



Australian
Competition &
Consumer
Commission

Draft Determination

Application for revocation and substitution of
authorisation

lodged by

Clean Energy Council Limited

in respect of

a voluntary code of conduct for solar
retailers

Date: 27 July 2015

Authorisation numbers: A91495 & A91496

Commissioners: Sims
Rickard
Cifuentes
Featherston

Summary

The ACCC proposes to grant reauthorisation to the Clean Energy Council Limited for its revised voluntary code of conduct for businesses which sell solar systems (the Code) for five years.

The Code imposes standards upon retail businesses selling solar systems in addition to their existing obligations under consumer protection legislation. A previous version of the Code has been authorised by the ACCC.

The ACCC considers that the Code is likely to improve consumer confidence and consumer protection in the solar photovoltaic (PV) retail sector, improve retailer standards and compliance and safety.

The ACCC will seek submissions in relation to this draft determination before making its final decision.

The application for authorisation

1. On 17 April 2015, the Clean Energy Council Limited (**the Council**) applied for the revocation of previous authorisations (A91365 & A91366) (the previous authorisations), and the substitution of authorisations A91495 & A91496 (reauthorisation).
2. The Council seeks reauthorisation of an amended version of its voluntary code of conduct for solar PV retail businesses. This Code would replace the previous Solar PV Retailer Code of Conduct (the **previous Code**) that was initially authorised by the ACCC in October 2013. Authorisation has been sought for five years. A copy of the Code, with the changes marked up, is at Attachment B.
3. The Council advises it has made a number of improvements to the Code based on experience with the previous Code and in response to certain submissions made by interested parties during the reauthorisation consultation process.
4. In broad terms the ACCC can authorise arrangements that may breach the competition provisions of the *Competition and Consumer Act 2010* (the **CCA**) if it is satisfied that the likely public benefits from the arrangements will outweigh the likely public detriment constituted by any lessening of competition.¹ Further details regarding the Council's application for authorisation can be found on the ACCC's Public Register.²

Background

The current and previous Codes

5. The purpose of the Code is to provide a mechanism for the self-regulation of retailers of PV systems to ensure that retailers maintain a best practice standard that will benefit consumers and the industry (see section 1.1 of the Code).

¹ The ACCC's *Guide to Authorisation* (available from the ACCC website) has more details regarding the ACCC's authorisation process.

² <http://registers.accc.gov.au/content/index.phtml/itemId/1186110/fromItemId/278039>.

6. The Code deals with the following general issues:
 - a. consumer protection; and
 - b. monitoring and enforcement.
7. The primary roles involved in the sale and installation of solar systems are the installer, designer and retailer. These roles can be fulfilled by one or a number of different entities.
8. Under the Code, the Council can apply a standard of conduct to solar PV retailers who have signed up to the Code, even where that retailer sub-contracts the installation of a solar PV system.
9. The Council submits that the previous Code has been extensively promoted as a mechanism for encouraging best industry practice, and that this is evidenced by the number of government bodies, community organisations and private businesses incorporating it into their procurement processes.
10. The Council submits that the uptake of rooftop solar PV systems by households and businesses has continued to increase, with about 195MW of rooftop solar PV capacity in the sub-100kW category installed in the first quarter of 2015, a 7 per cent increase on the same quarter a year ago.
11. As at 23 June 2015, 22 companies have successfully sought approval as signatories to the previous Code. The Council has rejected 16 applications. Each company which has been a signatory to the previous Code for 12 months has renewed its status as a signatory. The Council provided information that it has received positive feedback from signatories about the benefits of being a signatory to the previous Code.
12. Under the previous Code there has been one substantiated breach, involving the use of the Council's 'Approved Retailer' logo by a signatory to promote a separate business.
13. Since the authorisation in 2013, the Council submits that a number of unforeseen issues have emerged in the solar PV industry. The Council has amended the Code to address these issues. The most significant changes are to:
 - a. consumer finance (sections 2.1.20-2.1.23);
 - b. grid connection procedure (section 2.2.7);
 - c. privacy (section 2.2.11-2.2.14); and
 - d. Code fees (section 4.2).

Consumer protection

14. The Code seeks to enhance consumer protection by requiring signatories to among other things:
 - a. not engage in misleading or deceptive conduct in relation to the price, value or quality of goods and services including making statements with promises,

predictions or opinions that are known to be untrue or incorrect, or there are no reasonable grounds for making them (section 2.1.1 (f) (ii))

- b. adhere to ethical sales and quoting practices during all steps of the process including but not limited to avoiding high pressure sales tactics that induce consumers to make quick or uninformed decisions about the product and technologies that they are selecting (section 2.1.2 (a))
- c. in a change from the previous Code, meet certain requirements for the handling of consumers' personal information (section 2.2.13)
- d. in a further change from the previous Code, provide clear and accurate information to consumers about financing arrangements offered as an alternative to initial outright purchase, including providing a clear statement of information about the financing arrangements (section 2.1.21(d))
- e. in addition to the statutory guarantees under consumer law, provide a minimum retailer's warranty period for workmanship and products of five years on the operation and performance of the whole PV system, including an energy storage device connected to the PV system (section 2.2.10)
- f. provide internal complaints handling procedures that are fair, efficient and transparent (section 2.4.5) and
- g. comply with all local, state and federal legislation, the Council's Accreditation Guidelines and regulations including but not limited to Schedule 2 of the CCA (section 2.4.1).³

15. The Code requires retailers to provide consumers with information relevant to their potential purchase⁴ and advice on how to locate the Council's consumer guide to buying household solar panels.

Monitoring and enforcement

- 16. The Code is administered by the Council's Accreditation Team (**Code Administrator**) with independent oversight and monitoring by the Code Review Panel (sections 3.1 and 3.2).
- 17. The Code Review Panel will continue to prepare annual reports on the Code's operation including Code compliance.
- 18. Breaches of the Code are investigated by the Code Administrator. Breaches are assigned a severity rating which corresponds to relevant sanctions (section 3.6).
- 19. A range of sanctions are available including the appointment of an auditor, publication of the breach on the Council's website and removal as a signatory in certain circumstances. Appeals may be heard by the independent Code Review Panel (section 3.7).

³ Section 1.2 of the Code provides that "signatories' obligations under consumer protection legislation are not replaced or restricted by the Code". The "Code applies to the extent that it is consistent with all existing State and Federal legislation and regulation. Where the Code is found to be inconsistent with any existing legislation or regulation, that regulatory obligation will take precedence to the extent of the inconsistency."

⁴ Pursuant to all existing state and federal legislation and regulations, including the Australian Consumer Law.

Consumer Finance

20. When the previous authorisations were made by the ACCC, the Council submitted that the retail purchase of solar PV systems was generally a one-off purchase.
21. The Council submits that a range of financing options and alternative purchasing arrangements have recently become available to consumers that complicate the process of purchasing solar PV systems and expose consumers to financial disadvantage. Consumers may be vulnerable to incurring unreasonable and unexpected costs and fees, and to committing to an agreement with unsuitable terms, if they are not sufficiently informed.
22. For example, the Council submits that it has become aware of sales based on 'Power Purchase Agreements' and 'Solar Lease Agreements'. A Power Purchase Agreement is an agreement where the provider (often a solar retailer) installs a solar PV system at a discounted price (including arrangements where there is no up-front payment) and the consumer agrees to purchase the power generated by the system from the provider. A Solar Lease Agreement is where the provider installs a solar PV system and the consumer makes periodic repayments on the system for a period of time. These agreements are part of a trend where solar PV systems are purchased by consumers as a part of a financing or alternative purchase arrangement. There were no specific requirements placed upon signatories in regards to financing or alternative purchase arrangements under the previous Code.
23. The revised Code seeks to ensure consumer protection against the potential confusion created by these finance arrangements. The Code enhances consumer protection by requiring signatories to clearly and accurately disclose information about the finance arrangement and the fees and charges involved (section 2.1.21). Signatories must clearly state whether or not the arrangement being entered into involves a credit contract or other financial product within the meaning of the *Australian Securities and Investments Commission Act 2001* (Cth). Signatories are also required to make enquiries about whether the financing or alternative purchasing arrangements to be offered to a consumer are regulated by the *National Consumer Credit Protection Act 2009* (Cth) such that the provider of the arrangement would need to hold an Australian Credit Licence. Where the Signatory believes the arrangement will not be regulated by the National Consumer Credit Protection Act they must ensure that the contract contains a provision where the consumer acknowledges that the statutory protections will not be afforded to them.

Grid Connection Approval

24. The Council submits that the process of obtaining grid connection approval has been inconsistent and has resulted in ambiguities. The proposed changes attempt to make this process clearer (sections 2.1.16-2.1.19 and 2.2.7-2.2.9). This is achieved by clarifying that approval is required from the consumer's electricity provider to install a solar PV system, but that where the grid connection approval is rejected, the consumer is entitled to a refund minus the reasonable expenses incurred by the signatory. Furthermore, signatories must either prepare the documentation for such a connection on behalf of the consumer, or clearly explain to the consumer the process for preparing and submitting the required documentation.

Code Fees

25. The Council submits that the existing fee structure, which provides for a set fee for each application in the Code itself, has led to signatories paying unreasonably small fees that do not reflect the value of the status of being a signatory to the Code or the services provided by the Council.
26. The Code amends the fee structure to provide that fees will be published on the Solar Accreditation website rather than price figures being specifically stated in the Code. The Council submits that, compared to the fees paid under the previous Code, some signatories will pay higher fees and some will pay lower fees.

Privacy

27. The Code includes a new minimum standard for the use of personal data and information by signatories (section 2.2.13). This ensures that signatories will only use personal information provided by consumers for the purpose of the intended sale and future promotion, unless they have obtained express permission for other uses. [When providing a consumer with marketing material](#) Signatories must include an opt-out provision [with the material itself](#) (and may also offer an opt-in when consumers enter a contract).

Clean Energy Council Limited

28. The Council was formed in 2007 and is an incorporated not-for-profit association principally funded by membership fees, with additional income generated by events and its industry accreditation program for solar PV designers and installers.
29. The Council is the body responsible for the accreditation of solar PV designers and installers under the *Renewable Energy (Electricity) Regulations 2001* (Cth) and is able to penalise any accredited installer that fails to install a solar PV system to the relevant Australian Standard. Consumers wanting to take advantage of the Federal Government financial incentives available under the Small Scale Renewable Energy Scheme are required to use a Council accredited installer and designer. This requirement is in accordance with the Regulations and does not require that a consumer use a retailer which is a signatory to the Code.
30. The Council describes itself as the peak body representing Australia's renewable energy and energy efficiency industries. The Council has more than 500 members including solar PV system manufacturers and retailers in addition to a diverse range of representatives from many other industries who have an interest in energy generation and/or consumption.⁵

Public Consultation

31. On 6 May 2015, the ACCC invited submissions on the application for reauthorisation from potentially interested parties, including energy retailers, consumer groups and all state energy and water ombudsmen.

⁵ A list of the Council's members is available from the Council website: <http://www.solaraccreditation.com.au/consumers/find-an-installer.html>.

32. The ACCC received public submissions from:
- a. Demand Manager⁶
 - b. Ethnic Communities Council of Victoria
 - c. Northern Alliance for Greenhouse Action (**NAGA**)
 - d. Consumer Action Law Centre (**Consumer Action**)
 - e. Energy Australia.
33. All parties supported the application, although, Demand Manager, the Ethnic Communities Council of Victoria and Consumer Action provided some suggested amendments to the Code.
- a. Demand Manager submits that the Code could be strengthened by requiring that the metering solution for Power Purchase Agreement products involves the installation of a pattern approved meter.⁷
 - b. The Ethnic Communities Council of Victoria submits that it would like to see the Code better protect non-English speakers, and align with access and equity legislation.
 - c. Consumer Action submits that the Code might require some simple warnings to encourage consumers to think through finance offers and suggests including a definition of 'financing arrangements' in Appendix 5.1. Consumer Action also submits that the privacy provision should contain an opt-in to receive marketing materials rather than an opt-out. Finally consumer action submitted that the warranties provided by retailers should be defined to cover batteries and components of solar systems.
34. In response to the submission Consumer Action, the Council put forward an amended version of the Code. The amendments address the definition of 'Finance Arrangement' under the Code and clarify that the standard warranty required to be provided by retailers covers all components of the solar PV system, including energy storage devices.
35. On 3 July 2012, the Council provided to the ACCC another amended version of the Code which clarified the nature of the purchasing arrangements covered by the Code. The Council stated that many of the arrangements used by solar PV retailers did not involve finance or credit contracts as would be covered by the Australian Securities and Investments Commission Act. The amendments clarified the obligations around financing and alternative purchasing arrangements and the operation of the National Consumer Credit Protection Act.
36. On 17 July 2015, the Council provided a further amended version of the Code which clarified that in addition to providing an opt-out in marketing material, retailers could also offer consumers an opportunity to opt-in to marketing materials when entering an agreement with a retailer. The Council also expanded

⁶ Demand Manager is a company which provides financial services for the renewable energy industry.

