



Our ref: AA1000514
Contact officer: Miriam Kolacz
Contact phone: 03 9658 6476

30 June 2020

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

By email: [REDACTED]

Dear Ms Lim

Re: Clean Energy Council & Ors application for re-authorisation AA1000514 - interested party submissions

I refer to the above application for authorisation lodged with the Australian Competition and Consumer Commission (the **ACCC**) on 15 May 2020.

As you are aware, on 26 May 2020 the ACCC wrote to interested parties seeking submissions in relation to the application by 16 June 2020. 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:

- ACT Civil and Administrative Tribunal (ACAT)
- Associate Professor Penelope Crossley
- Noel Jago
- Energy & Water Ombudsman SA
- SolarQuotes
- Fred Torgovnikov
- AGL
- Arise Solar
- Bell Solar Pty Ltd
- Sungreen Solar
- Kuga Electrical
- FlexiGroup Limited
- Ian Cargill

- Tru Solar
- Adrian Luke
- Department for Energy and Mining South Australia
- Consumer Action Law Centre
- three interested parties whose identities have been redacted from their submissions at their request.

All publicly available submissions are available on the ACCC [public register](#).

The ACCC also received a number of submissions that were excluded from the public register at the request of the parties who provided those submissions.

Key issues raised by submissions

The majority of submissions received opposed re-authorisation of the Solar Retailer Code of Conduct (the **Code**) or only supported re-authorisation subject to further amendments. Below is a non-exhaustive summary of the main concerns raised in submissions. This summary includes concerns that were raised in submissions that were excluded from the ACCC's public register.

We note that some submissions were supportive of reauthorisation, including on the basis that the proposed amendments will improve consumer protections and strengthen competition.

Effective administration of the Code

A number of submissions raised concerns about whether the current provisions of the Code, and the Clean Energy Council's (**CEC**) interests, are enabling the Code to be administered in a fair and effective manner. In particular, submissions noted:

- difficulties with meeting the requirements to become a signatory, such as requiring businesses to have been operating for at least 12 months, and that no 'close family member' of any of a business' directors, partners or shareholders etc. have been involved in a business which has gone into liquidation or received a court judgment in the last five years
- the lack of an appeals mechanism for rejected applicants and concerns with the three-month exclusion period before applicants who have been rejected can reapply again to be signatories to the Code
- that certain breaches of the Code are too severe or not clearly defined. For example, some submissions raised concerns with a severe breach rating applying to signatories who may act in a way which brings the Code into disrepute
- that processes followed by the CEC to investigate complaints do not apply the principles of natural justice
- the fees charged by the CEC are significant and have an impact on small businesses
- the CEC has a conflict of interest as the body setting the standards and investigating breaches/enforcing the Code, and
- the Code/CEC is not representative of the majority of the industry.

Many submissions considered that issues such as those above are compounded by the fact that they do not consider the Code to be voluntary in practice. These submissions noted that

due to state government regulation (particularly in South Australia, Victoria and Queensland) that require the use of a CEC Approved Solar Retailer, solar retailers in some states can effectively not compete unless they are signatories to the Code.

The ACCC considers that effective administration and enforcement of a code is critical to its assessment of any claimed public benefits said to arise from that code. In assessing the claimed public benefits of the Code, the ACCC will consider the likelihood that the Code (including the proposed amendments to the Code) will be effectively administered and whether appropriate sanctions are being applied in a fair, transparent and consistent manner.

The ACCC will consider whether there are circumstances where the Code could result in a public detriment by impacting the ability of solar retailers to compete. For example, a lack of an appeal mechanism for rejected applicants or the process that is used to administer the application process may impact the ability of solar retailers to compete, particularly in those states which require consumers to purchase systems from a CEC Approved Solar Retailer.

The ACCC seeks your response to the issues which have been raised by interested parties about the effective administration of the Code.

Finance provisions

Submissions from FlexiGroup Limited and the Consumer Action Law Centre suggested specific amendments to the finance and alternative purchasing arrangements of the Code. The ACCC seeks your response to these suggested amendments.

Suggested amendments

A number of submissions suggested that the CEC's proposed amendments to the Code be modified or that further amendments be made. The ACCC seeks your response to the amendments which have been suggested by interested parties.

Transition to the NETCC

A number of submissions submit that any transitional period should be as short as possible to achieve the transition to the New Energy Tech Consumer Code (**NETCC**). The ACCC has asked for information in its letter of 15 June 2020 about why the transition process is expected to take two years. The ACCC also seeks to understand whether solar retailers will need to be signatories to both the NETCC and Code during the transition process? How will the potential for confusion amongst solar retailers and consumers with both the NETCC and Code being in operation be managed during the transition process?

CEC Accreditation Code

One interested party noted that the fact the CEC's Accreditation Code of Conduct is not authorised is of concern, given that it permits the CEC to impose sanctions against installers and designers including cancelling, and refusing to reinstate, their accreditation for an indeterminate period without any right of appeal. The ACCC seeks your response to this issue.

Next steps

If you wish to comment on the above or any other issues raised in submissions, please do so by **COB 17 July 2020**.

To the extent that your response to the ACCC's request for further information (sent on 15 June 2020) includes information relevant to your response to submissions, you do not need to provide this information again. In your response, please note where this is the case.

Subject to our consideration of any request for exclusion from the public register, a public version of your response to this letter with confidential information redacted will be placed on the ACCC's public register. This letter will also be published on the public register.

If you wish to discuss this letter, or wish to explain some of your responses to the information request, please contact Miriam Kolacz on (03) 9658 6476 or Andrew Mahony on (03) 92901983.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D. Staltari'.

Danielle Staltari
Director
Adjudication