defined in the Solar Retailer Code of Conduct, means the Clean Energy Council.

### 1. Alleged breach

1.1 Alleged breaches of the Solar Retailer Code of Conduct can be raised via:

- (a) self-reporting by Code signatories;
- (b) consumers emailing the Code of Conduct inbox directly;
- (c) consumers using the complaints form available on the CEC website at <http://www.solaraccreditation.com.au/retailers/complaints-form.html>; or
- (d) any other person or body using the above complaints form or directly emailing the Code of Conduct inbox.
- (e) Code Administrator as Signatory has had 3 requests to rectify minor non-compliance of the Code within 12 months
- (f) Evidence of alleged breaches can also be taken from any other source, including:
  - i. proactive audit compliance checks;
  - ii. mystery shopping;
  - iii. feedback from consumers obtained through consumer satisfaction surveys;
  - iv. investigation of cases in which signatories may have breached the Code;
  - v. analysis of conciliation and arbitration cases;
  - vi. analysis of consumer complaints;
  - vii. media reports;
  - viii. renewal process
  - ix. information received from other Code signatories; and
  - x. any additional sources.

1.2 All communication will be recorded in full and retained on electronic file by the Code Administrator in P:\10 Code of Conduct\05. Complaints & Breaches

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- 1.3 Written acknowledgment of receipt of a complaint will be sent to the complainant within three business days of the Code Administrator receiving the complaints form.
  - 1.4 Having lodged a complaint with the solar retailer or the relevant consumer protection organisation, the complainant may still lodge a complaint regarding an alleged breach of the Code with the Code Administrator.
  - 1.5 If the Code Administrator determines that the alleged behaviour does not fall within its jurisdiction as the retailer is not an Approved Solar Retailer or the complaint does not relate to the Code, the Code Administrator will:
    - a) pass the complaint to the Installation Integrity team to investigate any potentially poor workmanship by an Accredited Installer.
    - b) inform the complainant within five business days of receiving the complaint that he or she should redirect the complaint to the relevant body, for example, the solar retailer or, if the consumer is unsatisfied with the resolution of a complaint by that retailer, to the relevant consumer protection agency
  - 1.6 If the Code Administrator determines that the alleged behaviour is minor non-compliance from an Approved Solar Retailer the Complaints Procedure for Rectifications process should be followed.
  - 1.7 If the Code Administrator determine that the alleged behaviour may constitute a serious breach of the Code then a full investigation will take place using section 2 and section 3 of these procedures.

## **2. Investigating an alleged breach**

- 2.1 Where the Code Administrator determines that a breach may have occurred then further investigation will take place to allow the Code Administrator to gather the necessary information to inform the signatory. The Code Administrator will provide the signatory with:
  - (a) a complete list of allegations made against it; and
  - (b) copies of all documentation provided to the Code Administrator as evidence of the alleged breach or breaches; and
  - (c) where the complainant is not an individual consumer, the name of the complainant.
- 2.2 The signatory will have 21 days from the date of being notified by the Code Administrator of the alleged breach to respond to the allegations and provide evidence of its response (see section 3.5.2(b) of the Code).
  - (a) Where the signatory does not dispute the allegation, it must provide the Code Administrator with a written explanation of the action it has taken to rectify the breach and to ensure the breach will not occur again. Sanctions will be imposed according to section 2.5 of the Code
  - (b) Where the signatory disputes the allegation and does not provide the Code Administrator with evidence to support its position, the Code Administrator will proceed with its investigation of the complaint
- 2.3 The Code Administrator will investigate an alleged breach of the Code where it has classified the alleged behaviour as constituting a breach of the Code and:
  - (a) the signatory disputes the allegation made against it and does not provide the Code Administrator with a satisfactory explanation or evidence to support its position; and
  - (b) the signatory does not provide a response to the allegation made against it within 21 days of the Code Administrator's request (see section 2.2 above).
- 2.4 Where the Code Administrator determines to investigate an alleged breach of the Code, they may at their discretion, convene three appropriately credentialed CEC personnel to adopt and document a

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sound investigation plan. They may also choose to solely investigate the alleged breach and develop an investigation plan. The plan will be designed in accordance with this Complaints Procedure and to meet the specific requirements of the investigation.

The Code Administrator will investigate complaints using various means, including one or more of the following:

- (a) speaking with all involved parties;
- (b) requesting more information as required;
- (c) auditing the Code signatory's procedures where relevant;
- (d) talking to external organisations if required; and
- (e) the Code signatory presenting information to the Code Administrator as requested.