⁷ A pattern approved meter is one which has been tested to ensure that it is capable of maintaining accuracy when subjected to influences and disturbances (e.g. variations in temperature).

the clauses relating to the disclosure to consumers when entering a power purchase agreement.

37. On 23 July 2015, the Council, in response to queries from the ACCC, provided a second further amended version of the Code which specified the obligation of signatories to notify the ACCC before engaging in third line forcing.

38. Further information in relation to the application for reauthorisation, including the public submissions received by the ACCC as this matter progresses, may be obtained from the ACCC's website www.accc.gov.au/authorisations.

ACCC assessment

39. The ACCC's assessment of the Code is in accordance with the relevant net public benefits tests.⁸ In its assessment of the application the ACCC has taken into account:

- the application and submissions received from the Council and interested parties⁹
- other relevant information available to the ACCC, including information from consideration of previous matters¹⁰
- the relevant areas of competition likely to be affected by the Code. The Council submits that the Code relates to the retail sale and purchase of solar PV systems and that the Code may also affect the sale and purchase of:
 - components of solar PV systems
 - design services of solar PV systems
 - installation services of solar PV systems
 - finance provided to consumers purchasing a solar PV system.

For the purpose of assessing these applications, the ACCC considers the relevant areas of competition likely to be affected by the proposed conduct are those identified by the Council. However, the ACCC considers that a precise market definition is not required in these circumstances

- the five year authorisation period requested.

40. The ACCC notes that the Council has an existing authorisation for the previous Code which expires on 18 October 2018. In the likely future without the conduct,¹¹ the previous Code would be likely to continue to operate until October 2018. Beyond this date, existing consumer protection legislation would continue to regulate the conduct of businesses, including solar retailers. The ACCC has therefore considered the benefits and detriments of the revised Code as a whole as well as the revisions to the previous Code.

⁸ Subsections 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the CCA.

⁹ Please see the ACCC's Public Register for more details, including a list of parties consulted.

¹⁰ See Clean Energy Council Limited – Authorisation – A91365 & A91366 (2013) and Energy Assured Limited – Revocation and Substitution - A91390 & A91391 (2014).

¹¹ For more discussion about the ACCC's use of the likely future without the conduct that is the subject of the authorisation, see paragraphs 5.20-5.23 of the ACCC's Authorisation Guidelines.

Public benefits

Improved consumer confidence and enhanced consumer protection

41. The ACCC considers that the Code, including in particular the revisions made to the previous Code, may assist in improving solar PV retailers' compliance with consumer protection legislation, and therefore may decrease the risk of harm to consumers and reduce the number of consumer complaints.
42. The ACCC considers that the Code has resulted and is likely to continue to result in better informed consumers, as a result of obligations on signatories to educate potential consumers. This includes providing relevant information, such as the Council's consumer guide to buying household solar panels (sections 2.1.4 and section 2.3). Detailed information about the solar PV system must be set out in a written contract which includes the price, specifications, system performance estimates (based on data obtained from the Council) and after sales service inclusions regarding the solar PV system (sections 2.2.5 and 2.3).
43. Personal information of consumers is also provided with further protection by explicitly restricting the use of personal information by a signatory to the intended sale and future promotion of the signatory's business unless the consumer has expressly consented otherwise (sections 2.2.11 and 2.2.13). The Code also requires that signatories offer an opt-out on marketing material. As noted, the Council has also agreed to amend the Code to note that retailers could also offer consumers an [opportunity to opt-in to marketing materials](#) when entering an agreement with a retailer. The ACCC accepts that the amendments proposed by the Code requiring a consumer's consent enhance consumers' privacy protections.
44. The Code mandates greater obligations on signatories to understand the nature of any purchasing arrangement they propose to use, educate potential consumers and to provide relevant information including additional information on finance arrangements (section 2.1.20-23) and grid connection procedure (section 2.2.7).
45. The submissions received from interested parties support the benefits of the Code from improving consumer confidence. In particular, Consumer Action submits that the Code provides assurance to consumers that they will receive good service and trusted outcomes. The NAGA submits that the Code provides greater certainty and confidence of quality of service for consumers.
46. Similarly, Energy Australia submits that the clarification of grid connection processes will give consumers confidence that their installation and connection will be handled in an appropriate manner.
47. The ACCC considers that where consumers are able to make better and more informed purchasing decisions about the service that best meets their needs there may also be some efficiency improvements.
48. The ACCC notes the concerns of the Ethnic Communities Council of Victoria that the Code's obligations would be less effective, or ineffective, in protecting non-English speakers. The ACCC notes that, in reply, the Council accepts that the information required to be provided to consumers by the Code may be difficult to access for people for whom English is not their first language, do not speak English or have other English language challenges. The ACCC encourages the

Council to continue to consider ways in which the Code may assist to make this information more accessible for such persons.

49. The ACCC considers that the Code will continue to increase consumer confidence in the solar sector as the Code assists consumers to be better informed about their rights and obligations under the Code and the Australian Consumer Law (**ACL**). For example, section 2.1.4 of the Code requires signatories to give consumers a flyer describing the Code and the process for providing feedback and lodging consumer complaints.

Education about finance arrangements

50. The Council submits that the changes to the consumer finance sections of the Code seek to broaden protection of consumers and continue to raise the standard of sales practices in the solar industry by requiring retailers to understand the nature of finance and alternative purchasing arrangements used in the sale as well as to clearly and accurately disclose information to consumers.
51. Energy Australia submits that the new Code will ensure consumers are furnished with the information they require to make an informed decision.
52. The ACCC considers that the Code is likely to result in consumers making more informed decisions about finance arrangements for solar PV systems because they will be provided with clearer and more relevant information about both the structure of the financial agreement they are entering into and the nature of the provider. In particular:
 - a. consumers will be given a clear statement of the nature of the agreement being entered into (2.1.21(b))
 - b. for solar leasing finance arrangements, the consumer will be informed of the aggregate amount payable over the term of the agreement (2.1.21(f))
 - c. for power purchase agreements, the consumer will be given an estimate of the aggregate amount payable over the term of the agreement and will be informed that the consumer must pay the stated price for solar-generated electricity for the term of the contract and that the stated price may not reflect the market price and may not be competitive with the price of electricity purchased through other methods (2.1.21(g)-(h)).
53. The ACCC considers that while this information will assist consumers making informed decisions, such decisions remain complex and have the potential to expose consumers to financial disadvantage and the ACCC encourages consumers to be careful when entering into such arrangements.
54. As noted, consumers who are contractually obliged to deal with a particular retailer or other party for an extended period will be exposed to that party's electricity prices and are unable to take advantage of changes in the marketplace. In such circumstances, customers may end up paying more for the solar system and their electricity, together, than they would pay without the contract, for example, by acquiring a solar system outright and obtaining electricity retailing services from an electricity retailer of their choice.
55. The ACCC notes that any financing or alternative purchasing agreements which involve the supply of goods or services on the condition that the purchaser buys

goods or services from a particular third party, or a refusal to supply because the purchaser will not agree to that condition, may be a breach of the CCA. The ACCC has previously received exclusive dealing notifications regarding conduct that ties solar panel customers to a particular energy retailer. In some cases, this has raised significant concerns for the ACCC.

Improved retailer standards and compliance in the solar sector

56. The ACCC considers that the Code is likely to continue to improve solar PV retailer standards by providing specific guidance on the obligations of industry participants under existing laws including the ACL as well as enhancing these obligations through mechanisms which include requiring signatories to adopt complaints handling and dispute resolution procedures (section 2.4.4) and requiring signatories to keep and provide records and data for auditing and monitoring purposes (section 2.4.11).
57. The ACCC considers that the range of sanctions to be applied by the independent Code Review Panel¹² in the event of Code breaches (section 3.5) creates additional incentives for solar PV retailers to comply with the Code and therefore improve standards. The work of the Council in determining whether a breach has occurred is made publically available through its reporting processes. The ACCC considers that this transparency is important for the integrity of the sanctions available under the Code.
58. The NAGA submits that the Code has helped strengthen and encourage best practice across the solar industry, and provides greater certainty and confidence of quality service for customers. It believes that the revised Code adequately reflects the rapidly changing dynamics of the solar PV market.
59. The ACCC considers that the amended Code is likely to improve retailer standards by further providing specific guidance on the obligations on industry participants under existing laws including the ACL as well as through mechanisms in the Code.

Reduced safety risk

60. The Council submits that the requirement for retailers to only use Council accredited installers, ethical behaviour standards and the minimum five year warranty requirement under the Code should promote appropriate care and attention by both retailers and consumers to the choice of product, choice of installers, and volume of work allocated to installers, leading to increased safety for installers and consumers.
61. The ACCC considers that the Code is likely to reduce the risk for stakeholders including installers and consumers. Requiring the use of Council accredited installers sets the minimum standard for designers and installers at the same level as is required to receive government rebates under the *Renewable Energy (Electricity) Regulations 2001* (Cth). Furthermore, as signatories are required to warrant the overall system performance including installation workmanship, they

¹² The Council submitted in its previous submission that the Code Review Panel will consist of at least three participants that are non-signatories to the Code, including: (i) a consumer representative (ii) a solar PV representative, and (iii) a Chair with relevant experience and knowledge in regulatory or government administration of consumer law. The Chair will not be employed in the PV industry.

are likely to have a greater interest in ensuring that work undertaken by the designers/installers is not unsafe and is of high quality.

Reduced cost of regulatory oversight

62. The Council has submitted that the Code will facilitate regulatory compliance and will reduce costs to consumer affairs bodies, ombudsmen and government bodies by reducing the quantity of complaints and the administration and enforcement required to address solar complaints.
63. Existing consumer legislation, including the ACL and fair trading legislation, must be complied with regardless of the Code. To the extent that the Code facilitates increased compliance with the law and leads to public benefits by improving solar PV retailer standards and compliance, these benefits have been considered and accepted by the ACCC (see previous submission paragraphs 36 - 37).
64. Further, to the extent that the Code improves consumer awareness and reduces consumer complaints, these issues have been considered and accepted as providing public benefits under improved standards and consumer protection (see previous submission paragraphs 33 - 35).

Economic efficiency and environmental benefits

65. The Council submitted that the additional take-up of efficient solar PV systems by consumers in response to the Code may lower greenhouse emissions.
66. As set out in paragraph 42 of this Draft Determination, the ACCC accepts that the Code is likely to improve the efficiency of consumer purchasing decisions. If this results in an additional take up of solar PV systems, this would result in environmental benefits in the form of reduced greenhouse gas emissions.

ACCC conclusion on public benefits

67. The ACCC accepts that the Code has, since it was first authorised, resulted in public benefits. The ACCC also considers that the revisions to the Code improve it and consider that the revised Code is likely to result in public benefits by:
 - a. improving consumer confidence and consumer protection in the PV retail sector as PV retailers will provide consumers with more significant and meaningful information to assist in purchasing decisions, which will reduce information asymmetry
 - b. improving PV retailer standards and compliance
 - c. reducing safety risk.
68. The ACCC considers that to the extent that the other public benefits claimed by the Council arise, they have been considered under the categories listed above or are unlikely to be significant.

