

Your ref: AA1000439

5 September 2019

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

Sent by email to: [Theo.Kelly@accc.gov.au](mailto:Theo.Kelly@accc.gov.au)

Dear Ms Black

### **Re: Draft Determination in respect of the New Energy Technology Consumer Code**

I refer to the draft determination dated 1 August 2019 in respect of the New Energy Technology Consumer Code (“the NETCC”). This submission paper is a response to the concerns raised by interested parties in relation to the Clean Energy Council’s (‘CEC’) administration of the Solar Retailer Code of Conduct (“the Code”). The CEC, acting in its capacity as Code Administrator, relies on the information provided in this letter to refute the criticisms made of the Code and its administration in submissions to date.

### **Comment on public submissions**

The CEC takes seriously the comments made in submissions (and through other channels) that criticise the CEC’s ability to properly administer the Code. However, it should be noted that 12 submissions have raised concerns about the CEC’s administration, from a total of 964 applicants in six years (two out of 12 were double submissions from each individual party). Five submissions appear to have the same text and appeared to be co-ordinated and contain a number of general assertions with no specific or factual basis.

### **Governance**

Some of the submissions state that the CEC should not have allowed certain companies into the program; others are critical of the CEC for *not* allowing them into the program. It is the CEC’s intention to maintain good governance, for the protection of the Code Administrator, the Code’s reputation, and all stakeholders and interested parties. There will always be criticism of a body that seeks to enforce standards on participants within the industry. Signatories to the Code do utilise their status as a signatory as a means of distinguishing themselves from competitors within the industry.

The CEC applies the same processes to all applicants and endeavours to provide good customer service to the industry at the same time. For example, in the past three months, the Code Administrator has received an average of 194 phone calls per month, in addition to fielding email enquiries in relation to the program.

### **Applications**

It is within the remit of the Code Administrator to make an assessment of the applicant’s systems and procedures in addition to integrity checks before accepting or rejecting

applications.<sup>1</sup> The Code Administrator undertakes a comprehensive review of the applicant's documentation (including but not limited to its quotes, contracts, advertising, performance estimates, online presence, invoices, and complaints handling procedures) and provides ample opportunity to applicants to discuss the Code Administrator's findings. Rejected applicants are able to apply again after three months. The case studies referenced below show that some rejected applicants reapply and do eventually become signatories to the Code. The CEC are presently involved in two matters involving legal representatives with previously rejected applicants but note that these are on-going, and CEC remains amenable to finding a resolution.

## **Rejections and Appeals**

In response to submissions that have raised concerns about the rejection of applicants, we attach ten case studies of rejected applicants (**Attachment A**). Please note that we are requesting that this attachment be exempt from publication as it contains identifying details of rejected applicants. We also include a line graph tracking the rejection rates since October 2018 (**Attachment B**). This graph indicates a trend showing a decrease in rejection rates in the past months.

The Code governance includes an independent panel consisting of external experts<sup>2</sup>, which provides an important avenue of review. If a Signatory believes that the Code Administrator did not exercise reasonable discretion, that they were denied natural justice, or that new evidence has come to light that was not available at the time of original determination, they are entitled to appeal the determination of the Code Administrator to the Code Review Panel.

Signatories can lodge an appeal using the appeals form online and appeals must be lodged within one month of the original Code Administrator determination. They must be submitted in writing, detailing the relevant issue, and reasons why the appeal is being made. The Code Review Panel will consider the material and provide a ruling on the appeal in writing, along with reasons for the determination, as soon as reasonably practicable.<sup>3</sup>

## **Terceiro Legal Consulting submission dated 23 August 2019**

The submission from Terceiro Legal Consulting contains some serious, unsubstantiated and untrue allegations about its unidentified clients that the CEC will respond to separately. We note that it is difficult to respond to an anonymous submission. The CEC strenuously rejects the assertion that it has a "very poor record" in its capacity as Code Administrator. The CEC agrees in principle that an appeals process for applicants should be clearly articulated in the NETCC.

## **Objectives of the Code**

From our experience of administering the Code, we know that a certain level of discretion is required of an Administrator in order to effectively administer the code. The CEC invests significant resources into ensuring administration processes are fair, transparent, legal and help achieve the objectives of the Code<sup>4</sup>. This involves continuous consultation with industry, the independent oversight body and with professional legal advisors.

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<sup>1</sup> See section 4.1.2, 4.14 and 4.1.5 of the Code

<sup>2</sup> The Code Review Panel's composition is referenced in the CEC's submission dated 1 July 2019

<sup>3</sup> See section 3.7 of the Code

<sup>4</sup> See page 5 and 6 of the Code


## Code Fees

In response to the assertion that CEC levies large fees for administering the Code, it should be noted that the CEC has subsidised the program since its inception (**Attachment C**). CEC has done so because it believes that the Code is a valuable program that acts as a solid and substantial measure to reduce consumer harm within the industry by bringing increased accountability to retailers. Please note that we are requesting that this attachment be exempt from publication as it contains commercial in confidence information.

In the interests of ensuring the NETCC is properly administered, the CEC has raised with the Working Group areas of particular challenge so that these matters can be discussed and prepared for in respect of administration of the NETCC.

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 achieving the broad objectives of the Code. Should you have further queries on the content of this submission, please do not hesitate to contact me on [m\\_lim@cleanenergycouncil.org.au](mailto:m_lim@cleanenergycouncil.org.au) or on 03 9929 4153.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mindy Lim', written in a cursive style.

Mindy Lim  
Code of Conduct Manager