

Form FC

Commonwealth of Australia

Competition and Consumer Act 2010 — subsection 91C (1)

APPLICATION FOR REVOCATION OF A NON-MERGER AUTHORISATION AND SUBSTITUTION OF A NEW AUTHORISATION

To the Australian Competition and Consumer Commission:

Application is hereby made under subsection 91C (1) of the *Competition and Consumer Act 2010* for the revocation of an authorisation and the substitution of a new authorisation for the one revoked.

PLEASE FOLLOW DIRECTIONS ON BACK OF THIS FORM

1. Applicant

- (a) Name of applicant:
(Refer to direction 2)

Clean Energy Council Limited (CEC)

- (b) Description of business carried on by applicant:
(Refer to direction 3)

CEC is a non-profit industry body operating nationally to represent the renewable energy industry, including businesses operating in solar, wind, energy efficiency, hydro, bioenergy, energy storage, geothermal and marine, and more than 4,000 solar installers.

CEC is responsible for the accreditation of PV designers and installers and has authority to sanction designers and installers who do not comply with relevant standards.

CEC administers the Solar PV Retailer Code of Conduct.

- (c) Address in Australia for service of documents on the applicant:

Level 15, 222 Exhibition Street,
Melbourne VIC 3000

2. Revocation of authorisation

- (a) Description of the authorisation, for which revocation is sought, including but not limited to the registration number assigned to that authorisation:

Revocation is sought for authorisation numbers A91365 and A91366, being a voluntary code of conduct for solar PV (photovoltaic) retailers (“the Code”). To achieve its objectives, the Code addresses the four broad

A91495

A91496

subject areas of pre-sale activities, post-sale activities, documentation, and general business. It aims 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;
- to ensure that the consumer's 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;
- 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; and
- 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.

A Determination was made by the ACCC on 25 September 2013 to authorise the Code until 17 October 2018. That Determination is attached to this Form FC as Appendix 1.

(b) Provide details of the basis upon which revocation is sought:

CEC is seeking to have the current authorisation (A91365 and A91366) revoked on the basis that updates to the Code, which may not constitute minor amendments, are required.

Since the Code's inception, issues have emerged in the solar PV industry that were not foreseen but which are within the scope of the behaviour that the Code was designed to address.

CEC seeks to revoke the authorised Code and have it substituted with a revised version. The revised code will incorporate two new provisions, relating to finance and to privacy, and will contain modifications to the sections relating to grid connection procedure. The revised code will clarify retailers' obligation to inform consumers of the process by which permission should be sought for connection of a solar PV system to the electricity grid, and the circumstances under which the retailer is obliged to provide the consumer with a refund.

3. Substitution of authorisation

- (a) Provide a description of the contract, arrangement, understanding or conduct whether proposed or actual, for which substitution of authorisation is sought:
(Refer to direction 4)

The new code for which CEC seeks authorisation is attached, with substantial amendments marked up.

Finance options for purchasing solar

Upfront outright purchase is no longer the only way to acquire solar PV, as a range of financing options has recently become available to consumers. Pricing innovation will continue to develop and CEC seeks to make the Code a mechanism for ensuring consumer protection against the potential confusion created by finance arrangements. Some solar businesses provide the finance schemes themselves and others refer consumers to third party lenders. Such finance arrangements can make solar PV more accessible to consumers but they also have the potential to complicate the process of purchasing solar and expose consumers to financial disadvantage.

Leasing and Power Purchase Agreements (referred to as PPAs) are the most common finance models currently offered as an alternative to upfront outright purchase of solar PV systems. While these finance models may seem appealing on the surface, and indeed are often legitimately favourable, they are not well suited to all circumstances. For example, leasing may not work well for small systems. Typically, leasing agreements are worth at least \$10,000 over the life of the contract and will have a minimum duration of five years or longer.

While solar leasing usually requires consumers to pay for electricity on a monthly basis, electricity purchased under a PPA is charged per kilowatt hour. The usual model for a PPA is that a company agrees to install and maintain a solar system and the customer contracts to buy an agreed amount of electricity generated by the solar system at an agreed price (which is usually lower than the retail price of electricity from the grid). Solar PPAs are generally suited to consumers with a large demand for electricity. They have a typical duration of 10 to 15 years and typically have a minimum duration of around five years. PPAs usually require the consumer to agree to purchase a minimum amount of electricity, or to commit to purchasing the entire amount of electricity produced by the solar PV system. It is therefore important to choose an appropriate sized system to ensure consumers do not commit to purchasing more electricity than they need.

Consumers are vulnerable to incurring unreasonable and unexpected costs and fees, and to committing to an agreement with unsuitable terms, if they are not sufficiently informed before committing to a finance contract. In order to make a well-informed decision, consumers must know, but often don't know to ask, things like:

- who the consumer will be contracted to for the finance arrangement;
- whether that person or entity is a credit provider as defined by the *National Consumer Credit Protection Act 2009* (Cth);
- what the terms of the finance arrangement are;
- the comparative cost of that same product if the consumer was to purchase it outright on that day;
- any additional fees and charges arising from the finance contract; and
- whether the consumer will own the system at the end of a lease.

CEC seeks to broaden protection of consumers of solar PV and continue to raise the standard of sales practices in the solar industry via the Solar PV Retailer Code of Conduct by requiring solar PV retailers to clearly and accurately disclose such information to consumers.

Privacy

While use of consumer data collected by solar PV retailers is governed by the *Privacy Act 1988* (Cth) and other relevant legislation, CEC has been advised by its independent Code Review Panel to seek authorisation to directly address the matter of privacy in the Code.

In preparing the proposed section on privacy, CEC has consulted the solar PV industry and taken guidance from the consumer representatives on its

Code Review Panel. The proposed provision addressing use of consumer information is consistent with the Australian Privacy Principles. It makes clear to solar PV retailers that they may use personal data provided by consumers only for the purpose of the intended sale and for future promotion of their business to the extent that it is relevant to the existing relationship between the consumer and the retailer. It proposes that retailers must obtain express permission from consumers before using the collected data for any other purpose, and that marketing material must include an opt-out provision.

Fees

The Code states that CEC reserves the right to vary the fees from time to time and that notice of fee variations will be given to signatories in accordance with section 2.4 25 of the Code. CEC seeks to extract the price figures from the Code in order to facilitate such changes. All fees and charges are, and will continue to be, published on the internet at <http://www.solaraccreditation.com.au/retailers/application-process/application-form.html> and in the Solar PV Retailer Code of Conduct Application Form attached to this Form FC as Appendix 3.

CEC proposes to amend the fee structure by removing the pricing bands and implementing a price per kilowatt hour for all applicants/signatories, with a minimum annual fee and a maximum annual fee as set by CEC and varied from time to time in accordance with section 4.2 4 of the Code.

The existing fee structure has led to signatories paying unreasonably small fees. Details of fees and charges paid by applicants/signatories are attached to this Form FC as Appendix 4 and are provided to the ACCC in confidence.

The authorised fee structure and existing fees do not reflect the value of the status of being a signatory to the Code or of the services provided by CEC to code signatories. The fees are considerably less than those charged for lower standard schemes and programs in the market and the existing fee structure places an unsustainable financial burden on CEC as the Code Administrator.

Grid Connection Approval

The process by which grid connection approval is obtained, as described in section 2.1 16 of the Code, has been shown to be somewhat inconsistent with the grid connection practices of solar PV retailers and electricity distributors. Ambiguities around the issues of obtaining approval and providing customer refunds arise partly as a consequence of using the words

“should” and “must”. Following some consultation with solar PV retailers and the CEC Accreditation team, CEC has redrafted this section of the code for which substitution is sought.

Other amendments to the Code

CEC has made some formatting changes to the Code, including the numbering system used for paragraphs. CEC has also made some edits for the sake of clarity, consistency and accuracy. These do not constitute substantive changes and do not affect implementation of the stated objectives of the Code. They are not identified as changes in the marked up version of the Code submitted with this Form FC.

- (b) Description of the goods or services to which the contract, arrangement, understanding or conduct (whether proposed or actual) relate:

This Code relates to the sale of solar photovoltaics (PV) and aims to regulate the practices of solar PV retailers, thus improving industry standards and increasing consumer protections.

In accordance with section 2.4 25 of the Code, CEC seeks to modify the Code and supporting documentation, namely the Code of Conduct Application Form, to reflect the changing industry and ensure the Code continues to meet identified objectives.

- (c) The term for which substitute authorisation of the contract, arrangement or understanding (whether proposed or actual), or conduct, is being sought and grounds supporting this period of authorisation:

The Solar PV Retailer Code of Conduct was authorised for a period of five years, until 17 October 2018. CEC seeks authorisation for the substituted code of conduct for a period of five years from the date of authorisation of the substituted code.

The Code has been extensively promoted as a widely accepted mechanism for encouraging industry best practice. Re-authorisation for five years will enable CEC to build on the improvements which the Code is currently making to the solar industry.