Public detriments

Increased costs

69. The Council notes that a possible detriment of the Code is that there may be a small average increase in the cost of solar PV installations supplied by signatories due to the additional consumer support required by the Code. The Council also notes that the compliance and reporting requirements of the Code may be a burden for signatories or potential signatories.
70. The ACCC considers that any cost increases arising from the additional support supplied to consumers or the installation of higher quality solar PV systems are likely to reflect a corresponding increase in the quality of the goods and services supplied, for example as a result of the minimum warranty provision and information requirements. In relation to the compliance costs for signatories directly resulting from the Code's implementation, the ACCC considers that the compliance requirements imposed are necessary in order for the Code to be effective.
71. The Council submits that the existing fee structure places an unsustainable financial burden on the Council. The Council claims the fees charged are considerably less than those charged for lower standard schemes and programs in the market and that while fees for some signatories will increase, they will decrease for other signatories.
72. The fee structure which was part of the previous Code is amended under the Code so that the installation numbers and unit prices used to calculate annual fees can be set and changed by the Council without requiring the Code to be amended. The Council will publish the basis for calculating its fees on its website, and a maximum and minimum annual fee will still be set. The ACCC accepts that for the Code to continue and to be effectively enforced there are costs to the Council that need to be covered. However, the ACCC would be concerned if the fees were set at such a level that current and proposed signatories did not see value in being part of the Code. In this regard the ACCC notes that the Council is a not-for-profit organisation.

Procurement processes

73. Currently it is voluntary for PV solar retailers to become signatories to the Code. However, the Council advises that negotiations are taking place to embed the Code into various government procurement processes.
74. Should this occur, the obligation to become a signatory to win work from local and state governments suggests a preference for businesses that have adopted the Code. The ACCC notes that if this is conduct of a kind where good or services would only be supplied on the condition that the purchaser buys goods or services from a particular third party, this would not be protected by a decision on this application. The entities considering making the Code mandatory to participate in tendering processes will need to consider the benefits of this requirement, including, for example, the fees, membership requirements and costs involved in joining the Code.

Exclusionary conduct

75. The ACCC accepts that restricting membership of the Code to retailers that utilise the services of accredited installers is important in ensuring that the anticipated benefits of the Code are realised.
76. The ACCC also accepts that the detriments are likely to be minimal given that consumers that wish to take advantage of government incentives available through the Small Scale Renewable Energy Scheme are already required to use a Council accredited installer and designer.
77. The ACCC therefore considers that these provisions are unlikely to result in more than minimal public detriment.

Sanctions applied to solar PV retailers

78. The ACCC considers that the ability to sanction solar PV retailers for non-compliance is important in providing retailers with incentives to comply with the Code. These sanctions vary depending on the severity of the breach and include publically naming the retailer on the Council website and suspension or cancellation if a signatory has engaged in systemic breaches or cannot provide evidence that it has rectified a breach in a reasonable timeframe (sections 3.5 and 3.6).
79. The ACCC does not consider that the ability to impose sanctions, including expulsion from the Code would generate a public detriment provided sanctions are applied in an open, transparent and consistent manner,¹³ applied by an independent agency and only in accordance with standards required by the scheme.¹⁴
80. The ACCC has not received any information to suggest that the sanctions have been applied inappropriately under the previous Code.

Minimum warranty period

81. The Code requires signatories to provide a minimum retailer's warranty period of five years on the service component of installation and all products (inverters, panels, electrical components etc) (section 2.2.10).¹⁵ To the extent that retailers compete with each other on the duration and coverage of their warranty, the Code may reduce such competition between signatories by making specific reference to a minimum five year warranty. This may have the potential effect that this period would become the default warranty period.
82. However, the ACCC notes that the specified warranty is for a *minimum* period and the Code also makes clear that consumers may continue to have warranty rights beyond this time period, particularly in respect of certain parts of the solar PV system, such as panels and inverters (section 2.2.10). The Code also makes clear that this minimum warranty does not substitute any rights a consumer may

¹³ The breaches and corresponding sanctions are clearly set out in section 3.5.3.

¹⁴ The Council submits that the Code Review Panel will consist of at least three participants that are non-signatories to the Code including: (i) a consumer representative (ii) a solar PV representative, and (iii) a Chair with relevant experience and knowledge in regulatory or government administration of consumer law. The Chair will not be employed in the PV industry.

¹⁵ The Council notes that certain products including panels and inverters may have a warranty that exceeds five years.

have under the statutory guarantees. The ACCC therefore considers that these provisions are unlikely to lead to more than minimal public detriment.

ACCC conclusion on public detriments

83. The ACCC is of the view that the Code is likely to result in minimal public detriments. The ACCC notes that the Code is a voluntary code (albeit that future government procurement processes may require that a retailer is a Code signatory) and will be available to all solar PV retailers, regardless of Council membership, who are willing to comply with the requirements of the Code, in a market that appears to be competitive.
84. The ACCC notes that the Code provides that signatories' obligations under consumer protection legislation are not replaced or restricted by the Code, particularly in respect of retailer's warranty periods, and that the Code applies to the extent that it is consistent with all existing State and Federal legislation and regulation.
85. The ACCC is also of the view that sanctions to be imposed on retailers and public reporting mechanisms will promote compliance by PV retailers and are not likely to result in public detriment.

Balance of public benefit and detriment

86. For the reasons outlined in this draft determination, the ACCC considers that the revised Code, when considered both in its entirety and when considering the revisions themselves, is likely to result in public benefit that would outweigh any public detriment, including from any lessening of competition. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met.

Draft determination

The application

87. Applications A91495 and A91496 were made using a Form FC, under subsection 91C(1) of the CCA. The Council seeks authorisation of its voluntary code of conduct for solar retail businesses (the Code).
88. The Council seeks reauthorisation to make and give effect to the Code which may be regarded as a contract, arrangement or understanding that:
 - a. would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the CCA and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of the CCA
 - b. would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of the CCA (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of the CCA)
 - c. would have the purpose, or would have the effect, of substantially lessening competition within the meaning of section 45 of the CCA.

89. Section 90A(1) of the CCA requires that before determining an application for authorisation the ACCC shall issue a draft determination.

The net public benefit test

90. For the reasons outlined in this draft determination, the ACCC is satisfied that in all the circumstances the Code for which authorisation is sought is likely to result in a public benefit that would outweigh any likely detriment to the public constituted by any lessening of competition arising from the conduct. Further, the ACCC is satisfied that the Code for which authorisation is sought is likely to result in such a benefit to the public that the conduct should be allowed to take place.

91. Accordingly, the ACCC is satisfied that the tests in sections 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the CCA are met.¹⁶

Conduct which the ACCC proposes to authorise

92. The ACCC proposes to revoke authorisations A 91365 & A91366 and grant authorisations A91495 & A91496 in substitution for the ones revoked. The proposed authorisation is to make and give effect to the voluntary code of conduct for solar photovoltaic retail businesses (at Attachment B). The ACCC proposes to grant authorisation for five years. Any changes to the Code during this period would not be covered by the authorisation.

93. This draft determination is made on 27 July 2015.

Next steps

94. The ACCC will now seek submissions on the draft determination. In addition, the Council or an interested party may request that the ACCC hold a conference to discuss the draft determination, pursuant to section 90A of the CCA.

¹⁶ See Attachment A.

Attachment A

Competition and Consumer Act 2010

Subsections 90(5A) and 90(5B) provide that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding that is or may be a cartel provision, unless it is satisfied in all the circumstances that:

- the provision, in the case of subsection 90(5A) would result, or be likely to result, or in the case of subsection 90(5B) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(5A) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement were made or given effect to, or in the case of subsection 90(5B) outweighs or would outweigh the detriment to the public constituted by any lessening of competition that has resulted or is likely to result from giving effect to the provision.

Subsections 90(6) and 90(7) state that the ACCC shall not authorise a provision of a proposed contract, arrangement or understanding, other than an exclusionary provision, unless it is satisfied in all the circumstances that:

- the provision of the proposed contract, arrangement or understanding in the case of subsection 90(6) would result, or be likely to result, or in the case of subsection 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of subsection 90(6) would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if the proposed contract or arrangement was made and the provision was given effect to, or in the case of subsection 90(7) has resulted or is likely to result from giving effect to the provision.

Subsection 90(8) states that the ACCC shall not:

- make a determination granting:
 - i. an authorization under subsection 88(1) in respect of a provision of a proposed contract, arrangement or understanding that is or may be an exclusionary provision; or
 - ii. an authorization under subsection 88(7) or (7A) in respect of proposed conduct; or
 - iii. an authorization under subsection 88(8) in respect of proposed conduct to which subsection 47(6) or (7) applies; or
 - iv. an authorisation under subsection 88(8A) for proposed conduct to which section 48 applies;
- unless it is satisfied in all the circumstances that the proposed provision or the proposed conduct would result, or be likely to result, in such a benefit to the public that the proposed contract or arrangement should be allowed to be made, the proposed understanding should be allowed to be arrived at, or

the proposed conduct should be allowed to take place, as the case may be;
or

make a determination granting an authorization under subsection 88(1) in respect of a provision of a contract, arrangement or understanding that is or may be an exclusionary provision unless it is satisfied in all the circumstances that the provision has resulted, or is likely to result, in such a benefit to the public that the contract, arrangement or understanding should be allowed to be given effect to.

Attachment B

Code of Conduct

Solar ~~PV~~ Retailer Code of Conduct



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1. INTRODUCTION

The Clean Energy Council (CEC) is the peak body representing Australia's renewable energy and energy efficiency industry.

1.1 Purpose and Objectives

This non-prescribed voluntary code of conduct (the Code) aims to promote best practice measures and activities for retail businesses selling **solar photovoltaic (PV) systems**. This Code is for retail businesses that want to demonstrate the commitment they have to promoting responsible activity and development in the renewable energy sector across Australia. This Code is not intended to replace existing consumer, energy or environmental planning legislation, policy or regulations at local, state or federal government levels, but to bring about increased accountability within the PV retail industry.

The primary entities involved in the sale and installation of PV are the installer, designer, and retailer. It is the nature of the PV market that these roles can all be filled by one individual, or conversely, by two or three different entities. The former category is typically found in small retail businesses run by a qualified installer/designer, and the latter typically in medium- to larger-sized companies that subcontract out the designs and/or installations of PV systems, meaning that those running the business or making a sale are less likely to be qualified installers/designers. Many PV retailers in the industry now sell systems direct to consumers and sub-contract the installation of those systems.

CEC Accreditation for Solar PV Designers/Installers

The CEC Accreditation Team manages a PV accreditation program to accredit the designers and installers of solar systems. CEC Accreditation is not linked to membership with the CEC. This qualification demonstrates competence in design and/or installation of stand-alone and/or grid-connected solar PV systems. Under the PV accreditation scheme, which has a technical focus on safety and the correct design and installation of PV systems, only individuals are able to attain accreditation. A CEC-accredited solar designer/installer:

- has completed the necessary solar specific training courses;
- is bound by the CEC Accreditation Code of Conduct and the CEC Accreditation Terms and Conditions;
- complies with the CEC Design and Install Guidelines, relevant Australian Standards and all other relevant regulations when designing/installing PV systems.

In order to claim federal government financial incentives available under the Small-scale Renewable Energy Scheme (SRES), consumers must use a CEC-accredited installer and designer, in accordance with the *Renewable Energy (Electricity) (Cth) Regulations 2001*. More information on the Solar PV Accreditation Program is available at: solaraccreditation.com.au.

Solar **PV** Retailer Code of Conduct

As discussed above, the CEC Accreditation Program deals with matters relating to the installation and design of PV systems. This Code deals with matters relating to the marketing and sale of PV systems to ensure PV retailers also maintain a standard that will benefit consumers and the industry.

The Code has been developed to improve the relationship between consumers and PV retailers and to ensure the industry is suitably regulated. The Code is a self-regulated scheme designed to provide consumers with confidence that solar retailers will act in compliance with (and where appropriate, go beyond) relevant federal and state laws and regulations, and conduct their business in a professional and ethical manner. The Code also deliberately connects the responsibility of the retailer with the obligations of accredited installers/designers, to ensure that retailers are fully accountable for the actions of any subcontracted parties. This Code aims to address identified issues that may impact on the reputation of the solar industry. These issues include:

- Misleading claims given to consumers regarding the performance of their PV system and future electricity bills.
- Misleading advertising regarding the size of PV systems, the value of available government incentives, and the suitability of the PV system.
- The retailer not taking responsibility for the whole of the PV system including product warranties and workmanship.
- Sub-standard installation work.
- The retailer not taking responsibility for subcontracted parties acting on their behalf and any parties who generate sales leads utilised by the retailer.

The Code will be updated to reflect changes in the above, with the aim of proactively addressing issues that adversely affect consumers and the reputation of the PV industry.