2.5 Before reporting the Code Administrator's findings to the signatory or to the complainant, all the Code Administrator personnel who devised the investigative procedure will consider the findings and the sanction.

### **3. Imposing Sanctions**

3.1 Where a breach of the Code is determined and section 2.3 above has not been satisfied, the Code Administrator will:

- (a) inform the signatory in writing of its decision and any sanction to be applied in accordance with section 3.6 of the Code

3.2 After one month has passed from the date of the notice given in 3.1 above, the Code Administrator will:

- (a) if the signatory **has not** appealed the decision:
  - i. notify the complainant of the outcome; and
  - ii. ensure sanction requirements have been completed in required timeframe
  - iii. record the outcome for the Quarterly Report, Annual Report, Code Complaints spreadsheet and as otherwise required; or
- (b) if the signatory **has** appealed the decision:
  - i. notify the complainant and signatory that the matter has been referred to the Code Review Panel; and
  - ii. prepare the necessary documentation for the Code Review Panel.

3.3 Where a breach of the Code is determined not have occurred, the Code Administrator will inform the signatory in writing of its decision

### **4. Appealing a decision of the Code Administrator**

4.1 A signatory is entitled to appeal the Code Administrator's ruling to the Code Review Panel (see Section 3.7 of the Code). An appeal may be made if:

- (a) a Code signatory believes that the Code Administrator did not exercise reasonable discretion; or
- (b) new evidence is revealed that was not made available to the Code Administrator in the process of making the original determination.

4.2 Appeals must be lodged within one month of the original determination by the Code Administrator.

4.3 Appeals must be lodged by completing the Appeals form on the Solar Accreditation website at <http://www.solaraccreditation.com.au/retailers/code-review-panel.html>.

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- 4.4 Where an appeal is lodged, the Code Administrator will acknowledge receipt of the Appeal form within 3 business days of receipt and will advise the signatory of the date of the next Code Review Panel meeting at which the appeal will be heard.
  - 4.5 If a breach is referred to the Code Review Panel (either by the Code Administrator, or by appeal), the Code Administrator will provide documentation relating to the breach, along with a recommended course of action to the Code Review Panel for consideration.
  - 4.6 The Code Review Panel will determine if a breach has occurred and the subsequent action, if any, that will be taken. The Code signatory may be called to present information to the Panel.
  - 4.7 All parties involved in the breach will be notified in writing of the outcomes of the investigation, along with reasons for the determination, as soon as reasonably practicable.
  - 4.8 All decisions by the Code Review Panel are binding and there is no further right of appeal.

## 5. Suspensions and Cancellations

- 5.1 When a Signatory has been issued 3 sanctions due to Severe or Major non-compliance in a 12-month time period, the Signatory will automatically be suspended
- 5.2 Signatory given 30 days to remove suspension by providing proof that non-compliance has been rectified. Suspension will remain until Code Administrator is satisfied with Signatories response.
- 5.3 If Code Administrator not satisfied with Signatories response, then breach will be referred to Code Review Panel (refer to 4.5 of this document)
- 5.6 If this the 3<sup>rd</sup> suspension for Signatory in a 12-month time period, the breach will be referred to Code Review Panel to have the Signatory cancelled
- 5.7 Any Signatory that has their Approved Solar Retailer status cancelled will be unable to re-apply for six months from date of cancellation
- 5.8 Where a Code signatory is cancelled from the Code, fees will not be refunded.
- 5.9 Subsequent application fees will occur

## 6. Data collection and reporting

- 6.1 It is critical to record and analyse data on industry complaints in order to ensure the Code remains effective. The Code Administrator will do this by:
  - (a) collating relevant data from state and federal consumer protection agencies; and
  - (b) collating complaints data supplied by Code signatories.
- 6.2 This data will be analysed and used to track the effectiveness of the Code, and to highlight newly arising problem areas that may need to be addressed by the Code. A regular summary of this data will be reported to the Code Review Panel by the Code Administrator.
- 6.3 All investigations of alleged breaches that result in a sanction or rectification will also be available on Code website as follows:

**Rectification** – Will be listed on Current Complaints table under Rectification heading. No company name listed

**Breach:** Will be listed on Current Complaints table under Breach heading. No company name listed

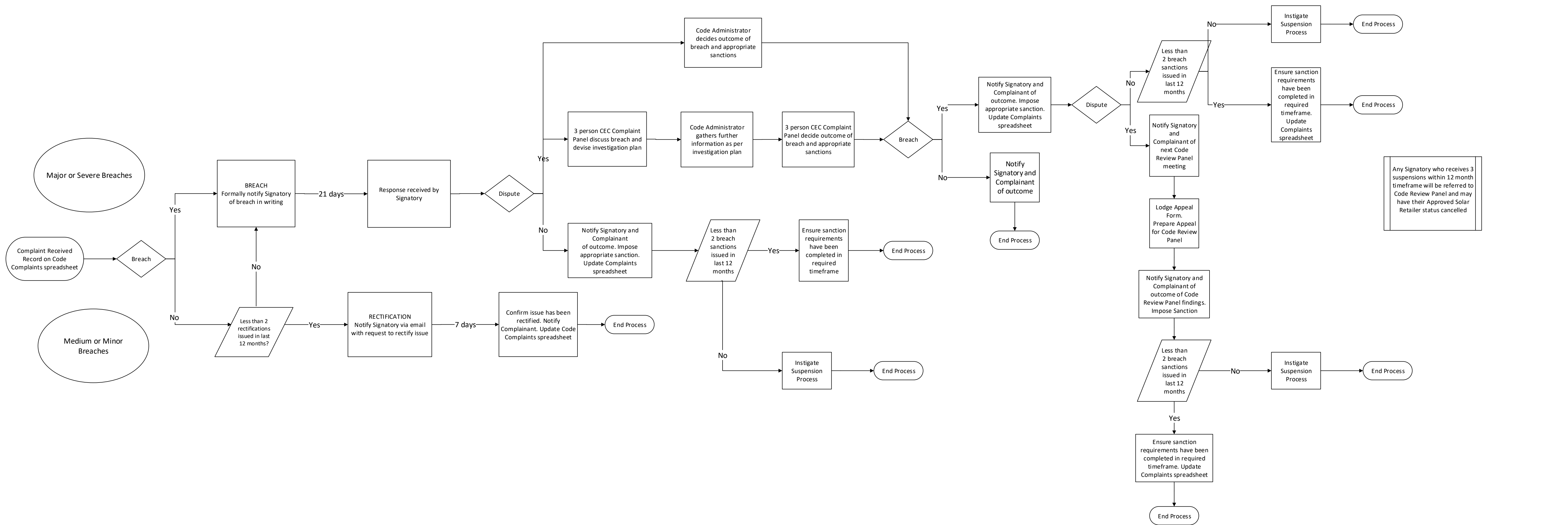
**Breach resulting in Suspension:** – Will be listed on Suspensions table. Signatory name, Complaint Reason and date of suspension will be listed

**Cancellation** – Will be listed on Cancellations table. Signatory name, Cancellation Reason and date of cancellation will be listed



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- 6.4 De-identified report of sanctions that have been imposed for breaches of the Code will be reported on Code website
  - 6.5 This Complaints Procedure will be analysed in the annual review of the Code by the Code Review Panel or as requested by Code Administrator.
  - 6.6 This procedure will be located on the Solar Accreditation website at <http://www.solaraccreditation.com.au/retailers/complaints-form.html>.

**END**



Major or Severe Breaches

Medium or Minor Breaches

BREACH  
Formally notify Signatory of breach in writing

Response received by Signatory

3 person CEC Complaint Panel discuss breach and devise investigation plan

Code Administrator gathers further information as per investigation plan

3 person CEC Complaint Panel decide outcome of breach and appropriate sanctions

Code Administrator decides outcome of breach and appropriate sanctions

Notify Signatory and Complainant of outcome. Impose appropriate sanction. Update Complaints spreadsheet

Notify Signatory and Complainant of next Code Review Panel meeting

Ensure sanction requirements have been completed in required timeframe. Update Complaints spreadsheet

RECTIFICATION  
Notify Signatory via email with request to rectify issue

Confirm issue has been rectified. Notify Complainant. Update Code Complaints spreadsheet

Notify Signatory and Complainant of outcome. Impose appropriate sanction. Update Complaints spreadsheet

Less than 2 breach sanctions issued in last 12 months

Ensure sanction requirements have been completed in required timeframe

Notify Signatory and Complainant of outcome

Lodge Appeal Form. Prepare Appeal for Code Review Panel

Notify Signatory and Complainant of outcome of Code Review Panel findings. Impose Sanction

Less than 2 breach sanctions issued in last 12 months

Ensure sanction requirements have been completed in required timeframe. Update Complaints spreadsheet

Any Signatory who receives 3 suspensions within 12 month timeframe will be referred to Code Review Panel and may have their Approved Solar Retailer status cancelled