The need and appetite for the Code is illustrated by the increased number of applicants and by the number of government bodies and community organisations incorporating it into their procurements processes, as well as the number of consumer groups referring to it and/or relying on it. For example:

- South Sydney Regional Organisation of Councils is referring participants in its “Our Energy Future” initiative to the CEC list of Approved Solar Retailers;
- Moreland Energy Foundation only engages Approved Solar Retailers for its Positive Charge programs;
- LJ Hooker refers to the Code extensively on its Liveability website;
- City of Glen Eira has been working on a significant solar PV installation project for the past 18 months and has relied heavily on the Code in selecting its solar PV retailers;
- the New South Wales government is proposing to use the Code and its signatories in its impending Environmental Upgrade Agreements program; and
- recently the NSW Opposition stated in its election campaign that “Labor will also make compliance with the Clean Energy Council’s Code of Conduct for solar retailers mandatory for all those who wish to receive NSW government contracts. This will provide consumer protection for solar households.”

Commercial in confidence negotiations are taking place to install the Code into various other procurement processes. The Code is gaining momentum in terms of the volume of solar retailers applying to sign it and the widespread acceptance of it as setting the benchmark for quality in service and installation of solar PV. Significant work remains to be done in improving the reputation of the industry and raising standards in the industry but CEC considers that the Code is currently contributing to improvement. Authorisation for a further five years would enable CEC to build on the Code’s reputation as a valuable program that has substantial integrity. Further, it will provide a suitable timeframe in which to advance CEC’s proposed consumer awareness campaign, and to use the benefits of that to guide the next stage of development.

4. **Parties to the contract, arrangement or understanding (whether proposed or actual), or relevant conduct, for which substitution of authorisation is sought**

- (a) Names, addresses and description of business carried on by those other parties to the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct:

A list of Approved Retailers (signatories to the Code) is publicly available at <http://www.solaraccreditation.com.au/retailers/approved-solar-retailers.html#searchResults>. At 30 March 2015, signatories to the Code are:

Energy Matters	Springers Solar
Suntrix	Bradford Solar
Evolve Energy	Skyline Solar
Sungevity	United Solar Energy
West Australian Alternative Energy	Clean Energy Solar
EcoLogic Estates	Coffs Solar Energy
Next Power	Enigin Western Australia
Solar West	Metro Solar
Clean Earth Services	Century Solar Energy
Infinite Energy	Clean NRG

Contact details for these signatories provided in Appendix 2 are submitted to the ACCC in confidence and we request that they are used only for the purpose of assessing this Application for Revocation of a Non-Merger Authorisation and Substitution of a New Authorisation.

- (b) Names, addresses and descriptions of business carried on by parties and other persons on whose behalf this application is made:
(Refer to direction 5)

Not applicable.

- (c) Where those parties on whose behalf the application is made are not known - description of the class of business carried on by those possible parties to the contract or proposed contract, arrangement or understanding:

Not applicable.

5. Public benefit claims

(a) Arguments in support of application for substitution of authorisation:

Finance

CEC contends that inclusion of the proposed consumer finance section in the Code will have substantial public benefit that would outweigh any potential detriment resulting from any lessening of competition arising from this provision.

The proposed section addressing finance aims to provide added protection for consumers in a rapidly expanding area related to solar PV but not currently addressed in the Code. It would place the onus on solar PV retailers to ensure that lenders to whom they refer consumers comply with the same high standards to which solar PV retailers are held under the Code. It would further require solar PV retailers to inform consumers of their rights under such finance agreements and educate them on how to determine whether the alternative finance arrangement will benefit the particular consumer.

CEC has received anecdotal feedback from individuals and community groups that door-to-door sales of Power Purchase Agreements - being presented as “free solar panels” - are prevalent in Melbourne. Consumers would benefit greatly from being referred to, or advised to rely on, solar PV retailers that will fully and accurately inform them of how finance arrangements operate and how to determine whether it is a favourable option for the consumer.

Inclusion of the proposed section on consumer finance would also help to protect the reputation and credibility, and therefore the value and endurance, of the Approved Retailer program that supports implementation of the Code. In addition to ensuring the standards of solar PV retailers who are signatories to the Code, the revised code would aim to further protect consumers by ensuring the lenders with whom those PV retailers have commercial relationships also meet the high standards set by the Code. Where the PV retailers are themselves providing the credit for the purchase of PV systems and/or electricity generated from them, they will be required to meet the requirements set under the proposed consumer finance section of the Code.

According to analysis commissioned by CEC in 2013 for its application and submission to the ACCC for authorisation of the Code, an estimated 15,550 people are directly and indirectly employed in the solar PV industry and

approximately 3,250 solar PV businesses are operating in Australia.¹ CEC contended in that application, and continues to do so, that the impact of benefits brought about by the Code would be distributed widely beyond the primary parties involved, namely the PV retailer and the consumer, and beyond the solar PV industry itself. Incorporating provisions into the Code that require solar PV retailers to protect and educate consumers about consumer credit/finance as it relates to solar PV is an example of such benefit.

Codes of conduct are well accepted by business as a means of documenting their procedures and the obligations they have committed to meeting. They also provide a mechanism by which businesses can communicate their superior standards to consumers. Codes of conduct are also well accepted by consumers as a means of identifying individuals or businesses, in this case solar PV retailers, who have or are likely to have been vetted and can be held accountable for their products and services.

The uptake of rooftop PV by households and businesses continues to increase, with about 195MW of rooftop PV capacity in the sub-100kW category installed in the first quarter, a 7 per cent increase on the same quarter a year ago.² CEC contends that this substantial body of consumers will be better protected by having a code of conduct for solar PV retailers and by extending the Code as submitted in this Form FC.

CEC reiterates the public benefit claims made in its Submission in Support of Application for Authorisation of a Voluntary Code of Conduct for Solar PV Retailers (Appendix 5).

Privacy

This proposed amendment serves to reiterate solar PV retailers' responsibilities under Australian privacy legislation, ensuring protection and ethical use of customer information. CEC claims that consumers will benefit from this addition to the Code by being told explicitly how their personal information can be used by the solar PV retailer, and by receiving a clear and accessible means to opt out of receiving promotional material.

Fees

CEC stands by the public benefits claimed in its original Submission (Appendix 5). It is CEC's view, based on the continued applications to sign

¹ The CEC Submission in Support of Application for Authorisation of a Voluntary Code of Conduct for Solar PV Retailers is attached to this Form FC as Appendix 5.

² Bloomberg New Energy Finance, as cited in Parkinson, G. 2015 'Australian Renewable Investment Plunges to Near Zero', *Renew Economy* <http://reneweconomy.com.au/2015/australian-renewable-investment-plunges-to-near-zero-but-rooftop-solar-grows-93815>

the Code and feedback from stakeholders, that the Code is achieving its key objective of raising standards in the solar industry.

The fees charged by CEC to participate in the Approved Retailer program do not account for the cost of administering the Code to a high standard. CEC helps applicants improve their documentation and processes in order to increase their chances of meeting the requirements of the Code. CEC dedicates resources to these efforts with the intention of raising standards in the solar PV industry. CEC rejects approximately 50 per cent of applicants to the Code on the basis that they do not, even after assistance, meet the standards set by the Code. The cost of processing all applications (those that are successful and those that do not convert to revenue) is not sufficiently accounted for in the current fees.

CEC has a 100 per cent renewal rate for solar PV retailers who have been signatories to the Code for 12 months. It is CEC's view, based on positive feedback from signatories about the program and the increasingly apparent benefits of being signatories to the Code, that this renewal rate will remain high. Under the proposed fee structure, some Approved Retailers will pay a lower annual fee than the annual fee they paid on initially signing the Code. Others will pay more. The proposed fee structure is a more equitable method of charging for the program. It includes an increase in the minimum charge for annual fees and a decrease in the maximum amount charged for annual fees.

The proposed change to the fee structure is projected to result in increased revenue for CEC, which would enable CEC to continue to provide a quality program and to further develop and promote it. An increase in the minimum fee would help facilitate that progression.

The proposed new fees are reasonable and do not cause a barrier to entry but reflect the cost of managing compliance and processing the increasing number of applicants. The proposed fees will enable the CEC to dedicate adequate resources to promoting the Code and continually improving the rigour of compliance testing, thereby further ensuring strict compliance with the Code and consumer protection.

Grid connection approval process

References in the Code to obtaining approval to connect to the electricity grid are somewhat contradictory. The intention to require solar PV retailers to make consumers aware of their rights and obligations in relation to connecting their solar PV system to the grid is clear. However, it has become apparent to network engineers in attempting to implement these

provisions that they are somewhat contradictory. The proposed amendments will clarify when consumers are entitled to a refund if grid connection approval is not granted by the electricity retailer or distributor.