To achieve its objectives, this Code addresses four broad subject areas:

1. Pre-Sale activities

- To protect the consumer against dishonest or misleading advertising and sales tactics, and to ensure that sales representatives act ethically at all times during marketing campaigns and when dealing with consumers.
- To ensure that the consumer is provided with the necessary written information to enable full understanding and awareness of their purchase.

2. Post-Sale activities

- To ensure that consumers' legal rights relating to cooling-off periods, deposits and refunds are respected, and that the consumer has the opportunity to cancel a contract where changes are made after point of contract that are not approved in writing.

- To ensure that the consumer receives a system that is installed correctly, in accordance with existing legislation, regulations, standards and guidelines.
- To ensure that the consumer is provided with a standard minimum warranty period covering the operation and performance of the entire system, and that the retailer is responsible for addressing any problems relating to workmanship or product that arise during this period.

3. Documentation

- To ensure that the consumer is provided with the required documentation after the PV system is installed, and that the retailer and the consumer are fully aware of who is responsible for the provision of the relevant documentation.

4. General business

- To ensure that the retailer adheres to all existing legislation and regulations, and maintains consistent business practices including, but not limited to, effective complaint handling procedures and cancellation procedures.

1.2 Scope and Interpretation

While the Code has been developed primarily to address issues arising during the sale and installation of small-scale PV to residential and small business consumers, the Code applies to any PV retailer that becomes a Signatory, regardless of what size system and to whom they are selling. However, where signatories are selling PV to medium- and large-scale business consumers (who can be assumed to have a genuine and reasonable opportunity to negotiate the terms of a contract), it is acceptable for a commercial contract to supersede specific clauses of the Code.

This Code co-exists with relevant state or federal legislation, including *Australian Consumer Law (Cth) (ACL)* (Schedule 2 of the *Competition and Consumer Act 2010*), which replaced the *Trade Practices Act 1974*. Signatories' obligations under these laws are not replaced or restricted by this Code. This Code applies to the extent that it is consistent with all existing state and federal legislation and regulation. Where the Code is found to be inconsistent with any existing state or federal legislation or regulation, that regulatory obligation will take precedence to the extent of the inconsistency. Compliance with this Code does not guarantee compliance with any legislation.

A summary of relevant laws that protect consumers is provided at Appendix 5.4.

1.3 Signatories to the Code

Solar PV retail businesses that are signatory parties to this Code are compliant with and agree to adhere to the Code. They:

- are PV retailers, including those selling PV to residential and small business consumers and those selling PV to medium and large-scale business consumers;
- are committed to developing and conducting their business in line with best industry practices and interacting with consumers in a professional and ethical manner; and
- include non-CEC members and CEC members who apply and are accepted as signatories to this Code~~choose to subscribe to the code~~.

A regularly updated list of current signatories to the Code is available online for consumers at www.solaraccreditation.com.au/retailers/approved-solar-retailers.

2. GENERAL RULES AND STANDARDS

Signatories to the Code comply with the rules and standards in this section as set out below.

2.1 Pre-Sale Activities

Advertisements and promotions

2.1.1 Any advertisements, promotions, quotations and statements produced must be legal, truthful, and comply with all relevant legislation. Signatories must:

- (a) ensure all state and federal government incentive schemes are honestly and accurately represented, including not misrepresenting an association with government, or falsely claiming to be part of a government scheme;
- (b) not provide any false or misleading claims relating to the company, product or services being offered including system performance, stocks and substitution of products;
- (c) clearly attribute any claims relating to performance and savings to a reputable source;
- (d) advertise the total price as prominently as they advertise a component of the price;
- (e) provide information that is specific to the state or region of advertisement; and
- (f) not engage in any misleading or deceptive conduct in relation to the price, value or quality of goods or services including:
 - (i) failing to clearly outline disclaimers or relying on disclaimers buried in small print in order to deliberately mislead a consumer;
 - (ii) making statements with promises, predictions or opinions that are known to be untrue or incorrect, or for which there are no reasonable grounds to make them;
 - (iii) quoting tariffs or financial incentives that are no longer available or not available in the region of advertisement;
 - (iv) misleading consumers about the impact that installing solar will have on their electricity bills;
 - (v) misleading consumers in relation to the size of the system or output;
 - (vi) advertising large inverters with small systems, with the intention of making it appear that the system size is the size of the advertised inverter;
 - (vii) the place of origin (manufacture) of a product; and

(viii) exaggerating or misleading a consumer in regards to their need for the product.

(viii)(ix) making representations regarding the cost of finance or an alternative purchasing arrangement for the product, such as representing that there is no additional cost for the finance or alternative purchasing arrangement when the price of the product has been inflated above the cash price or market value of the product.

Sales and quoting practices

2.1.2 Signatories must adhere to ethical sales and quoting practices during all steps of the process, including but not limited to:

(a) avoiding high-pressure sales tactics that induce consumers to make hasty or uninformed decisions about the product and technologies they are selecting. High-pressure sales tactics can be defined as (for example):

- (i) seeking to sell products to individuals who, or organisations that, are clearly unable to understand the information and/or the contract they are being asked to enter into. For example, deliberately targeting consumers who are vulnerable due to mental illness or physical disability, age, learning difficulties, or speaking English as a second language;
- (ii) offering inflated prices and then discounts for agreeing to sign on the day or for providing testimonials and/or providing referrals;
- (iii) revisiting the consumer's premises uninvited intending to pressure the consumer;
- (iv) applying psychological pressure (by appealing to the consumer's fears, greed or vanity), to persuade the consumer to make a quick purchase decision;
- (v) employing badgering techniques, such as making frequent telephone calls, to pressure individuals or organisations into signing contracts; and
- (vi) if the consumer reasonably feels they have been subject to high-pressure sales tactics then this may also be considered to constitute such tactics.
 - What constitutes 'reasonable' will be determined by the Code Administrator (see section 3.1 below).

(b) When engaging the consumer in their home or place of business:

- (i) identifying all sales agents with company-issued identification for the safety and comfort of consumers;
- (ii) explaining up-front the purpose of the visit and informing the consumer that they can ask the retailer to leave at any time;
- (iii) leaving the premises immediately if the consumer asks them to do so; and
- (iv) explaining to consumers their right to terminate the agreement within ten business days for unsolicited sales.

- 2.1.3 Any reference to Small-scale Technology Certificates (STCs) must be consistent with Clean Energy Regulator wording, whereby an STC is a financial incentive, not a rebate, and consumers will not qualify for any government-based financial recompense at the completion of the STC creation process.
- 2.1.4 Consumers must be given a flyer describing this Code and also including:
- (a) the process for provision of consumer feedback and lodging consumer complaints;
 - (b) a link to the CEC Solar PV Consumer Guide.
- 2.1.5 An electronic link to this flyer is acceptable only if a hard copy can be provided upon request. The Code flyer will be produced and provided to signatories by the Code Administrator (see section 3.1).

Point of contract

- 2.1.6 A written contract must be provided to the consumer that shows:
- (a) an itemised list of the goods to be supplied;
 - (b) the total price of all goods and services;
 - (c) the total value of any discounts, STCs, Goods and Services Tax (GST) and rebates as applicable;
 - (d) full specifications of the system, including the manufacturer, model, quantity and power rating of the solar modules and the inverter/s;
 - (e) a site-specific full system design including the proposed roof plan (sketch or diagram is acceptable), orientation and tilt, expected efficiency losses due to shading, and the system's site-specific estimated energy yield, i.e. average daily performance estimate in kilowatt hours (kWh) for each month of solar generation.
 - The performance estimate must be based on data obtained from the CEC System Design Guidelines for Accredited Designers or other reputable source.

It is acceptable for this section 2.1.6(e) to be provided as a deliverable of the contract, provided that:

- (i) this information is provided before the expiry of any cooling-off period; and
- (ii) where section 2.1.6(e) is provided as a deliverable of contract:
 1. the initial contract must include a generic outline of the likely system performance estimate (to enable the consumer to make an informed purchase decision); and
 2. the consumer must be entitled to a full refund upon request, if they do not consent to the site-specific full system design and performance estimate upon receipt of this information.

- (f) Any site conditions and special circumstances beyond the control of the Signatory which may result in extra chargeable work not covered by the quote. This includes any additional costs that may arise at or after installation and that will not be borne by the Signatory. For example, fees for meter exchange/reconfiguration, damage on meter panels, and changing dedicated off peak control devices if required;
- (g) an estimated timetable for supplying and installing the system. Where timeframes are out of control of the retailer, this can be noted with relevant disclaimers;
- (h) business terms, including the payment method, deposits and timetable, and how long the quote will be valid for;
- (i) details about any after-sales services, guarantees and express warranties. The warranty must:
 - (i) Include a statement that the consumer's rights under the warranty sit alongside the consumer guarantees which are required under ACL and cannot be excluded.
 - Under ACL, consumers cannot sign away their consumer guarantee rights. Signatories must not put terms into their contracts to avoid their consumer guarantee obligations.
 - (ii) The consumer's cooling-off and termination rights.
- (j) Full disclosure of all assumptions made in relation to systems and finance offerings including:
 - (i) system design, performance and output assumptions;
 - (ii) financial savings including STC financial incentives, savings relating to return on investment, income and energy prices; and
- (k) a clause stating that the Signatory must comply with this Code.

2.1.7 The contract must be expressed in a clear and transparent way, using plain language that is legible.

2.1.8 Signatories must endeavour to draw to the attention of the consumer specific requirements of the contract which, if not brought to the consumer's attention, are likely to result in a dispute. For example, section 2.1.6(g), additional fees that may arise, or if there is any difference between a price verbally quoted, and the final contract price.

2.1.9 Both parties must sign the agreement and any amendments. Equivalent methods of legal agreement other than signing a contract in person are also permitted (for example, electronic acceptance).

2.1.10 Any requirement to provide a document or information in writing can be met in electronic form, or to provide a signature can be met in electronic or verbal form.

2.1.11 Receipts must be issued for all deposits collected.

Prior to signing the contract

- 2.1.12 Before the contract is signed the Signatory must provide the consumer with the address of the local office or showroom, or a telephone number where any queries can be answered.
- 2.1.13 Signatories must ensure that the contract is explained to consumers prior to entering into an agreement.
- 2.1.14 Signatories must clearly explain the process surrounding the payment and trade of STCs, including where relevant, the provision of accurate information about the operation of the STC Clearing House (i.e. that STCs in the Clearing House are only sold when there is a buyer, there is no guarantee on how long they will take to sell, and consumers are not guaranteed \$40).
- 2.1.15 Signatories must advise consumers that their electricity contract/tariff may change following installation of solar and that the consumer should contact their electricity retailer:

(a) before signing a contract, to check what new electricity tariff rates may be applied; and

(a)(b) after installation of the solar PV system, to confirm that the agreed tariff has been applied.

~~2.1.16 Signatories must advise consumers of potential billing issues that may arise following changeover of the meter. For example, consumers should contact their electricity retailer and check their bills to confirm that the agreed tariff has been applied by their electricity retailer.~~

Approval to connect to the electricity gridNetwork

~~2.1.17~~ 2.1.16 Consumers must be advised Signatories must inform consumers (where relevant in the state of installation), before a contract is signed, that:

(a) the consumer requires approval from their distributor to connect a solar PV system to the electricity grid (“grid connection approval”); and

(a)(b) must fill out the relevant paperwork must be completed and submitted prior to installation.; ~~and should gain approval prior to sale.~~

2.1.17 Where Signatories have fulfilled their obligations under 2.1.16 above and the consumer takes responsibility for obtaining grid connection approval and

(a) consumers take responsibility for obtaining approval to connect to the network ~~and~~ the application is rejected and

(b) the contract has already been signed,

the consumer is entitled to the return of all moneys paid minus reasonable expenses incurred by the Signatory to the point of termination of the contract.

2.1.18 Where a Signatory has fulfilled its obligations under 2.1.16 above and the consumer authorises the Signatory to that prepare and submit the relevant documentation required-obtain grid connection approval on its behalf, the Signatory must ensure the consumer receives approval prior to installation.

