

Level 15, 222 Exhibition Street, Melbourne, Vic 3000
Tel: (03) 9929 4100
www.cleanenergycouncil.org.au



26 August 2015

Dr Richard Chadwick
General Manager, Adjudication
Australian Competition & Consumer Commission
23 Marcus Clarke Street
Canberra ACT 2601

Dear Dr Chadwick

**Application for revocation and substitution A91495 – A91496
Clean Energy Council – response to submissions from interested parties**

Thank you for the opportunity to respond to the submission from the Office of the Australian Information Commissioner (OAIC). Clean Energy Council (CEC) notes the concerns of the OAIC and responds as follows.

1. Use of personal information for future promotion of business/direct marketing

CEC appreciates the OAIC's support for inclusion of privacy enhancing measures in the Code.

(a) In response to OAIC's concern that,

"The provisions of the Code do not reflect the requirements of APP 7 in circumstances where an individual does not have a reasonable expectation that their personal information will be used or disclosed for the purpose of direct marketing,"

CEC may insert a new clause 2.2.11 in the following terms:

2.2.11 Signatories have obligations under the Privacy Act 1988 (Cth) and the Spam Act 2003 (Cth) in relation to collection, use and disclosure of personal information. Signatories must be aware of and comply with such legal obligations at all time.

(b) In response to OAIC's concern that,

"Clause 2.2.12 of the Code does not create clear and specific obligations but instead is framed as best practice,"

CEC says that this is a voluntary code of conduct which does not set out specific legal obligations and contends that doing so would make the Code unwieldy and would cause confusion for signatories and other stakeholders as to what the Code requires beyond legal obligations.

- (c) CEC considers that insertion of the new clause proposed at 1(a) above would address the OAIC's concern that,

“the Code addresses ‘use’ of personal information but does not specifically address ‘disclosure’ of personal information.”

- (d) In response to OAIC's suggestion that,

“consideration be given to including a specific reference to APP 7 in the Code, to ensure that signatories are aware of their obligations when using or disclosing person information for direct marketing,”

CEC again relies on inserting the new clause proposed at 1(a) above relieving OAIC's concern in this regard.

- (e) In response to OAIC's suggestion that,

“consideration be given to the Code including a definition or guidelines which explain what is meant by ‘the future promotion of their business’, to provide clarity to signatories about the type of marketing activities that are permitted under the Code,”

CEC may amend proposed clause 2.2.11 as follows:

2.2.12 Subject to 2.2.11, a Signatory may use personal information collected from consumers:

- (a) for the purpose of the intended sale; and*
- (b) for future marketing of its products and services that relate to the sale; or*
- (c) where a consumer might otherwise reasonably expect to receive marketing material from the Signatory.*

In drafting our original proposed amendments regarding privacy, CEC and the Code Review Panel for the Solar PV Retailer Code of Conduct considered that maintaining relationships between solar PV retailers and consumers would benefit consumers and the industry. Continuing relationships create further accountability on the retailer and provide a point of contact for the consumer.

Signatories to the Code operate using best practice and can use their relationships with consumers to further educate them on developments in technology and the industry generally.

While it is a primary objective of the Code to protect consumers, including protecting their privacy, it is our opinion that solar retailers should be encouraged to maintain relationships with their customers within their obligations under the law and this Code.

2. Finance and alternative purchasing arrangements

CEC thanks the OAIC for its comments on Section 21C of the *Privacy Act 1988* (Cth) and clause 4.1 of the Credit Reporting Privacy Code.

(a) In response to its suggestion that,

“consideration also be given to amending the provisions of the Code to ensure that signatories are aware that the Code is not an exhaustive list of the notification obligations which apply to credit providers, and that credit providers are required to meet obligations imposed by section 21C of the Privacy Act and clause 4.1 of the Credit Reporting Privacy Code,”

CEC may insert a new section 2.1.21 in the following terms:

2.1.21 The Code does not provide an exhaustive list of the notification obligations which apply to credit providers. Credit providers are required to meet obligations imposed by section 21C of the Privacy Act 1988 (Cth) and clause 4.1 of the Credit Reporting Privacy Code.

Conclusion

CEC has carefully considered the submission made by the OAIC in relation to this application for revocation and substitution of the Solar PV Retailer Code of Conduct and has responded as we see appropriate at this stage. We would welcome the opportunity to discuss the submission and our response with you following your own discussions with the OAIC.

Kind regards

Anna Sexton



ANNA SEXTON, CODE OF CONDUCT MANAGER

Level 15, 222 Exhibition Street, Melbourne, VIC 3000

T +61 3 9929 4109

asexton@cleanenergycouncil.org.au

www.cleanenergycouncil.org.au

www.solaraccreditation.com.au