Edits to Code

Edits have been made to remove ambiguities and improve clarity by making terminology consistent throughout the document, improving the numbering of sections of the Code, and generally improving the certainty and readability of some clauses. This will increase the ease with which signatories and their employees, contractors and agents can comply with the Code, clarify for other stakeholders what signatories' obligations are under the Code and make the document more accessible to members of the public who may access it through the CEC website.

(See Direction 6 of this Form)

- (b) Facts and evidence relied upon in support of these claims:

Finance

The past two years have seen a marked increase in innovative retailing and solar leasing options available to consumers of solar PV. Of the 20 signatories to the Code, four currently offer or are in the process of developing offers to consumers to enter into Power Purchase Agreements. Three signatories offer leasing of solar PV systems to residential and commercial customers.

Data from the Australian Energy Regulator shows that it has granted approximately 50 Individual Exemptions from the requirement to hold a retailer authorisation under the National Energy Retail Law to businesses selling electricity under alternative arrangements.

The Consumer Action Law Centre has alerted CEC to the practices of at least one lender that is not transparent in its provision of finance arrangements for solar PV customers.

Privacy

The Code Review Panel has recommended that the Code directly address the matter of privacy. CEC has taken the advice of the Code Review Panel and consulted with the solar PV retail industry, and considers it prudent to include a section in the Code to clarify expectations on handling customer data. This appears to be an approach consistent with other voluntary codes of conduct authorised by the ACCC.

6. Market definition

Provide a description of the market(s) in which the goods or services described at 3 (b) are supplied or acquired and other affected markets including: significant suppliers and acquirers; substitutes available for the relevant goods or services; any restriction on the supply or acquisition of the relevant goods or services (for example geographic or legal restrictions):

The code of conduct for which CEC seeks substitution will operate in the same market as the authorised Code, namely retailers of solar PV. The substituted code of conduct will also affect businesses that provide credit to consumers of solar PV.

(See Direction 7 of this Form)

7. Public detriments

- (a) Detriments to the public resulting or likely to result from the substitute authorisation, in particular the likely effect of the conduct on the prices of the goods or services described at 3 (b) above and the prices of goods or services in other affected markets:

Any potential public detriments caused by the Code would also apply to the revised code of conduct. These are detailed and accepted in the ACCC's Final Determination dated 25 September 2013 (Appendix 1). For completeness of this Application for Revocation and Substitution, they are:

- Exclusionary conduct by restricting membership to retailers that employ or contract with accredited designers or installers.
- Sanctioning of PV retailers.
- The potential to reduce a competitive dynamic where the Code specifies minimum standards such as a five year warranty for system performance and workmanship of installers.
- Increased costs to signatories from membership fees and higher standards which are likely to be recovered in the form of higher prices to consumers.

For the reasons outlined below, CEC submitted that these public detriments are unlikely to arise and will have minimal, if any, impact on competition as:

- The Code will be open to all PV retailers.
- There will be no relationship to an applicant's membership with the CEC in the determination of their eligibility to become a Code signatory. All prospective signatories will be eligible to become a

signatory so long as they comply with the relevant rules and standards detailed in the Code.

- All signatories to the Code are to be treated equally in regards to their requirement to comply with the Code and all Code compliance procedures, including penalties and sanctions, will be fully transparent and independently monitored.
- The CEC claims that the fee structure has been tiered according to the number of PV installations a company completes per year.
- A range of supporting documentation to assist Code signatories in digesting and adhering to the scheme will be developed by the CEC to ensure consistency and reduce compliance costs.

Further to the potential detriments detailed above, the revised code of conduct may give rise to the following public detriment:

- Restriction of competition in the finance market resulting from signatories to the Code making commercial arrangements only with lenders who agree to provide standard terms that enable the solar PV retailer to meet its obligations under the code.

(See Direction 8 of this Form)

- (b) Facts and evidence relevant to these detriments:

It is proposed that the Code will have substantial public benefits which would outweigh potential detriments constituted by any lessening of competition arising from the scheme. The proposed amendments aim to further lessen the risk of exploitation of susceptible consumer groups, continue to improve the flow of information to consumers and PV retailers, and continue to facilitate increased compliance with federal and state legislative requirements.

8. Contracts, arrangements or understandings in similar terms

This application for substitute authorisation may also be expressed to be made in relation to other contracts, arrangements or understandings (whether proposed or actual) that are, or will be, in similar terms to the abovementioned contract, arrangement or understanding

- (a) Is this application to be so expressed?

This is an application to substitute the amended code for the authorised code. The amended version is largely the same as the authorised Code, with the exception of the proposed insertion of sections on privacy and finance,

amendments to the sections relating to grid connection approval, and various formatting changes.

- (b) If so, the following information is to be furnished:
- (i) description of any variations between the contract, arrangement or understanding for which substitute authorisation has been sought and those contracts, arrangements or understandings that are stated to be in similar terms:

Not applicable.
(See Direction 9 of this Form)

- (ii) Where the parties to the similar term contract, arrangement or understanding(s) are known - names, addresses and description of business carried on by those other parties:

Not applicable.
(See Direction 5 of this Form)

- (iii) Where the parties to the similar term contract, arrangement or understanding(s) are not known — description of the class of business carried on by those possible parties:

Not applicable.

9. Joint Ventures

- (a) Does this application deal with a matter relating to a joint venture (See section 4J of the *Competition and Consumer Act 2010*)?

No.

- (b) If so, are any other applications being made simultaneously with this application in relation to that joint venture?

Not applicable.

- (c) If so, by whom or on whose behalf are those other applications being made?

Not applicable.

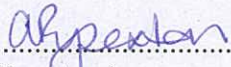
10. Further information

- (a) Name, postal address and telephone contact details of the person authorised by the parties seeking revocation of authorisation and substitution of a replacement authorisation to provide additional information in relation to this application:

Anna Sexton
Code of Conduct Manager
Clean Energy Council
Level 15
222 Exhibition Street, Melbourne, Vic, 3000
Phone (03) 9929 4109

Dated 17 April 2015

Signed by/on behalf of the applicant


.....
(Signature)

Anna Sexton
(Full Name)

Clean Energy Council Limited
(Organisation)

Code of Conduct Manager
(Position in Organisation)

DIRECTIONS

1. Where there is insufficient space on this form to furnish the required information, the information is to be shown on separate sheets, numbered consecutively and signed by or on behalf of the applicant.
2. Where the application is made by or on behalf of a corporation, the name of the corporation is to be inserted in item 1 (a), not the name of the person signing the application and the application is to be signed by a person authorised by the corporation to do so.
3. In item 1 (b), describe that part of the applicant's business relating to the subject matter of the contract, arrangement or understanding, or the relevant conduct, in respect of which substitute authorisation is sought.
4. In completing this form, provide details of the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, in respect of which substitute authorisation is sought.
 - (a) to the extent that the contract, arrangement or understanding, or the relevant conduct, has been reduced to writing — provide a true copy of the writing; and
 - (b) to the extent that the contract, arrangement or understanding, or the relevant conduct, has not been reduced to writing — provide a full and correct description of the particulars that have not been reduced to writing; and
 - (c) If substitute authorisation is sought for a contract, arrangement or understanding (whether proposed or actual) which may contain an exclusionary provision — provide details of that provision.
5. Where substitute authorisation is sought on behalf of other parties provide details of each of those parties including names, addresses, descriptions of the business activities engaged in relating to the subject matter of the authorisation, and evidence of the party's consent to authorisation being sought on their behalf.
6. Provide details of those public benefits claimed to result or to be likely to result from the contract, arrangement or understanding (whether proposed or actual), or the relevant conduct, including quantification of those benefits where possible.
7. Provide details of the market(s) likely to be affected by the contract, arrangement or understanding (whether proposed or actual), in particular having regard to goods or services that may be substitutes for the good or service that is the subject matter of the application for substitute authorisation.
8. Provide details of the detriments to the public, including those resulting from the lessening of competition, which may result from the contract, arrangement or understanding (whether proposed or actual). Provide quantification of those detriments where possible.
9. Where the application is made also in respect of other contracts, arrangements or understandings, which are or will be in similar terms to the contract, arrangement or understanding referred to in item 2, furnish with the application details of the manner in which those contracts, arrangements or understandings vary in their terms from the contract, arrangements or understanding referred to in item 2.