~~a) they must ensure the consumer receives approval prior to installation.~~

2.1.19 Where a Signatory has fulfilled its obligations under 2.1.16 above and the consumer authorises the Signatory to take responsibility prepare and submit the documentation required for grid connection approval and

(a) the application is rejected and

(b) the contract has already been signed,

~~for obtaining approval to connect to the network, ce~~ the consumer is entitled to a full refund ~~if the application is rejected and the contract has already been signed.~~

Finance and alternative purchasing arrangements

2.1.20 When advertising an arrangement that provides an alternative to initial outright purchase (for example, a credit contract or a lease or power purchase agreement), the Signatory must comply with section 2.1 (and all other sections) of this Code.

2.1.21 When offering to a consumer, whether through the Signatory's own or associated company or via a third party provider, an arrangement that provides an alternative to initial outright purchase, a Signatory must ensure that the consumer clearly and accurately receives the following information:

(a) the name of the provider to whom the consumer will be contracted;

(b) a clear statement regarding the nature of the arrangement being entered into (e.g. whether it involves a credit contract or other financial product within the meaning of the Australian Securities and Investments Commission Act or a non-regulated credit arrangement);

(c) a clear statement that the periodic payments are available only if the consumer wishes to take advantage of the finance or alternative purchasing arrangement;

(d) the comparative cost of that same product if the consumer was to purchase it outright on that day;

(e) a clear statement that fees and charges apply in relation to the arrangement, including:

(i) the dollar amount of fees and charges applied under the arrangement and what each fee and charge represents;

(ii) whether the fees are fixed and, if not, details of escalation rates; and

(iii) where and in what form the consumer can expect the fees and charges to appear in the finance or alternative purchasing arrangement contract;

- (f) under a solar leasing agreement, the aggregate amount payable over the life of the agreement's term;
- (g) under a power purchase agreement, the aggregate amount payable over the agreement's term based on a reasonable and stated estimate of the solar-generated electricity consumed by the consumer;
- (h) under a power purchase agreement, a clear statement that the consumer must pay the stated price for solar-generated electricity for the term of the contract and that the stated price may not reflect the market price and may not be competitive with the price of electricity purchased through other methods;
- (i) details of any exit payments or penalties associated with the finance or alternative purchasing arrangement;
- (j) a statement as to whether the consumer owns the system at the conclusion of any plan or agreement under the terms of the arrangement and/or details, including any associated costs and/or fees, of any option or options available to the consumer to purchase the system at the end of the term; and
- (k) a statement that questions and complaints about the arrangement should be directed to the provider with whom the consumer is or will be contracted and:

 - (i) if the provider is a member of such a scheme, to the relevant external dispute resolution scheme;
 - (ii) if the arrangement involves a credit or other financial product, the Australian Securities and Investments Commission (ASIC) or
 - (iii) if the arrangement does not involve regulated credit or other financial product, to the relevant state based authority which has responsibility.

To comply with this section 2.1.21, a Signatory may, for example, provide the third party provider with a pro forma to be completed by that provider and attached to the Signatory's contracts, or attach the standard terms of the provider.

2.1.22 A Signatory must make reasonable enquiries as to whether the arrangement that is to be offered to a consumer (whether by the Signatory or by another business introduced to the consumer by the Signatory or Approved Retailer) is regulated by the National Consumer Credit Protection Act 2009 (Cth) ("the NCCP Act"), such that the provider of the arrangement would need to hold an Australian Credit Licence.

If as a result of those enquiries, the Signatory believes that the arrangements will not be regulated by the NCCP Act, the Signatory must ensure that:

- (a) The relevant contract includes a provision substantially in the form set out in section 2.1.23 below ; and
- (b) the provision referred to in section 2.1.2(a) is signed by the consumer.

Note: If an arrangement is a credit contract or a consumer lease that is regulated by the NCCP Act, the credit provider must hold an Australian Credit Licence. Any business that has a role in introducing the consumer to the credit provider (e.g. the Signatory or the Approved Retailer) may also need to hold a licence or be a credit

representative of a licensee. It is a breach of the NCCP Act to engage in activities without holding a required licence or being a credit representative of a licensee. The obligations in this section are in addition to the legal obligations under the NCCP Act. A Signatory or Approved Retailer should obtain advice as to their obligations under the NCCP Act.

2.1.23 “This arrangement is not regulated by the National Consumer Credit Protection Act 2009 (Cth) (“the NCCP Act”). As a result:

(a) if you have a complaint about the arrangement, you may not have access to the services of an external dispute resolution scheme that has been approved by ASIC. This means that you may have to go to court to resolve a dispute with the provider.

(b) if you have trouble paying the periodic payments required under the arrangement:

(i) you may not have the right to ask the provider for a hardship variation to help you get through your financial difficulty.

(ii) The provider may take action against you for non-payment without giving you an opportunity to remedy the default.”

2.1.24 Signatories will not offer an agreement which involves “third line forcing”, such as supplying solar panels on condition that the consumer purchase energy from another energy supplier, unless prior notification to, or authorisation from, the ACCC has been provided in accordance with the *Competition and Consumer Act 2010*.

2.2 Post-Sale Activities

Pre-installation

Cooling-off period

2.2.1 For unsolicited sales, consumers must be given ten business days after they sign the contract to cancel the contract without penalty (the “cooling-off period”).

2.2.2 Where a consumer wishes to withdraw from a valid contract after the expiry of any cooling-off period, signatories are entitled to apply their own policies regarding fees for cancellation, in line with the termination rights specified in the initial contract, provided that such cancellation fees do not amount to unfair contract terms under the ACL. Cancellation fees must be reasonable, and related to the cost incurred by the Signatory. Consumers have rights under unfair contract terms provisions in ACL relating to cancellation of contracts and termination fees.

Refunds

2.2.3 Once the consumer has signed the contract, any variations to the system design must be documented and signed off by the consumer prior to installation.

2.2.4 The Signatory must provide the consumer with a full refund upon request when:

- (a) the final system design provided in accordance with section 2.1.6(e) is significantly different to that quoted at the point of contract and is not signed off by the consumer;
- (b) in accordance with section 2.1.6(f), the site-specific full system design and performance estimate is provided as a deliverable of the contract and:
 - (i) this information is not provided before the expiry of any cooling-off period; and
 - (ii) the consumer does not consent to this information upon receiving it;
- (c) the estimated delivery timeframe for installation completion that was agreed upon at the point of contract is not honoured, for reasons reasonably within the Signatory's control, and the consumer does not consent to a revised timeframe;
~~i. Excluding reasonable events outside of the control of the signatory or customer (for example, force majeure events).~~
- (d) ~~Where,~~ in accordance with 2.1.19 above, the Signatory acting on behalf of the consumer to obtain grid connection approval does not do so prior to sale/installation, and the consumer does not receive approval from the distributor to connect a system; and
- (e) extra chargeable work arises, which was not specified in the initial contract, and the additional costs are not borne by the Signatory and the consumer does not consent to these additional costs.

Post-installation

2.2.5 A Signatory must advise the consumer how to measure the performance of their system. The Signatory must specify, using at least one of the following methods, how energy output can be measured:

- (a) demonstration;
- (b) written instructions on how to read the inverter; or
- (c) provision of a measuring device that links back to the inverter.

Energy output is a reasonable measure of performance; savings are not.

2.2.6 Signatories must inform consumers how to appropriately maintain their system and that they should do so on a regular basis (providing maintenance documentation in accordance with section 2.3 below is sufficient).

Connection to the Network electricity grid

2.2.7 To facilitate connection to the grid, the Signatory must:

~~(a) in accordance with section 2.1.18, Signatories must~~ prepare and submit within a reasonable timeframe all relevant documentation ~~on behalf of the consumer (where permitted to do so)~~ required by the electricity retailer and/or distributor for meter installation and connection of the system to the network; or

~~(b) in accordance with section 2.1.17, signatories must clearly explain to the consumer the process for preparing and submitting the documentation required by the electricity retailer and/or distributor.~~

~~2.2.7—The , or otherwise clearly explain to the consumer the process for preparing and submitting such documentation.~~

2.2.8 Signatory must explain to the consumer the process from system installation to network connection. The Signatory must:

- (a) notify the consumer when it has provided the relevant paperwork to the electricity retailer and/or distributor (if applicable) and how the paperwork was provided, for example, by email;
- (b) give the consumer expected timeframes for each step of the process;
- (c) advise the consumer who they should contact to follow up on progress; and
- (d) advise of any potential problems that may arise.

2.2.9 The Signatory must respond within a reasonable timeframe to any additional compliance requests from the distributor or electricity retailer (for example, re-submitting incorrect paperwork), and consult with the consumer if necessary, ~~in consultation with the consumer.~~

Warranty

2.2.10 A standard minimum retailer's warranty period of five years¹ on the operation and performance of the whole solar PV system, including workmanship and products, must be provided to the consumer by the Signatory.

- (a) That retailer's warranty exists over and above the consumer's rights under consumer guarantees in ACL.
- (b) The consumer is entitled to claim a remedy if the goods or services do not meet a consumer guarantee or retailer's warranty.
 - (i) The Signatory must implement warranty repairs or replacements within a reasonable timeframe.
 - (ii) The consumer is not entitled to a remedy when the Signatory does not meet a consumer guarantee (statutory and retailer's warranty) due to something:

¹ This warranty period is the minimum applicable to the service component of installation and all products (inverters, panels, electrical components etc.). Certain products, for example, panels and inverters, might have a warranty that exceeds five years.

- A. someone else said or did (excluding the Signatory's agents or employees); or
- B. beyond human control that happened after the goods or services were supplied (for example, *force majeure* events, possums, extreme weather).

Privacy

2.2.11 Signatories may use personal data and information provided by consumers for the purpose of the intended sale and for future promotion of its business.

2.2.12 Signatories may (but are not required under this Code to do so) seek the consumer's consent, by way of an opt-in clause in the contract or other appropriate document, to receive marketing material.

2.2.12.2.13 Regardless of whether a consumer consented to receiving marketing material pursuant to 2.2.12 above, Signatories must include an opt-out provision on marketing material.

2.2.13.2.14 Signatories must not use consumers' personal data for purposes other than those described in 2.2.11 above (for example, they must not provide the data to a third party, or use the data to promote a business other than that with which the consumer has a direct relationship) unless they have obtained express permission from the consumer.

2.2.14.2.15 This section sets out the minimum standard for use of customer data. Signatories can determine their own marketing practices, in accordance with all other provisions of this Code and pursuant to the *Privacy Act* 1988, beyond meeting this minimum standard.

2.3 Documentation

2.3.1 Section 2.3.2 contains a list of documents that the consumer must receive once the PV system is installed and who is responsible for providing that documentation. Signatories must ensure that the responsible parties below provide the consumer with this documentation.

2.3.2 The following documentation must be provided to the consumer in either electronic format or hard copy. Where appropriate, specified details of where this information can be found (for example, a web link) is acceptable. However, hard copies must be provided upon request by the consumer.

Party responsible	Documents
Retailer	<ul style="list-style-type: none">• List of equipment• Warranty information• Equipment manual• Equipment handbook• Array frame engineering certificate
Designer	<ul style="list-style-type: none">• Shut down and isolation procedure• System performance estimate• Maintenance• Earth fault alarm actions• System connection diagram• Site inspection checklist
Installer	<ul style="list-style-type: none">• Testing/commissioning• Declaration of compliance• Certificate of electrical safety (where applicable)

2.3.3 Signatories are accountable for the work of their sub-contractors. In addition to the document requirements set out above, Signatories must be aware of any other documentation required by electricity distributors and regulators in their regions of operation.

2.4 General Business and Obligations of Signatories

Compliance with the law

- 2.4.1 Signatories must comply with all local, state and federal legislation, CEC Accreditation Guidelines and regulations including but not limited to:
- (a) The Renewable Energy Target (*Renewable Energy (Electricity) Act 2000* and *Renewable Energy (Electricity) (Charge) Act 2000*) which is supported by the *Renewable Energy (Electricity) Regulations 2001*.
 - (b) The Australian Government Do Not Call Registry (*Do Not Call Register Act 2006*) and associated telemarketing standards including permitted hours for contacting consumers.
 - (c) Schedule 2 of the *Competition and Consumer Act 2010*, which replaced the *Trade Practices Act 1974*.
 - (d) Respecting “Do Not Knock” and “No Hawkers” stickers
 - (e) Additional outlined in Appendix 5.4.

In-house procedures and complaints handling

- 2.4.2 Signatories must be responsive to, and deal appropriately with, consumers at all times.
- 2.4.3 Consumers have the right to expect that PV systems supplied by a Signatory will:
- (a) perform properly;
 - (b) reflect the agreed contract;
 - (c) be fit for purpose as per the specifications provided and as outlined by the Signatory; and
 - (d) meet the standards the consumer would reasonably expect, including those set out in this section 2: General Rules and Standards.
- 2.4.4 If a consumer is dissatisfied with a product or service offered or provided, they can submit a complaint to the Signatory. A complaint may include, for example, any expression of dissatisfaction with a product or service offered or provided, with the sales process or salesperson, or with the complaints handling procedure itself.
- 2.4.5 Signatories must have an appropriate internal complaint handling procedure that is fair, efficient and transparent, in line with the following:
- (a) the complaint handling procedure must be compliant with relevant legislation and standards including the Australian Standard on Complaints Handling AS ISO 10002-2006, which Australia adopted as the replacement for AS 4269 in 2006;

- (b) information about the complaints process must be made available to consumers and staff;
- (c) the Signatory must log the complaint and begin its investigation within a reasonable time of its receipt;
- (d) every reasonable effort must be made to advise the complainant as soon as possible of receipt of the complaint and the expected timeframe for resolution of that complaint;
- (e) feedback on the outcome of complaints must be provided to the consumer within 21 days of receipt. Where additional time is required:
 - (i) consumers must be informed of the need for more time to complete investigation; and
 - (ii) the investigation must be completed within 45 days of receipt of the complaint;
- (f) where a consumer is dissatisfied with the outcome of a complaint, the Signatory must provide the consumer with the appropriate contact details for escalating that complaint either internally or externally to the relevant state or territory industry consumer protection organisation, as an independent dispute resolution body.

Signatories must ensure that consumers fully understand the various avenues of complaint available to them. This is best done by clearly documenting those avenues in the complaints handling procedure. Consumers who have attempted to have their complaint resolved by the Signatory and are dissatisfied with that response must be referred by the Signatory to the applicable industry ombudsman or consumer affairs body; and

- (g) Signatories must maintain appropriate record keeping of complaints and their outcomes.

2.4.6 Signatories must be able to demonstrate compliance with the Code and provide evidence of compliance to the Code Administrator when a suspected breach of the Code is being investigated. This may include:

- (a) documented procedures;
- (b) discussion of standard practices; and
- (c) examples of standard documentation given to consumers such as contracts and warranty documents.

Information to be provided to the Code Administrator

2.4.7 Signatories are required to provide an annual confirmation of their compliance with the Code, which also serves to reaffirm the Signatory's ongoing commitment to implementing the Code.

2.4.8 Signatories must nominate a ~~an authorised~~ person who is authorised by the company to be as the “code primary contact” for all matters and correspondence relating to the Code (the Primary Contact). Signatories, ~~and must~~ provide the Code Administrator with up-to-date details including email address, title and telephone number for the Primary Contact. Signatories must inform the Code Administrator within 28 days of a change to the Primary Contact’s details. Signatories must inform the Code Administrator immediately of any change in circumstances that may impact on the Primary Contact’s ability to fulfil their role.

2.4.9 A Signatory must inform the Code Administrator, within 10 business days of the Signatory being notified by the relevant body of receipt of a complaint, of any complaints lodged against them with an energy ombudsman or consumer affairs body.

2.4.10 Signatories must undertake to inform the Code Administrator of any breaches to the Code made by other signatory companies.

2.4.11 Signatories must provide the Code Administrator with the following information and data upon request: ~~This information will be used by the Code Administrator in managing the administration of, and compliance with, the Code, including compliance audits and investigating all suspected breaches of the Code.~~

(a) relevant procedures outlined above in section 2.4: *In-house procedures and complaints handling*;

(b) records of all relevant business activities and transactions relating to a suspected breach, including (if applicable) information provided to the consumer who lodged the complaint, and training provided to employees. These records must be kept for a minimum period of five years for audit purposes in the administration of this Code;

(c) details of any known breaches of the Code;

(d) regular (for example, quarterly) complaints data, including:

(i) the number of complaints received;

(ii) the type of complaints received; and

(iii) the number of resolved complaints; and

(e) any other information that the Code Administrator deems relevant for investigating a suspected breach of the Code.

This information will be used by the Code Administrator in managing the administration of and compliance with the Code, including compliance audits and investigating all suspected breaches of the Code.

2.4.12 All commercial-in-confidence information will be treated with appropriate confidentiality.

- 2.4.13 Signatories must comply in a timely manner with reasonable requests made by the Code Administrator for the provision of information or documentation in relation to compliance audits or investigation of suspected breaches of the Code.
- 2.4.14 Signatories must comply with all reasonable requests of the Code Review Panel in pursuance of its functions (see section 3.2).

Training and promotion of the Code

- 2.4.15 Signatories must ensure consumers are made aware of the Code and:
- (a) take all reasonable steps to promote the benefits of the Code to consumers, including telling consumers about the Code and providing copies on request;
 - (b) advertise the latest version of the Code on their website and in other relevant marketing documents;
 - (c) ensure that consumers are aware of the Signatory's complaints handling provisions.
- 2.4.16 Signatories must ensure that its employees and representatives, whether employed directly, subcontracted or selling or providing services on the company's behalf, are aware of the Code and their responsibilities under the Code.
- ~~(a) Are aware of the Code and their responsibilities under the Code.~~
- 2.4.17 For all system designs and installations, Signatories must employ and contract CEC-accredited designers/installers who abide by the CEC Accreditation Code of Conduct and Accreditation Terms and Conditions ~~for all system designs and installations, who abide by the CEC Accreditation Code of Conduct and Accreditation Terms and Conditions~~, or an equivalently trained accredited designer/installer as defined by the federal government in accordance with the Renewable Energy (Electricity) (Cth) Regulations 2001.
- 2.4.18 Signatories must ensure the safety of their installers, subcontractors and employees.
- (a) Persons must be appropriately qualified and have completed safety training modules (as listed in CEC Accreditation Guidelines) appropriate to the work including working from heights training.
 - (b) Signatories must demonstrate due diligence in ensuring the safety of persons under their direct or indirect responsibility.

Obligations of Signatories and grounds for action to be taken

- 2.4.19 Signatories have given an undertaking that they agree to follow the Code as outlined in this document.
- 2.4.20 Signatories must comply with the Code General Rules and Standards (this section 2) when selling, designing and installing solar PV systems.

- 2.4.21 Signatories are also subject to the Code Administrator's Complaints Procedure, the Code Review Panel Terms of Reference and the Brand Mark Guidelines.
- 2.4.22 Signatories must not act in any way that might bring the Code into disrepute.
- 2.4.23 Signatories must not make any vexatious or unfounded claims against another Signatory.
- 2.4.24 Signatories must ensure that their employees, contractors, agents, and any other individuals or businesses acting on the Signatory's behalf comply with the latest version of the Code. Signatories will be held responsible for all the actions of their employees, contractors, agents, and any other individuals or businesses acting on the Signatory's behalf to the extent that such actions are governed by this Code.~~those individuals they contract with or who sell on their behalf. This includes the practices of third parties from whom signatories purchase sales leads.~~
- 2.4.25 The Code Administrator/Code Review Panel may need to modify both the Code and supporting documentation to reflect the changing industry and ensure the Code standards continue to meet the stated objectives of the Code. Changes required may be identified through regular reviews of the Code which will assess the Code's effectiveness and possible areas for improvement (see section 3.8). Any major changes will be undertaken in consultation with the key stakeholders including signatories, industry, ACL regulators and consumer protection agencies. Signatories are obliged to comply with the most current version of these documents at all times. Code signatories will be notified by email of any changes to these documents, and will be given three months' notice of any significant changes.
- 2.4.26 The Code Administrator/Code Review Panel may take action where there is any failure by a Signatory to meet their obligations under the Code. These circumstances include:
- (a) any conduct or activity which has or may bring the Code into disrepute;
 - (b) failure to observe and conform to all relevant Australian Standards and all relevant CEC Accreditation Guidelines, and all applicable laws, ordinances, regulations and codes of practice;
 - (c) failure to comply with the requirements for provision of information and data as outlined above in section 2.4: *Information to be provided to the Code Administrator*;
 - (d) failure to pay any fees and charges associated with being a Signatory;
 - (e) making any false or misleading declarations or statements to the CEC relating to the Code and the Signatory's conduct;
 - (f) where there are complaints of a serious nature made against the Signatory that are unresolved;
 - (g) where the Signatory becomes bankrupt, insolvent, or their organisation is placed under administration; and

- (h) serious, wilful, systemic, repetitive non-compliance with the potential to impact a large number of consumers or to have a serious impact on a lesser number of consumers.

3. CODE ADMINISTRATION AND COMPLIANCE

Signatories to this Code are also subject to the Code administration and compliance arrangements as set out below.

3.1 Role of Clean Energy Council (Code Administrator)

3.1.1 The Code will be administered by the CEC Accreditation Team. The Accreditation Team also manages the PV Accreditation Program to accredit designers and installers of PV.

3.1.2 The Code Administrator (CEC Accreditation Team) will be responsible for:

- (a) managing the administration process relating to Code signatories;
- (b) monitoring Code compliance, including:
 - i. carrying out compliance audits and initiating inquiries into compliance; and
 - ii. investigating complaints that the Code has been breached;
- (c) determining when breaches of the Code have occurred;
- (d) determining appropriate action when breaches of the Code have occurred;
- (e) enforcing sanctions;
- (f) referring cases to the Code Review Panel for consideration as required;
- (g) performing secretariat functions for the Code Review Panel;
- (h) overseeing promotion of the Code; and
- (i) developing training and supporting material on the Code to assist signatories to comply with the Code.

3.1.3 The Code Administrator is not a dispute resolution body and will refer consumers to either the Code Signatory or the relevant consumer protection organisation in accordance with section 3.3 below.

3.2 Role of the Code Review Panel

3.2.1 The oversight, monitoring and direction of the Code will be undertaken by the Code Review Panel (the Panel).

3.2.2 The Panel will:

- (a) be an independent body. All representatives must be independent of Code signatories. They must not have any conflict of interest, for example, having recently been employed by, or consultant to, any Code Signatory;
- (b) have no representative of the Code Administrator sitting on the Panel;
- (c) be suitably qualified to arbitrate cases referred to it by the Code Administrator, and to hear appeals against sanctions imposed by the Code Administrator;
- (d) consist of at least three participants that are all non-signatories to the Code, including:
 - (i) a consumer representative with relevant experience and knowledge in, for example, consumer advocacy, protection and law, appointed by the Code Administrator in consultation with regulators of ACL;
 - (ii) a PV representative with experience in the solar PV industry appointed by the Code Administrator; and
 - (iii) a Chair with relevant experience and knowledge in, for example, regulatory or government administration of consumer law, or a suitable background to ensure due process is followed at all times, particularly when dealing with any breach of the Code. The Chair will be appointed by the Code Administrator and not employed in the PV industry.

3.2.3 Panel members will be appointed for a period of three years, and will be eligible for reappointment.

3.2.4 The Panel will be responsible for:

- (a) arbitrating cases referred to it by the Code Administrator;
- (b) arbitrating appeals against sanctions imposed by the Code Administrator in accordance with section 3.7; and
- (c) conducting its own inquiries into Code compliance.

3.2.5 The Panel will adhere to the Panel Terms of Reference, which set out its powers and functions.

3.2.6 The Panel will meet regularly to look at revisions to the Code, policy changes, how the Code operates, and complaints data.

3.2.7 All decisions of the Panel are final. Signatories have no right of review beyond the Panel.

3.3 Consumer Disputes

- 3.3.1 The Code Administrator will investigate all reported breaches of the Code but will not resolve a dispute between the Code Signatory and the consumer.
- 3.3.2 Consumers who wish to make a complaint against a Signatory should first contact the Signatory directly. Signatories are required to have a fair and transparent consumer complaints process that meets or exceeds the requirements of the Complaints Handling standard, AS ISO 10002-2006. Details of this process are outlined in section 2.4: In-house procedures and complaints handling.
- 3.3.3 If the consumer is not satisfied with the complaint resolution by the Signatory, the consumer should then contact the relevant industry consumer protection organisation, for example the state consumer affairs or fair trading body (see Appendix 5.3).
- 3.3.4 Consumers are encouraged to inform the Code Administrator of any behaviour which may be in breach of the Code that is lodged with a consumer protection organisation, even if their complaint is subsequently resolved. They can do so using the dispute form available online or in writing or by telephone.