Solar ~~PV~~-Retailer Code
of Conduct



TABLE OF CONTENTS

1. INTRODUCTION	4
1.1 Purpose and Objectives	4
CEC Accreditation for Solar PV Designers/Installers	4
Solar PV Retailer Code of Conduct	5
1.2 Scope and Interpretation	6
1.3 Signatories to the Code	7
2. GENERAL RULES AND STANDARDS	8
2.1 Pre-Sale Activities	8
Advertisements and Promotions	8
Sales and Quoting Practices	9
Point of Contract	10
Prior to Signing the Contract	12
Approval to Connect to the Network	12
Consumer Finance	13
2.2 Post-Sale Activities	15
Pre-Installation	15
Post-Installation	16
2.3 Documentation	18
2.4 General Business and Obligations of Signatories	19
Compliance with the Law	19
In-house Procedures and Complaints Handling	19
Information to be provided to the Code Administrator	20
Training and Promotion of the Code	22
Obligations of Signatories and Grounds for Action to be Taken	22
3. CODE ADMINISTRATION AND COMPLIANCE	25
3.1 Role of Clean Energy Council (Code Administrator)	25
3.2 Role of the Code Review Panel	26

3.3	Consumer Disputes.....	27
3.4	Compliance and Auditing	27
3.5	Breaches of the Code	28
	Breach Matrix.....	29
3.6	Sanctions	33
	Termination of Signatories	34
3.7	Appeals.....	34
3.8	Review of the Code and Public Reporting	35
4.	BECOMING A CODE SIGNATORY	36
	4.1 Application Process.....	36
	4.2 Code Fees	37
	4.3 Withdrawing from the Code.....	38
	4.4 Use of Brandmark	38
5.	APPENDIX	39
	5.1 Glossary and Definitions	39
	5.2 Additional Information	40
	Designer/Installer Accreditation	41
	The Code.....	41
	Consumer Information	41
	5.3 Consumer Protection Organisations/Other Contacts.....	41
	Consumer Affairs.....	41
	Other Bodies.....	42
	5.4 Relevant Acts and Legislation	43

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.

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, co~~ the consumer is entitled to a full refund if the application is rejected and the contract has already been signed.

Consumer finance

2.1.20 When advertising a finance arrangement that provides an alternative to initial outright purchase (for example, 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 lender, a finance 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 lender to whom the consumer will be contracted;

(b) a clear statement that the periodic payments are available only if the consumer wishes to take advantage of the finance model;

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

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

(i) the dollar amount of fees and charges applied under the finance 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 contract;

(e) under a solar leasing offer, the aggregate amount payable over the life of the financing term;

- (f) under a PPA, the aggregate amount over the financing term based on a reasonable and stated estimate of the solar-generated electricity consumed by the consumer;
- (g) details of any exit payments or penalties associated with the finance arrangement;
- (h) a statement as to whether the consumer owns the system at the conclusion of any plan or agreement under the terms of the finance 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
- (i) a statement that questions and complaints about the finance arrangement should be directed to the lender with whom the consumer is or will be contracted and, where relevant, to the Australian Securities and Investments Commission or the financier's external dispute resolution provider.

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

2.1.22 Credit Providers operating in Australia are governed by the National Consumer Credit Protection Act 2009 (Cth) ("the NCCP Act"). The Signatory must make reasonable enquiries as to whether the lender (ie. the finance company to whom it is introducing consumers) is a credit provider as defined by the NCCP Act. If the lender is not or states that it is not a credit provider as defined in the NCCP Act, the Approved Retailer must ensure that:

- (a) the relevant contract includes a provision substantially in the form set out in section 2.1.3 below ; and
- (b) the provision referred to in section 2.1.2(a) is signed by the consumer.

2.1.23 "The consumer acknowledges that the lender is not, or may not be, subject to the National Consumer Credit Protection Act 2009 (Cth) ("the NCCP Act") and accordingly the consumer may not have the benefit of the statutory protections afforded to consumers under the NCCP Act including, without limitation:

- (a) access to the services of the Financial Ombudsman Service;
- (b) access to dispute resolution services;
- (c) access to a streamlined court procedure for small claims;
- (d) a right to seek compensation;
- (e) applications for hardship variations or stays of enforcement; and
- (f) receiving information from the Credit Provider when a consumer defaults on their contract or a debit is dishonoured."

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:
 - 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 must include an opt-out provision on marketing material.
- 2.2.13 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 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.

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.

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 ~~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

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: <ul style="list-style-type: none"> 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
Where relevant in the State of installation, the Signatory must inform the consumer before a contract is signed. Consumers must be advised (where relevant in the state of installation) that they require approval is required from the distributor to connect a system to the electricity grid, that must fill out the relevant paperwork must be completed and submitted prior to installation and that should gain approval should be gained 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	
Signatories must inform 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
Signatories must inform C provide adequate details 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 Complaints Procedure Code compliance procedure , 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 appears-is, in the Code Administrator's opinion, to be a procedural lack of compliance to with the Code by the Signatory that impacts or has the potential to impact a number of consumers.	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 themselves 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 themselves 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 acc.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)).



Australian
Competition &
Consumer
Commission

Determination

Applications for authorisation

lodged by

Clean Energy Council Limited

in respect of

a voluntary code of conduct for solar PV (photovoltaic) retailers

Date: 25 September 2013

Authorisation numbers: A91365 & A91366

**Commissioners: Sims
Cifuentes
Court
Walker**

Summary

The Australian Competition and Consumer Commission (ACCC) grants authorisation to the Clean Energy Council Limited (CEC) for its voluntary code of conduct for businesses which sell solar photovoltaic (PV) systems (the Code) until 17 October 2018.

The Code imposes standards upon retail businesses selling PV systems that are in addition to their existing obligations under consumer protection legislation. The ACCC considers that the Code is likely to improve consumer confidence and consumer protection in the PV retail sector, improve PV retailer standards and compliance in the PV sector, and reduce risk and cost for other stakeholders operating in the market.

The application for authorisation

1. On 4 April 2013, the Clean Energy Council Limited (CEC) lodged two applications for authorisation with the ACCC (A91365 & A91366) under sections 88(1) and 88(1A) of the *Competition and Consumer Act 2010* (the Act). The CEC lodged an amended Code on 29 May 2013 to address recommendations made by interested parties and the ACCC.
2. The CEC seeks authorisation of a voluntary code of conduct for solar photovoltaic (PV) retail businesses (the Code) for matters relating to the marketing and sale of solar PV systems. Authorisation has been sought for five years. A copy of the Code is at Attachment B.
3. In broad terms the ACCC can authorise arrangements that may breach the competition provisions of the Act 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 CEC's application for authorisation can be found on the ACCC's Public Register.²
4. On 4 July 2013, the ACCC released a draft determination proposing to grant authorisation to the CEC for its Code for a period of five years. A conference was not requested in relation to the draft determination.

Rationale for the Code

5. The CEC submits that the purpose of the Code is to provide a mechanism for the self-regulation of retailers of solar PV systems to ensure that retailers maintain a standard that will benefit consumers and the industry (see section 1.1 of the Code).
6. The primary entities involved in the sale and installation of solar PV systems are the installer, designer and retailer. These roles can be fulfilled by one or a number of different entities. The CEC submits that it is likely that medium to larger PV retailers will subcontract the design and installation of solar PV systems.

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

² <http://transition.accc.gov.au/content/index.phtml/itemId/1108396/fromItemId/278039>.

7. The CEC is the body responsible for the accreditation of PV designers and installers and is able to penalise any accredited installer that fails to install a PV system to the relevant Australian Standard. However, where a retailer sub-contracts the installation of the system the retailer is not covered by a standard other than existing consumer protection legislation.
8. CEC submits that the growth in the number of PV retailers³ operating in the market and the number of residential PV installations has led to concerns regarding the accountability of retailers in the sale and post-sale activities of solar PV systems which has prompted the development of the Code.
9. In particular, the CEC is concerned that these changes in the industry have decreased consumer confidence in the sector and have contributed to an increase in the number of consumer complaints to ombudsmen and regulators. The Energy and Water Ombudsman of Victoria (EWOV) submits that it has received 9508 solar related complaints in 2011 – 2012.
10. The retail purchase of PV solar systems is generally a once off purchase, may be relatively complicated for consumers, and may involve a number of different parties. Typically, consumers purchase a solar PV system from a retailer who will then contract with a system designer and installer.
11. Due to the varying types of PV systems and billing options available (including government incentives), consumers may be unable to assess the suitability, performance and billing arrangements of the system in a fully informed manner and may need to rely on the information provided to them by PV retailers. This may lead to retailers encouraging consumers to make purchasing decisions that are in the retailer's rather than the consumer's best interests.
12. Further, given the complexity of PV systems and the number of parties involved in the installation, it can be difficult for consumers to identify which party is accountable in the event of system performance concerns.

The Code

13. To address these and other concerns, the Code sets best practice standards for retail businesses that sell PV systems.

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

³ In 2011, there were 3,946 companies listed with accredited installers.

about the product and technologies that they are selecting (section 2.1.2 (a))

- c. in addition to the statutory guarantees under consumer law, provide a minimum retailer's warranty period of five years on the operation and performance of the whole PV system including workmanship and products (section 2.2.10), and
 - d. comply with all local, state and federal legislation, CEC Accreditation Guidelines and regulations including but not limited to Schedule 2 of the Act (section 2.4.1).⁴
15. The Code requires retailers to provide consumers with information relevant to their potential purchase⁵ and advice on how to locate the CEC's consumer guide to buying household solar panels.

Monitoring and enforcement

16. The Code is to be administered by the CEC 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 prepare annual reports on the Code's operation including Code compliance.
18. Breaches of the Code are to be investigated by the Code Administrator. Breaches have been assigned a severity rating (section 3.6) which corresponds to relevant sanctions (section 3.6).
19. Sanctions range from the appointment of an auditor, publication of the breach on the CEC's website and termination of signatories in certain circumstances. Appeals may be heard by the independent Code Review Panel (section 3.7).

Clean Energy Council Ltd (CEC)

20. The CEC 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 PV designers and installers.
21. The CEC is the body responsible for the accreditation of PV designers and installers. Consumers wanting to take advantage of the Federal Government financial incentives available under the Small Scale Renewable Energy Scheme (SRES) are required to use a CEC accredited installer and designer. This requirement is in accordance with the *Renewable Energy (Electricity) (Cth) Regulations 2001*.

⁴ 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."

⁵ Pursuant to all existing state and federal legislation and regulations, including the Australian Consumer Laws.

22. The CEC describes itself as the peak body representing Australia's renewable energy and energy efficiency industries. The CEC 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.⁶ The CEC advised that 172 of its members include solar 'retailer' as one of the services provided.⁷

Public Consultation

Prior to draft determination

23. On 9 April 2013, the ACCC invited submissions on the application from 150 potentially interested parties, including energy retailers, consumer groups and all state energy and water ombudsmen.

24. The ACCC received submissions from:⁸

- a. Energy and Water Ombudsman Victoria Ltd (EWOV), and
- b. Energy Australia Pty Ltd (Energy Australia).

25. Both parties supported the application, although EWOV provided some recommendations to further clarify the provisions of the Code for consumers.

26. The CEC provided a further submission clarifying aspects of the Code which included minor amendments to the Code in response to suggestions made by interested parties and the ACCC.

Post draft determination

27. The ACCC received further public submissions in response to the draft determination from:

- a. Consumer Action Law Centre, which supports the authorisation and is of the view that the Code is a very positive step forward for the industry, and if implemented effectively, should result in increased accountability and protection for consumers, and
- b. ACT Civil & Administrative Tribunal, which also supports authorisation and is of the view that the proposed Code builds on existing consumer protection mechanisms and assists to clarify the responsibilities of retailers of solar photovoltaic cells.

28. The Applicant has not made any further submissions post draft determination.

⁶ A list of CEC's members is available from the CEC website:

<http://www.cleanenergycouncil.org.au/aboutus/membership/currentmembers/sponsoring.html>.

⁷ CEC email to ACCC 7 June 2013.

⁸ All submissions can be viewed on the ACCC's Public Register, including a list of parties consulted: <http://transition.accc.gov.au/content/index.phtml/itemId/1108396/fromItemId/278039>.

ACCC evaluation

29. The ACCC's evaluation of the Code is in accordance with the relevant net public benefit tests contained in the Act.⁹ In broad terms, under the relevant tests the ACCC shall not grant authorisation unless it is satisfied that the likely benefit to the public would outweigh the detriment to the public, including the detriment constituted by any lessening of competition that would be likely to result.

30. In its evaluation of this application, the ACCC has taken into account:

- a. Information available from the ACCC's consideration of previous relevant Codes of Conduct.¹⁰
- b. Information received from the CEC and interested party submissions, including that the two submissions received supported the application for authorisation.
- c. The likely future without the conduct the subject of the authorisation.¹¹ The CEC submits that not implementing the proposed Code may lead to an increase in solar PV system related complaints by consumers compared to the likely future with the Code. The ACCC notes that existing consumer protection legislation regulates the conduct of businesses, including PV retailers. However, the ACCC accepts that the Code may assist in improving PV retailer's compliance with consumer protection legislation, and therefore may reduce the number of consumer complaints.
- d. The relevant areas of competition likely to be affected by the Code. The CEC 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:
 - a. components of solar PV systems
 - b. design services of PV systems, and
 - c. installation services of PV systems.

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 CEC. However, the ACCC considers that a precise market definition is not required in these circumstances.

- e. The five year authorisation period requested.

⁹ Subsections 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the Act. The relevant tests are set out in Attachment A.

¹⁰ Energy Assured Limited - Minor Variation - A91258 & A91259 (2013) and Energy Assured Limited - Authorisations - A91258 & A91259 (2011).

¹¹ For more discussion see paragraphs 5.20-5.23 of the ACCC's *Guide to Authorisation*.

Public benefits

31. The CEC submits that the proposed Code will lead to the following public benefits:¹²
- a. Improved standards in the PV sector, increased consumer confidence and consumer protection.
 - b. Education of consumers to enable them to make more informed choices.
 - c. Provision of nationally uniform practices and addressing jurisdictional challenges.
 - d. Reduced regulatory cost.
 - e. Reduced risk and cost for other stakeholders operating in the market.
 - f. Economic efficiency and environmental benefits.
32. The ACCC's assessment of the likely public benefits from the conduct follows.

Improved consumer confidence and enhanced consumer protection

33. The ACCC considers that the Code is likely to result in better informed consumers as a result of the obligations on signatories to educate potential consumers and to provide relevant information including the CEC's consumer guide to buying household solar panels (sections 2.1.4 and section 2.3). Detailed information about the system will be set out in a written contract which includes among other things the price, specifications, system performance estimates (based on data) obtained from the CEC, and after sales service inclusions regarding the PV system (section 2.2.5 and section 2.3).
34. 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.
35. The ACCC also considers that consumer confidence in the PV retail sector may also improve 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.

Improved PV retailer standards and compliance in the PV sector

36. The ACCC considers that the Code is likely to improve 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

¹² The complete CEC supporting submission can be viewed on the ACCC's Public Register at <http://transition.accc.gov.au/content/index.phtml/itemId/1108396/fromItemId/278039>.

2.4.4) and requiring signatories to keep and provide records and data for auditing and monitoring purposes (section 2.4.11).

37. The ACCC considers that the range of sanctions to be applied by the independent Code Review Panel¹³ in the event of Code breaches (section 3.5) creates additional incentives for PV retailers to comply with the Code and therefore improve standards.

Reduced risk and cost for other stakeholders operating in the market

38. The CEC submits that ethical behaviour standards and the minimum five year warranty requirement under the Code should promote appropriate care and attention to the choice of product, choice of installers, and volume of work allocated to installers, leading to increased safety for installers and consumers.

39. The CEC also submits that the record keeping and compliance requirements placed on retailers under the Code may also reduce the incidence of fraud for example claiming for the installation of second hand systems or systems that have not been installed. Therefore the Code may provide Renewable Energy Certificate (REC) agents with confidence in the trade of certificates issued by the Clean Energy Regulator under the Small-scale Renewable Energy Scheme (SRES).

40. The ACCC considers that the Code is likely to reduce the risk and cost for stakeholders including installers and potentially for REC agents and government stakeholders responsible for administering incentive schemes. As signatories are required to warrant the overall system performance including installation workmanship, they 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 compliance

41. The CEC 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.

42. 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 PV retailer standards and compliance, these benefits have been considered and accepted by the ACCC (see paragraphs 36 - 37).

43. 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 paragraphs 33 - 35).

¹³ CEC 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.

Economic efficiency and environmental benefits

44. The CEC submits that the additional take-up of efficient solar PV systems by consumers in response to the Code may lower greenhouse emissions.
45. As set out in paragraph 34, the ACCC accepts that the Code is likely to improve the efficiency of consumer purchasing decisions. However, the ACCC considers that any additional take up of PV systems and resulting reduction in greenhouse gas emissions as a result of the Code is unlikely to be significant.

ACCC conclusion on public benefits

46. The ACCC accepts that the 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 information to assist in purchasing decisions,
 - b. improving PV retailer standards and compliance in the PV sector, and
 - c. reducing risk and cost for other stakeholders operating in the market.
47. The ACCC considers that to the extent that the other public benefits claimed by the CEC arise, they have been considered under the categories listed above or are unlikely to be significant.

Public detriments

48. The CEC notes the following possible public detriments in relation to the Code:
- a. Exclusionary conduct by restricting membership to retailers that employ or contract with accredited designers or installers.
 - b. Sanctioning of PV retailers.
 - c. The potential to reduce a competitive dynamic where the Code specifies minimum standards such as a five year warranty for system performance and workmanship of installers.
 - d. Increased costs to signatories from membership fees and higher standards which are likely to be recovered in the form of higher prices to consumers.¹⁴
49. For the reasons outlined below, CEC submits these public detriments are unlikely to arise and will have minimal, if any, impact on competition as:
- a. The Code will be open to all PV retailers.
 - b. There will be no relationship to an applicant's membership with the CEC in the determination of their eligibility to become a Code signatory. All prospective signatories will be eligible to become a

¹⁴ The complete CEC supporting submission can be viewed on the ACCC's Public Register at <http://transition.accc.gov.au/content/index.phtml/itemId/1108396/fromItemId/278039>.

signatory so long as they comply with the relevant rules and standards outlined in the Code.