3.4 Compliance and Auditing

- 3.4.1 The Code Administrator has put in place arrangements for monitoring Signatories' compliance with the Code to ensure it delivers the desired outcomes. Signatories must agree to comply with the requirement for regular monitoring and to allow audits on their compliance with the Code.
- 3.4.2 The Code Administrator will carry out the following monitoring and auditing measures and assess ongoing compliance with the code through:
 - (a) audit compliance checks;
 - (b) mystery shopping;
 - (c) assessing feedback from consumers obtained through consumer satisfaction surveys;
 - (d) investigating cases it is aware of in which signatories may have breached the Code;
 - (e) analysis of conciliation and arbitration cases;
 - (f) analysis of consumer complaints;
 - (g) using information obtained from media reports;
 - (h) using information received from other Code signatories; and

- (i) using information obtained from any additional sources.

3.5 Breaches of the Code

3.5.1 The Code Administrator will investigate potential breaches of the Code. Breaches can be raised via:

- (a) self-reporting from Code signatories;
- (b) consumers using the dispute forms available on CEC websites;
- (c) any other person or body using the dispute form on the CEC solar accreditation website; or
- (d) evidence of breaches taken from any source including those outlined in section 3.4.

3.5.2 Alleged breaches of the Code will be investigated by the Code Administrator, which will follow the Complaints Procedure. The key steps of this procedure are:

(a) Where the only source of information on a potential breach is raised by a third party (section 3.5.1(a), (b) or (c) above), evidence of the breach will be requested from the third party.

(b) The Code Administrator will contact the Signatory in writing, providing details of the alleged breach as soon as practicable.

The Signatory will be given 21 days to respond to the Code Administrator setting out its comments and evidence on the alleged breach.

Once a Signatory is aware a breach may have occurred, if the matter is not disputed, they must explain the actions they have taken to address the alleged breach as soon as practicable.

(c) The Code Administrator will investigate and assess the issue as soon as reasonably practicable in order to minimise consumer dissatisfaction and improve industry standards.

(d) Where a breach is found to have been made, depending on the severity of the breach (see section 3.5: *Breach Matrix* below), the Code Administrator will either:

- (i) allocate a sanction in accordance with section 3.6; or
- (ii) provide documentation relating to the breach along with a recommended course of action to the Code Review Panel for consideration.

(e) In the event that the breach is handled solely by the Code Administrator, a Signatory is entitled to appeal the ruling to the Code Review Panel (see section 3.7).

(f) If a breach is referred to the Code Review Panel (either by the Code Administrator or by appeal), the Panel will determine if a breach has occurred and the subsequent action, if any, that will be taken against the Signatory.

(g) All parties involved in the complaint/breach will be notified of the outcomes of the investigation.

(h) All decisions by the Code Review Panel are binding.

Breach matrix

3.5.3 The table below indicates the severity of the breaches. In order to proactively target systemic issues in the industry, the breach levels can be altered at the discretion of the Code Review Panel. Any changes will be made in accordance with section 2.4.25.

Section of the Code	Breach level
Pre-sale activities	
Advertisements and promotions Any advertisements, promotions, quotations and statements produced must be legal, truthful, and comply with all relevant legislation.	Severe
Sales and quoting practices Signatories must adhere to ethical sales and quoting practices during all steps of the process	Major
Any reference to Small-scale Technology Certificates (STCs) must be consistent with Clean Energy Regulator wording.	Medium
Point of contract A written contract must be provided to the consumer and executed as described in the Code.	Severe
Receipts must be issued for all deposits collected.	Severe
Prior to signing the contract Before the contract is signed the Signatory must provide the consumer with the address of the local office or showroom, or a telephone number where any queries can and will be answered.	Minor
Consumers must be given a flyer describing this Code and also including: a) the process for provision of consumer feedback and lodging consumer complaints; and b) a link to the CEC's <i>Guide to Installing Solar PV for Households</i> Solar PV Consumer Guide.	Medium
Signatories must ensure that the contract is explained to the consumer before the contract is signed.	Major
Signatories must clearly explain the process surrounding the payment and trade of STCs.	Medium

Consumers must be advised that their electricity contract/tariff may change following installation of solar and that they should check with their electricity retailer as to what new electricity tariff rates may be applied.	Medium
Signatories must advise consumers of potential billing issues that may arise following changeover of the meter.	Minor
<u>Where relevant in the State of installation, the Signatory must inform the consumer before a contract is signed</u> Consumers must be advised (where relevant in the state of installation) that they require approval <u>is required</u> from the distributor to connect a system to the electricity grid, <u>that must fill out</u> the relevant paperwork <u>must be completed and submitted</u> prior to installation and that should gain approval <u>should be gained</u> prior to installation, sale.	Medium
Where the Signatory prepares and submits the documentation required for approval to connect to the network on behalf of the consumer, they must ensure consumers have approval prior to installation.	Medium
Post-sale activities	
Pre installation	
Cooling-off periods and requirements will <u>must</u> be adhered to.	Major
Refund requirements will <u>must</u> be adhered to.	Major
Post-installation	
<u>Signatories must inform</u> C consumers must be informed on as to how to measure the performance of their system.	Minor
Signatories must inform consumers as to how to appropriately maintain their system on a regular basis.	Medium
Signatories must prepare and submit all relevant documentation on behalf of the consumer (where permitted to do so) or otherwise clearly explain to the consumer the process for preparing and submitting such documentation.	Major
<u>Signatories must inform</u> C <u>provide adequate details</u> consumers must be informed of of the process between system installation and network connection.	Medium
Signatories must endeavour to respond in a timely manner to any additional compliance requests from the distributor or electricity retailer, and if required, in consultation with the consumer.	Medium
Warranty requirements must be adhered to.	Severe
Documentation	
Signatories must ensure that the responsible parties provide the consumer with the relevant documentation in either electronic format or hard copy.	Medium
General business and obligations of signatories	
Compliance with the law	
Signatories must comply with all local, state and federal legislation, CEC	Severe

accreditation guidelines and regulations.	
In-house procedures and complaints handling Signatories must be responsive to, and deal appropriately with, consumers at all times.	Medium
Complaint handling requirements will be adhered to. Signatories must have an appropriate internal complaint handling process that is fair, efficient and transparent.	Severe
Signatories must be able to demonstrate compliance with the Code and provide evidence of compliance to the Code Administrator when a suspected breach of the Code is being investigated.	Medium
Information to be provided to the Code Administrator Signatories must comply with the requirements for information and data to be provided to the Code Administrator.	Severe
Training and promotion of the code Signatories must ensure consumers are made aware of the Code.	Medium
Signatories must ensure employees and representatives, whether employed directly, subcontracted or selling on the company's behalf are aware of the Code and their responsibilities under the Code.	Major
Signatories must employ and contract CEC-accredited designers/installers for all system designs and installations, or an equivalently trained accredited designer/installer as defined by the federal government in accordance with the Renewable Energy (Electricity) Regulations 2001.	Severe
Signatories must ensure the safety of their installers, subcontractors and employees.	Severe
Obligations of signatories and grounds for action to be taken Signatories must adhere to the <u>Complaints Procedure Code compliance procedure</u> , Code Review Panel Terms of Reference, and Brand Mark Guidelines.	Severe
Signatories must not make any vexatious or unfounded claims against other Signatories.	Medium
Code administration	
Failure to pay any fees or charges associated with the Code.	Major
Failure to comply with agreed action plan from an audit.	Major
Failure to comply with directives from the Code Administrator relating to Code breaches.	Major
Systematic breaches This is a breach of the Code that is not a singular event but <u>appears-is, in the Code Administrator's opinion, to be</u> a procedural lack of compliance <u>to with</u> the Code by the Signatory <u>that impacts or has the potential to impact a number of consumers.</u>	Severe

3.6 Sanctions

3.6.1 Once a breach of the Code has been confirmed then the sanctions will be undertaken as per the matrix below:

Breach	<u>Actions / Sanctions</u>
Severe	Signatory details to the Code Administrator its strategy to rectify the issue and appoints an independent auditor to audit the areas of activity where the breach(es) occurred at the Signatory's cost. Audit results and actions to prevent the breach occurring again to be sent to the Code Administrator. The breach will be listed on the CEC website in accordance with section 3.6.3 below.
Major	Signatory details to the Code Administrator its strategy to rectify the issue and implements an agreed action plan (at their cost) to prevent the issue re-occurring. If more than three major breaches occur within a 12 month timeframe, the Signatory must appoint an independent auditor, at the Signatory's cost, to audit the areas of activity where the breach(es) occurred. Audit results and actions to prevent the breach occurring again to be sent to the Code Administrator.
Medium	Signatory details to the Code Administrator its strategy to rectify the issue, and implements an agreed action plan (at their cost) to prevent the issue re-occurring.
Minor	The Signatory provides a written undertaking to the Code Administrator that the breach will not be repeated.

3.6.2 The relevant regulator and ombudsman will be notified of any breach of ACL.

3.6.3 Where a major breach has been made, Signatories will be given an opportunity to rectify the breach within a reasonable timeframe, in accordance with a determination by the Code Administrator/Code Review Panel.

- (a) If the breach is not rectified during this time, the breach will be publicly listed on the CEC website and in the Code Annual Report, identifying the name of the Signatory involved.
- (b) If the breach is rectified during this time, the breach will be publicly listed on the CEC website and in the Code Annual Report, but will not name the Signatory involved (i.e. de-identified listings of major breaches will be published in order to advise customers of issues prevailing in the sector).

Termination of Signatories

- 3.6.4 Serious, wilful, systemic or repetitive non-compliance which is detrimental to consumers may be cause to remove the retailer as a Signatory to the Code with immediate effect.
- 3.6.5 Suspension or cancellation of a Signatory can occur if:
- (a) the Signatory fails to provide evidence that they have rectified or addressed a breach of the Code within a reasonable timeframe; or
 - (b) the Signatory has multiple breaches that signify a systematic failure to adhere to the Code. In this case, they can be suspended until they provide evidence the systemic issue has been rectified.
- 3.6.6 Where a Signatory has been suspended or withdrawn from the Code, the Code Administrator/Code Review Panel has the right to inform the general public and any interested party that the Signatory is no longer a signatory to the Code. The Signatory will also immediately cease to:
- (a) describe itself as a signatory to the Code or an Approved Retailer;
 - (b) use the Code brand mark; and
 - (c) advertise or portray itself as in any way being connected to the Code.

3.7 Appeals

- 3.7.1 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.
- 3.7.2 Signatories can lodge an appeal using the appeals form online.
- 3.7.3 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.
- 3.7.4 The Code Review Panel will consider and provide a ruling on the appeal in writing, along with reasons for the determination, as soon as reasonably practicable.
- 3.7.5 All parties involved will be notified of the outcomes of the investigation.
- 3.7.6 All decisions by the Code Review Panel are binding and there is no further right of appeal.

3.8 Review of the Code and Public Reporting

- 3.8.1 An annual report on the Code's operation, including reporting on Code compliance, will be produced by the Code Review Panel, to enable a periodic assessment of the Code's effectiveness, ensure the Code standards meet the identified objectives and community expectations, and to identify systemic issues and areas for improvement.
- 3.8.2 All breaches and sanctions occurring each year will be reported in the Code's annual report. This information will not identify the names of any signatories, with the exception of:
- (a) cases where a Signatory has been removed or suspended from the Code; and
 - (b) severe breaches that are not rectified by the Signatory, as outlined in section 3.6.3 above.
- 3.8.3 For the purpose of sections 2.4.7 to 2.4.11, none of this information will be made publicly available, with the exception of 2.4.7(c) and (d), which may be included de-identified in the Code's annual report.
- 3.8.4 The Code, Code reporting, Code Review Panel and Code Review Panel Terms of Reference will also be independently reviewed every three years following their commencement. The review will be undertaken by a suitably qualified, independent person/body.
- 3.8.5 The independent three-yearly reviews will be conducted in consultation with relevant stakeholders including consumer advocacy groups, government bodies and regulators of consumer law. The independent reviewer will have access to all necessary documentation including procedures and reporting from the Code Review Panel and Code Administrator.
- 3.8.6 Systemic concerns identified during Code reviews will be referred to the relevant regulators, as will any breaches of laws and regulations.
- 3.8.7 The Code annual report and independent reviews will be published online.

4. BECOMING A CODE SIGNATORY

4.1 Application Process

4.1.1 PV retailers wanting to sign on to the Code will need to complete the following steps:

- (a) complete the online application form or print and complete the application form and submit it to the CEC (both forms located at <http://www.solaraccreditation.com.au/retailers/application-process.html>);
- (b) agree to and sign the Code including the Code *General Rules and Standards* (section 2);
- (c) provide examples of standard documentation as requested (for example, contracts and quotes);
- (d) submit to an integrity/financial check using an external agency;
- (e) allow documentation to be checked by independent experts (for example, lawyers) as required by the Code Administrator. This will be completed in confidence;
- (f) explain any adverse findings from a summary report on any dispute history lodged with the Code Administrator;
- (g) if required by the Code Administrator, attend an interview with Code Administrator; and
- (h) if required by the Code Administrator, provide referees for reference checks/consumer feedback data.

4.1.2 Based on the information submitted by the applicant, the Code Administrator will make an assessment as to whether the application sufficiently demonstrates that the applicant retailer complies with the Code and has the systems and procedures in place to ensure ongoing compliance.

4.1.3 Formal feedback on the application assessment will be provided to the applicant.

4.1.4 Incorrect or incomplete information submitted by an applicant may lead to the delay or rejection of an application.

- 4.1.5 Where an applicant's actions or behaviour is considered to be inconsistent with the Code, the Code Administrator has the right to decline an application.
- 4.1.6 Becoming a Signatory to the Code is open to both non-CEC members and CEC members.

4.2 Signatory Code Fees

4.2.1 All fees are stated exclusive of GST.

4.2.2 All fees are subject to GST.

4.2.3 All fees are published on the Solar Accreditation website at www.solaraccreditation.com.au/codeofconduct/application, including in the Application Form available for download in pdf format from that website.

4.2.4 The CEC reserves the right to vary the fees from time to time. Notice of fee variations will be given to signatories in accordance with section 2.4.25.

4.2.5 A non-refundable Application Fee will be charged for each application. On receipt of an application, the CEC will issue a tax invoice for the Application Fee to the applicant's Primary Contact. On receipt of the Application Fee, the CEC will process the application. The Application Fee is not charged to Signatories undertaking their annual renewal.

4.2.6 Signatories are required to pay an Annual Fee. The Annual Fee is calculated at a price per kilowatt (kW) of solar PV installed by the applicant company in the previous financial year or calendar year, whichever concluded more recently. The Annual Fee charged will have a set minimum and maximum, published in accordance with section 4.2.1 above.

4.2.7 Becoming and remaining a Signatory is conditional upon the timely payment of fees, charges and additional agreed costs associated with being a Signatory (for example, agreed payment for advertising).

- ~~1. Retailers are required to pay an annual fee in order to maintain their status as a code signatory.~~
- ~~2. Code fees are tiered according to company size and based on the kW of installed PV per year each company completes.~~
- ~~3. A \$100 non-refundable administration fee will be charged for each application. This will not be charged for signatories that are undertaking their annual renewal.~~
- ~~4. The applicant or signatory must agree that becoming and remaining a signatory to the code is subject to and conditional upon the timely payment of the following fees.~~

Size of company	No. of installs per year	Annual fee (ex GST)
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Large	Greater than 12,000	\$0.55 / kW installed per year
Medium	1,500 – 12,000	\$0.55 / kW installed per year
Boutique	Less than 1,500	\$0.55 / kW installed per year

- ~~5. The CEC reserves the right to alter or vary the fees from time to time after reasonable notice is given to signatories, in accordance with Section 2.4, 25.~~
- ~~6. The annual fee will be calculated based on the kW installed in the previous financial or calendar year – whichever is more recent.~~
- ~~7. There will be a cap of \$7500 for the maximum fee.~~

4.3 Withdrawing from the Code

- 4.3.1 A Signatory can withdraw from the Code at any time provided they advise the Code Administrator of their intention in writing, and give two weeks' notice of their request to be removed as a Signatory.
- 4.3.2 Signatories who choose to withdraw from the Code will not be entitled to a refund of any fees or associated charges already paid at the date of receipt of notice to withdraw.

4.4 Use of Brand Mark

- 4.4.1 Signatories are required to use the Code brand mark in accordance with the relevant guidelines. The Code brand mark remains the intellectual property of the CEC and legal action may be taken in regard to its misuse.

5. APPENDIX

5.1 Glossary and Definitions

The definitions for terms used in this document are as follows.

Approved Retailer – A solar retailer who is a current signatory to this Code of Conduct.

Australian Consumer Law – Schedule 2 to the *Competition and Consumer Act 2010* (Commonwealth).

Agreement – See ‘Contract’

Best Industry Practice –

- a) Developing and conducting a business in a manner in line with leading practice in the industry, in order to maintain quality that goes beyond mandatory legislated standards.
- b) A benchmark for the industry that shows results superior to those achieved purely through adherence to legislation.
- c) Can evolve over time as improvements are discovered.

Breach – Any failure to comply with the Code of Conduct including the Code General Rules and Standards, and other documentation referred to in the Code.

Business day – A day that is not a Saturday, Sunday or public holiday in the relevant location in Australia.

CEC – the Clean Energy Council.

Code – This Solar ~~PV~~ Retailer Code of Conduct, as published by the Clean Energy Council.

Code Administrator – Clean Energy Council. Has the meaning outlined in section 3.1.

Code Review Panel – Has the meaning outlined in section 3.2.

Complaint – Any expression of dissatisfaction with a product or service offered or provided, or with a complaints process.

Consumer – A person, business or not for profit organisation that seeks to buy or lease goods or services from a business or other provider, is party to a contract, or is eligible under the criteria set by a retailer to enter into a contract to acquire a product. Includes the following categories of consumer:

- a) **Residential Consumer** – A person who purchases solar PV principally for personal, household or domestic use at premises.
- b) **Small Business Consumer** – A business or not for profit organisation which at the time it enters into the contract, may not have a genuine and reasonable opportunity to negotiate the terms of the contract. A small business is defined in accordance with the *Fair Work Act 2009* as one with fewer than 15 employees, not including casual employees. Associated entities are taken to be one entity when calculating the number of employees.

- c) **Medium and Large Scale Business Consumer** – Any that does not fit into a) or b) above.

Contract – An agreement made between two or more parties (for example, a retailer and a consumer) to supply goods or services relating to a solar PV product, that is intended to be legally enforceable. Contracts can be made in writing or orally.

Designer – A designer of solar PV systems.

Dispute – A complaint by a consumer in relation to a Code signatory, that has not been immediately resolved when brought to the attention of that signatory.

Distribution – The activity of delivering electricity from the generator via wires to the end user (retail customers including homes, businesses, etc.).

Distributor – A distribution network service provider, which is an owner, controller or operator of an electricity distribution system.

Electricity Retailer – An entity that delivers and sells electricity directly to the end-use customer.

Force Majeure Event – an extraordinary event outside the reasonable control of a retailer or a consumer.

Inform – To advise in writing or verbally.

Installer – An installer of solar PV systems.

Manufacturer – Includes a person who:

- a) grows, extracts, produces, processes or assembles goods
- b) portrays himself to the public as the manufacturer of goods
- c) causes or permits their name, business name or brandmark to be applied to goods they supply
- d) permits himself to be held out as the manufacturer by another person, or
- e) imports goods into Australia where the manufacturer of the goods does not have a place of business in Australia.

Product – The solar PV system including panels, inverters and components.

~~**Retailer** – Solar PV retailers who are signatories to the Code of Conduct.~~

Signatory – A signatory to the Solar Retailer Code of Conduct, also referred to as an Approved Retailer.

Signed – Has the meaning of something signed in person or equivalent point of acceptance in accordance with the *Electronic Transaction Act* and other relevant legislation.

Solar PV - Solar photovoltaic.

System – The solar PV system. Refers to the entire arrangement, including PV modules and all other equipment required to make it work including inverters and components.

5.2 Additional Information

Further information relating to this Code including documentation referred to in the Code, guides for signatories to assist in complying with the Code, Code templates, and information for consumers, can be found online.

Designer/Installer Accreditation

- Design Guidelines: solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines
- Install Guidelines: solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines
- Accreditation Code of Conduct: solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines/accreditation-code-of-conduct
- Accreditation Terms and Conditions: solaraccreditation.com.au/installers/compliance-and-standards/accreditation-guidelines/accreditation-terms-and-conditions

The Code

- Code Review Panel terms of reference: approvalsolarretailer.com.au
- Brandmark guidelines: approvalsolarretailer.com.au
- Code flyer (consumer guide to the Code): approvalsolarretailer.com.au

Consumer Information

- CEC Consumer guide to buying household solar panels: solaraccreditation.com.au/consumers/purchasing-your-solar-pv-system.html
- CEC guides to connecting to the grid: cleanenergycouncil.org.au/technologies/grid/grid-connection.html

5.3 Consumer Protection Organisations/Other Contacts

Consumer Affairs

Australian Competition and Consumer Commission

GPO Box 3131
Canberra ACT 2601
T. 1300 302 502
acc.gov.au

Australian Capital Territory Office of Regulatory Services

GPO Box 158
Canberra ACT 2601
T. (02) 6207 0400
ors.act.gov.au

New South Wales NSW Fair Trading

PO Box 972

Parramatta NSW 2124
T. 13 32 20
fairtrading.nsw.gov.au

Northern Territory Consumer Affairs

GPO Box 1722
Darwin NT 0801
T. 1800 019 319
consumeraffairs.nt.gov.au

Queensland Office of Fair Trading

GPO Box 3111
Brisbane QLD 4001
T. 13 13 04
fairtrading.qld.gov.au

**South Australia
Office of Consumer
& Business Services**

GPO Box 1719
Adelaide SA 5001
T. (08) 8204 9777
ocba.sa.gov.au

**Tasmania
Office of Consumer
Affairs & Fair Trading**

GPO Box 1244
Hobart TAS 7001
T. 1300 654 499
consumer.tas.gov.au

**Victoria
Consumer Affairs Victoria**
GPO Box 123

Melbourne 3001
T. 1300 55 81 81
consumer.vic.gov.au

**Western Australia
Department of Commerce: Consumer
Protection**

Locked Bag 14
Cloisters Square WA 6850
T. 1300 30 40 54
commerce.wa.gov.au

**Australian Securities and
Investments Commission**

PO Box 9827
(in your capital city)
T. 1300 300 630
asic.gov.au

Other Bodies

- Clean Energy Regulator ret.cleanenergyregulator.gov.au
- Australian Competition and Consumer Commission accc.gov.au

5.4 Relevant Acts and Legislation

The Code and *Code General Rules and Standards* should be read in conjunction with relevant legislation including:

- *Australian Consumer Law* (Schedule 2 of the *Competition and Consumer Act 2010*, the new name of the *Trade Practices Act 1974*) (Cth).
- State and Territory fair trading legislation, where relevant.
- State and Territory door-to-door sales legislation, where relevant.
- The *Disability Discrimination Act 1992* (Cth).
- The *Racial Discrimination Act 1975* (Cth).
- Any other relevant equal opportunity legislation.
- *The Privacy Act 1988* (Cth).
- *The Spam Act 2003* (Cth).
- *The Do Not Call Register Act 2006* (Cth).
- Renewable Energy Target legislation (*Renewable Energy (Electricity) Act 2000* and *Renewable Energy (Electricity) (Charge) Act 2000*) which is supported by the *Renewable Energy (Electricity) Regulations 2001* (Cth).
- Relevant state domestic building work contracts Acts:
 - *Domestic Building Contracts Act 1995* (Victoria).
 - *Home Building Act 1989* (New South Wales).
 - *Domestic Building Contracts Act 2000* (Queensland).
 - *Building Work Contractors Act 1995* (South Australia).
 - *Home Building Contracts Act 1991* (Western Australia).
 - *Housing Indemnity Act 1992* (Tasmania).
- The *Electronic Transactions Act 1999* (Cth).
- Relevant state and territory electrical licensing legislation (for example, *Electricity (Licensing) Regulations 1991* (Western Australia)).