- c. All signatories to the Code are to be treated equally in regards to their requirement to comply with the Code and all Code compliance procedures, including penalties and sanctions, will be fully transparent and independently monitored.¹⁵
- d. The CEC claims that the fee structure has been tiered according to the number of PV installations a company completes per year.¹⁶
- e. A range of supporting documentation to assist Code signatories in digesting and adhering to the scheme will be developed by the CEC to ensure consistency and reduce compliance costs.

50. The ACCC's assessment of the likely public detriment from the conduct follows.

Exclusionary conduct

51. 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.
52. The ACCC also notes the CEC's submission that the detriments are likely to be minimal given that consumers that wish to take advantage of the government incentives available through the SRES are already required to use a CEC accredited installer and designer.
53. The ACCC therefore considers that these provisions are unlikely to lead to more than minimal public detriment.

Sanctions applied to PV retailers

54. The ACCC considers that the ability to sanction 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 CEC website and suspension or cancellation if a signatory has engaged in systemic breaches or cannot provide evidence that they have rectified a breach in a reasonable timeframe (sections 3.5 and 3.6).
55. 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,¹⁷ applied by an independent agency and only in accordance with standards required by the scheme.¹⁸

¹⁵ Independently overseen by the Code Review Panel (CRP).

¹⁶ CEC claims that this will ensure that the smaller companies are on equal footing with larger companies in the requirement for payment of an annual Code fee.

¹⁷ The breaches and corresponding sanction are clearly set out in section 3.5.3.

¹⁸ CEC 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.

Minimum warranty period

56. 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).¹⁹ To the extent that competitors 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.

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

Increased costs

58. The CEC notes that a possible detriment of the Code is that there may be a small average increase in the cost of PV installations supplied by signatories due to the additional consumer support required by the Code. The CEC also notes that the compliance and reporting requirements of the Code may be a burden for signatories or potential signatories.

59. 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. In relation to the compliance costs for signatories directly resulting from the Code's implementation, the ACCC considers that these are likely to be minimal and that the compliance requirements imposed are necessary in order for the Code to be effective.

60. The ACCC is therefore of the view that there will be minimal public detriment arising from increased costs and prices associated with the Code.

ACCC conclusion on public detriments

61. 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 and will be available to all solar PV retailers, regardless of CEC membership, who are willing to comply with the requirements of the Code, in a market that appears to be competitive.

62. 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

¹⁹ CEC notes that certain products including panels and inverters may have a warranty that exceeds five years.

applies to the extent that it is consistent with all existing State and Federal legislation and regulation.

63. 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 benefits and detriments

64. The ACCC considers that the likely public benefits from the conduct would outweigh any public detriment that may arise from the conduct.
65. Accordingly, the ACCC is satisfied that the relevant net public benefit tests are met.

Length of authorisation

66. The ACCC grants authorisation for the five years requested by the Applicant, that is until 17 October 2018.
67. The ACCC notes that it may review an authorisation prior to its expiry if there has been a material change in circumstances since the authorisation was granted.
68. The authorisation is in respect of the Code as it currently stands (as at Attachment B). Any changes or variations to the Code during the term of the authorisation would not be covered by the authorisation.

Determination

The application

69. On 4 April 2013, the Clean Energy Council Limited (CEC) lodged two applications for authorisation with the ACCC (A91365 & A91366) under sections 88(1) and 88(1A) of the *Competition and Consumer Act 2010* (the Act). The CEC lodged an amended Code on 29 May 2013 (the Code).
70. The CEC seeks authorisation to make and give effect to the Code which may be regarded 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 that Act and which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act
 - b. would be, or might be, a cartel provision within the meaning of Division 1 of Part IV of that Act (other than a provision which would also be, or might also be, an exclusionary provision within the meaning of section 45 of that Act)
 - c. would have the purpose, or would have the effect, of substantially lessening competition within the meaning of section 45 of that Act.

The net public benefit test

71. For the reasons set out in this 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 the 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.

72. Accordingly, the ACCC is satisfied that the tests in sections 90(5A), 90(5B), 90(6), 90(7) and 90(8) of the Act are met.²⁰

73. The ACCC grants authorisations A91365 & A91366 to Clean Energy Council Ltd to make and give effect to the voluntary code of conduct for solar photovoltaic (PV) retail businesses (the Code). The ACCC grants authorisation for five years, until 17 October 2018.

Date authorisation comes into effect

74. This determination is made on 25 September 2013. If no application for review of the determination is made to the Australian Competition Tribunal (the Tribunal), it will come into force on 17 October 2013.

²⁰ See Attachment A.

Attachment A

Competition and Consumer Act 2010

Section 90—Determination of applications for authorisations

Section 90 (5A) states that the Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a proposed contract, arrangement or understanding that would be, or might be, a cartel provision, unless the Commission is satisfied in all the circumstances:

- (a) that the provision would result, or be likely to result, in a benefit to the public; and
- (b) that the benefit would outweigh the detriment to the public constituted by any lessening of competition that would result, or be likely to result, if:
 - (i) the proposed contract or arrangement were made, or the proposed understanding were arrived at; and
 - (ii) the provision were given effect to.

Section 90 (5B) states that the Commission must not make a determination granting an authorisation under subsection 88(1A) in respect of a provision of a contract, arrangement or understanding that is or may be a cartel provision, unless the Commission is satisfied in all the circumstances:

- (a) that the provision has resulted, or is likely to result, in a benefit to the public; and
- (b) that the benefit 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.

Sections 90(6) and 90(7) state that the Commission 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 section 90(6) would result, or be likely to result, or in the case of section 90(7) has resulted or is likely to result, in a benefit to the public; and
- that benefit, in the case of section 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 section 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



Clean Energy Council

Voluntary Code of Conduct for Solar PV Retail Businesses

Contents

1.	Introduction	4
1.1	Purpose and Objectives	4
	CEC Accreditation for Solar PV Designers/Installers	4
	Code of Conduct for PV Retailers.....	4
1.2	Scope and Interpretation.....	6
1.3	Signatories to the Code:.....	6
2.	General Rules and Standards.....	7
2.1	Pre-Sale Activities.....	7
	Advertisements and Promotions	7
	Sales and Quoting Practices.....	7
	Point of Contract.....	8
	Prior to Signing the Contract.....	10
2.2	Post Sale Activities	11
	Pre-Installation.....	11
	Post-Installation	12
2.3	Documentation	13
2.4	General Business and Obligations of Signatories.....	13
	Compliance with the Law.....	13
	In-house Procedures and Complaints Handling.....	14
	Information to be Provided to the Code Administrator	15
	Training and Promotion of the Code	16
	Obligations of Signatories and Grounds for Action to be Taken	16
3.	Code Administration and Compliance	18
3.1	Role of Clean Energy Council (Code Administrator)	18
3.2	Role of the Code Review Panel	18
3.3	Consumer Disputes	19
3.4	Compliance and Auditing.....	19
3.5	Breaches of the Code	20
	Breach Matrix.....	21
3.6	Sanctions.....	23
	Termination of Signatories.....	23
3.7	Appeals.....	24

3.8	Review of the Code and Public Reporting.....	24
4.	Becoming a Code Signatory	26
4.1	Application Process	26
4.2	Signatory Fees	26
4.3	Withdrawing from the Code	27
4.4	Use of Brandmark	27
5.	Appendix	28
5.1	Glossary and Definitions	28
5.2	Additional Information.....	29
	Designer/Installer Accreditation	29
	The Code	29
	Consumer Information.....	29
5.3	Consumer Protection Organisations/Other Contacts.....	30
	Consumer Affairs.....	30
	Other Bodies	31
5.4	Relevant Acts and Legislation	31

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 that are 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, 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. Only individuals are able to gain accreditation under the PV accreditation scheme, which has a technical focus on safety and the correct design and installation of PV systems. A CEC-accredited solar designer/installer:

- Has completed 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.

Code of Conduct for PV Retailers

The PV Accreditation Program deals with matters relating to the installation and design of PV systems. This Code deals with matters that relate to the marketing and sale of PV systems to ensure the PV retailer also maintains a standard that will benefit consumers and the industry.

The Code has been developed to improve the relationship between consumers and PV retailers and ensure the industry is suitably regulated. The Code is a self-regulated scheme designed to provide consumers with confidence that the retailer will act in compliance with (and where appropriate, go beyond) relevant federal and state based laws and regulations, and conduct its 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 issues identified which may impact on the reputation of the 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:

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.

Post-Sale Activities

- To ensure that consumers' legal rights relating to cooling-off periods, deposits and refunds are respected and upheld, 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.

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.

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 exists in addition to any relevant state or federal legislation including *Australian Consumer Law (Cth)* (ACL) (Schedule 2 of the *Competition and Consumer Act 2010*, which is the new name of 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 or federal legislation or 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 5.5.

1.3 Signatories to the Code:

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

- Are any 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.
- Include non-CEC members and CEC members who choose to subscribe to the Code.

A regularly updated list of current signatories to the Code will be available online for consumers.

2. General Rules and Standards

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

2.1 Pre-Sale Activities

Advertisements and Promotions

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 fairly 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.
 - 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 there are no reasonable grounds for making 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.
 - viii. Exaggerating or misleading a consumer in regards to their need for the product.

Sales and Quoting Practices

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 quick or uninformed decisions about the product and technologies that 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. Undertaking badgering techniques, such as making daily telephone calls, to pressure individuals or organisations into signing contracts.
 - 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.
 - iii. Leaving the premises immediately if the consumer asks them to do so.
 - iv. Explaining to consumers their right to terminate the agreement within ten business days for unsolicited sales.
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.
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.

A link to this flyer is acceptable, so long as 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

5. 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 (if applicable).
 - d) Full specifications of the system, including the solar modules (manufacturer, model, quantity, power rating) and inverter/s (manufacturer, model, quantity, power rating).

- e) A site-specific full system design including the proposed roof plan (sketch or diagram is acceptable), all shading issues, orientation and tilt, along with the system's site-specific estimated energy yield i.e. daily performance estimate in kilowatt hours (kWh) for each month of solar generation.
 - i. The performance estimate must be based on data obtained from the CEC System Design Guidelines for Accredited Designers or other reputable source.
- f) It is acceptable for Section 5(e) above to be provided as a deliverable of the contract, so long as:
 - i. This information is provided before the expiry of any cooling-off period.
 - ii. Where Section 5(e) is provided as a deliverable of contract:
 - The initial contract must include a generic outline of the likely system performance estimate (to enable the consumer to make an informed purchase decision).
 - 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.
- g) The expected efficiency losses due to shading or orientation.
- h) Any site conditions and special circumstances beyond the control of the signatory which may result in extra chargeable work not covered by the quote, and hourly or daily rates which would apply in this situation.
 - i. 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.
- i) A timetable for supplying and installing the system.
- j) Business terms, including the payment method, deposits and timetable, and how long the quote will be valid for.
- k) Details about any after-sales services, guarantees and express warranties. The warranty must:
 - i. Set out relevant claim periods or procedures.
 - ii. 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.
 - iii. The consumer's cooling-off and termination rights.
- l) 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.
 - m) A clause stating that the signatory must comply with this Code.
6. The contract must be expressed in a clear and transparent way, using plain language that is legible.
 7. 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 5(h), additional fees that may arise, or if there is any difference between a price verbally quoted, and the final contract price.
 8. Both parties must sign the agreement and any amendments.
 - a) Equivalent methods of legal agreement other than signing a contract in person are also permitted (for example, electronic acceptance).
 9. Any requirement to provide a document or information in writing, or provide a signature or record of information can be met in electronic form.
 10. Receipts must be issued for all deposits collected.

Prior to Signing the Contract

11. 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.
12. Signatories must ensure that the contract is explained to consumers prior to entering into an agreement.
13. Signatories must clearly explain the process surrounding the payment and trade of STCs, including:
 - a) 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).
14. Consumers must be advised that their electricity contract/tariff may change following installation of solar and to check with their electricity retailer what new electricity tariff rates may be applied.
15. 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 Network

16. Consumers must be advised (where relevant in the state of installation) that they require approval from their distributor to connect a system to the electricity grid, must fill out the relevant paperwork prior to installation and should gain approval prior to sale.
 - a) Where consumers take responsibility for obtaining approval to connect to the network and the application is rejected and the contract has already been signed, the consumer is entitled to the return of all funds minus the reasonable expenses incurred by the signatory to the point of termination.

17. For signatories that prepare and submit the relevant documentation required for approval to connect to the network on behalf of the consumer, they must ensure the consumer receives approval prior to installation.
 - a) Where signatories take responsibility for obtaining approval to connect to the network, consumers are entitled to a refund if the application is rejected and the contract has already been signed.

2.2 Post Sale Activities

Pre-Installation

Cooling-Off Period

1. For unsolicited sales, consumers must be given ten business days to cancel the contract without penalty (the cooling-off period) after they have signed the contract.
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

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.
4. A full refund must be given to the consumer upon request when:
 - a) The final system design provided in accordance with Section 2.1, 5(e) is significantly different to that quoted at point of contract and is not signed off by the consumer.
 - b) Where, in accordance with Section 2.1, 5(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.
 - ii. The consumer does not consent to this information upon receiving it.
 - c) The delivery timeframe for installation completion that was agreed upon at point of contract is not honoured and the consumer does not consent to a revised timeframe.
 - i. Excluding reasonable events outside of the control of the signatory or customer (e.g *force majeure* events).
 - d) Where, in accordance with Section 2.1, 17, the signatory acting on behalf of the consumer to obtain approval to connect to the network does not do so prior to sale, and the consumer does not receive approval from the distributor to connect a system.
 - e) Extra chargeable work not specified in the initial contract arises, the additional costs are not borne by the signatory, and the consumer does not consent to these additional costs.

Post-Installation

5. Consumers must be informed on how to measure the performance of their system. Signatories must specify how energy output can be measured by one of the following:
 - a) Demonstration.
 - b) Written instructions on how to read the inverter.
 - c) Provision of a measuring device that links back to the inverter.

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

6. Signatories must inform consumers how to appropriately maintain their system on a regular basis (provision of maintenance documentation in accordance with Section 2.3 below is sufficient).

Connection to the Network

7. Signatories must prepare and submit within a reasonable timeframe, all relevant documentation on behalf of the consumer (where permitted to do so) required from the electricity retailer and/or distributor for meter installation and connection of the system to the network, or otherwise clearly explain to the consumer the process for preparing and submitting such documentation.
8. Consumers must be informed of the process between system installation and network connection. Signatories must:
 - a) Notify the consumer when they have provided the relevant paperwork to the electricity retailer and/or distributor (if applicable) and how the paperwork was provided, for example: email, fax.
 - b) Provide expected timeframes for each step.
 - c) Advise the consumer who they should contact to follow up on progress.
 - d) Advise of any potential problems that may arise.
9. Signatories must endeavour to respond within a reasonable timeframe to any additional compliance requests from the distributor or electricity retailer (for example, re-submitting incorrect paperwork), and if required, in consultation with the consumer.

Warranty

10. A standard minimum retailer's warranty period of five years¹ must be provided by the signatory, on the operation and performance of the whole PV system including workmanship and products.
 - a) This retailer's warranty exists over and above the consumer's automatic rights under consumer guarantees.
 - 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. Signatories 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.

- Someone else said or did (excluding the signatory’s agents or employees).
- Beyond human control that happened after the goods or services were supplied (e.g. *force majeure* events, possums, extreme weather).

2.3 Documentation

1. Below (Section 2.3, 2) is a list of the required documentation that the consumer needs to receive once the PV system is installed, and who is responsible for providing the documentation. Signatories must ensure that the responsible parties below provide the consumer with this documentation.
2. This documentation must be provided in either electronic format or hard copy. Where appropriate, specified information (for example, a web link) on where this information can be found is acceptable, however hard copies must be provided upon request from 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)

2.4 General Business and Obligations of Signatories

Compliance with the Law

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” or “No Hawkers” stickers
- e) Additional outlined in Appendix 5.4.

In-house Procedures and Complaints Handling

2. Signatories must be responsive to, and deal appropriately with, consumers at all times.
3. Consumers have the right to expect that PV systems supplied by a signatory will perform properly, reflect the agreed contract, be fit for purpose as per the specifications provided and as outlined by the signatory and meet the standards the consumer would reasonably expect, including those set out in this Chapter 2: *General Rules and Standards*.
4. If consumers are dissatisfied with a product or service offered or provided, they can provide a complaint to the signatory. A complaint may include 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.
5. Signatories must have an appropriate internal complaint handling process that is fair, efficient and transparent, in line with the following:
 - a) 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 this complaints process must be made available to consumers and staff.
 - c) Signatories must log the complaint and begin their 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 within 21 days of receipt. Where additional time is required:
 - i. Consumers must be informed of the need for more time to complete investigation.
 - ii. The investigation must be completed within 45 days of receipt of the complaint.
 - f) Where consumers are dissatisfied with the outcome of a complaint, signatories must provide them 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. Consumers who have attempted to have their complaint resolved by the signatory and are dissatisfied with that response be referred by the signatory to the applicable industry ombudsman or consumer affairs body.
 - g) Signatories must maintain appropriate record keeping of complaints and their outcomes.

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 could include:
 - a) Documented procedures
 - b) Discussion of standard practices
 - c) Examples of standard documentation given to consumers such as contracts, warranty documents

Information to be Provided to the Code Administrator

7. Signatories are required to provide an annual reconfirmation of their compliance with the Code which also serves to reaffirm the signatory's ongoing commitment to implementing the Code.
8. Signatories must nominate an authorised person as the "Code primary contact", and provide up to date details including email address, title and telephone number for this contact. Signatories must inform the Code Administrator within 28 days of a change to the Code 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.
9. Signatories must inform the Code Administrator of any complaints lodged against them with an energy ombudsman or consumer affairs body.
10. Signatories must undertake to inform the Code Administrator of any breaches to the Code made by other signatory companies.
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 in-house 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 e.g. quarterly) complaints data, including:
 - i. The number of complaints received.
 - ii. The type of complaints received.
 - iii. The number of resolved complaints.
 - e) Any other information that the Code Administrator deems relevant for investigating a suspected breach of the Code.
12. All commercial in confidence information will be treated with appropriate confidentiality.
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.

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

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 when asked.
 - b) Advertise the latest version of the Code on their website and in other relevant marketing documents.
 - c) Ensure consumers are aware of their company's complaints handling provisions.
16. Signatories must ensure employees and representatives, whether employed directly, subcontracted or selling on the company's behalf:
 - a) Are aware of the Code and their responsibilities under the Code
17. Signatories must employ and contract CEC accredited designers/installers 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*.
18. Signatories must ensure the safety of 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

19. Signatories have given an undertaking that they agree to follow the Code as outlined in this document.
20. Signatories must comply with the Code *General Rules and Standards* (this Chapter 2) when selling, designing and installing solar PV systems.
21. Signatories also agree to be bound by the Code compliance procedure (breach of the Code procedure), Code Review Panel terms of reference and landmark guidelines.
22. Signatories must not act in any way that might bring the Code into disrepute.
23. Signatories must not make any vexatious or unfounded claims against other Code signatories.
24. Signatories must ensure all of their employees, contractors, agents, and any other individuals who act on their behalf comply with the latest version of the Code. Signatories will be held responsible for all the actions of their employees, those individuals they contract with or who sell on their behalf. This includes the practices of third parties from whom signatories purchase sales leads.
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 identified objectives. 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.

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 breach of the Code by a signatory or failure to comply with the Code.
 - b) Any conduct or activity which has or may bring the Code into disrepute.
 - c) 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.
 - d) 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*.
 - e) Failure to pay any applicable fees.
 - f) Making any false or misleading declarations or statements to the CEC relating to the Code.
 - g) Where there are complaints of a serious nature made against the signatory that are unresolved.
 - h) Where the signatory becomes bankrupt, insolvent, or their organisation is placed under administration.
 - i) 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)

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.
2. The Code Administrator (CEC Accreditation Team) will be responsible for:
 - a) Managing the administration process relating to Code signatories.
 - b) Monitoring Code compliance:
 - i. Carrying out compliance audits and initiating inquiries into compliance.
 - ii. Investigation of 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) Secretariat functions for the Code Review Panel.
 - h) Overseeing promotion of the Code.
 - i) Development of training and supporting material on the Code to assist signatories to comply with the Code.
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

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

- 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. Panel members will be appointed for a period of three years, and eligible for reappointment.
 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.
 - c) Conducting its own inquiries into Code compliance.
 5. The Panel will adhere to the Panel terms of reference, which set out its powers and functions.
 6. The Panel will meet regularly to look at revisions to the Code, policy changes, how the Code operates, and complaints data.
 7. All decisions of the Panel are final. Signatories have no right of review beyond the Panel.

3.3 Consumer Disputes

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.**
2. Consumers who wish to make a complaint against a Code signatory should first contact the signatory directly. PV retailers that are signatories to this Code 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. If the consumer is not satisfied with the resolution of a complaint by a Code signatory, they should then contact the relevant industry consumer protection organisation, for example the state consumer affairs or fair trading body (see Appendix 5.3).
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

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.
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) Media reports.
- h) Information received from other Code signatories.
- i) Any additional sources.

3.5 Breaches of the Code

1. The Code Administrator will investigate potential breaches of the Code by signatories. 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.
 - d) Evidence of breaches can also be taken from any source including those outlined in Section 3.4.

2. Alleged breaches of the Code will be investigated by the Code Administrator, which will follow the Code Compliance 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 Code signatory in writing, providing details of the alleged breach as soon as practicable.

The Code 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 Code 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. The Table below indicates the seriousness 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 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 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. b) A link to the CEC Solar PV Consumer Guide.	Medium
Signatories must ensure that the contract is explained to the consumer prior to entering into an agreement.	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 to check with their electricity retailer 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
Consumers must be advised (where relevant in the state of installation) that they require approval from the distributor to connect a system to the electricity grid, must fill out the relevant paperwork prior to installation and should gain approval prior to sale.	Medium
For signatories who prepare and submit the relevant documentation required for approval to connect to the network on behalf of the consumer, they must ensure consumer have approval prior to installation.	Medium
Post-sale Activities	
Pre Installation Cooling-off periods and requirements will be adhered to.	Major
Refund requirements will be adhered to.	Major
Post-installation	

Consumers must be informed on how to measure the performance of their system.	Minor
Signatories must inform consumers 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
Consumers must be informed 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	
Retailers must ensure that the responsible parties provide the customer 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 accreditation guidelines and regulations.	Severe
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) (Cth) Regulations 2001.	Severe
Signatories must ensure the safety of installers, subcontractors and employees.	Severe
Obligations of Signatories and Grounds for Action to be Taken	
Signatories must adhere to the Code Compliance Procedure, Code Review Panel terms of reference, and landmark guidelines.	Severe
Signatories must not make any vexatious or unfounded claims against other Code signatories.	Medium
Code Administration	
Failure to pay any applicable fees.	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 appears to be a procedural lack of compliance to the Code by the signatory that impacts or has the potential to impact a number of consumers.	Severe

3.6 Sanctions

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

Breach	Sanction
Severe	Signatory details to the Code Administrator its strategy to rectify the issue and appoints an independent Code auditor to audit the areas of activity where the breach(s) 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, 2 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 time frame the signatory must appoint an independent Code auditor to audit the areas of activity where the breach(s) occurred at the signatory's cost. 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.

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

4. Serious, wilful, systemic, repetitive non-compliance which is detrimental to consumers may be cause to remove the retailer as a signatory to the Code with immediate effect.

5. Suspension or cancellation of Code signatory can occur if:
 - c) The signatory fails to provide evidence that they have rectified or addressed a breach of the Code within a reasonable timeframe.
 - d) 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.
6. Where a signatory has been removed or withdrawn as a Code signatory, 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 themselves as a signatory to the Code.
 - b) Use the Code brandmark.
 - c) Advertise or portray themselves as in any way connected to the Code.

3.7 Appeals

1. If a Code 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.
2. Signatories can lodge an appeal using the appeals form online.
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.
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.
5. All parties involved will be notified of the outcomes of the investigation.
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

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.
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.
 - b) Severe breaches that are not rectified by the signatory, as outlined in Section 3.6, 2 above.
3. For the purpose of Sections 2.4, 7- 11, none of this information will be made publicly available, with the exception of 11 (c) and (d), which may be included in the Code's annual report de-identified.

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.
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.
6. Systemic concerns identified during Code reviews will be referred to the relevant regulators, as will any breaches of laws and regulations.
7. The Code annual report and independent reviews will be published online.

4. Becoming a Code Signatory

4.1 Application Process

1. PV retailers wanting to sign on to the Code will need to complete the following steps:
 - a) Complete the online application form.
 - b) Agree to and sign the Code including the Code *General Rules and Standards* (Chapter 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) Explain any adverse findings from a summary report on any dispute history lodged with the Code Administrator.
 - f) If required by the Code Administrator, attend an interview with Code Administrator.
 - g) If required by the Code Administrator, provide referees for reference checks/consumer feedback data.
2. Based on the information collected the Code Administrator will make an assessment as to whether the application sufficiently demonstrates that the retailer complies with the Code and has the systems and procedures in place to ensure on-going compliance.
3. Formal feedback on the application assessment will be provided to the applicant.
4. Incorrect or incomplete information submitted by an applicant may lead to the delay or rejection of an application.
5. Where an applicant's actions or behaviour is considered to be inconsistent with the Code, the Code Administrator has the right to refuse an application.
6. Becoming a signatory to the Code is open to both non-CEC members and CEC members.

4.2 Signatory Fees

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 number of installations per year each company completes.
3. 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
Large	Greater than 4,000	\$7,000
Medium	1,000-4,000	\$4,000
Boutique	Less than 1,000	\$350

4. 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.

4.3 Withdrawing from the Code

1. Retailers can withdraw as a signatory to 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.
2. Signatories who choose to withdraw from the Code will not be entitled to a refund of any fees or associate charges already paid at the date of receipt of notice to withdraw.

4.4 Use of Brandmark

1. Signatories are required to use the Code brandmark in accordance with the relevant guidelines. The Code brandmark 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.

- **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** – Clean Energy Council.
- **Code** – This 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 itself.
- **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** – Clean Energy Council accredited designer of 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 event outside the reasonable control of a retailer or a consumer.
- **Inform** – To advise in writing or verbally.
- **Installer** – Clean Energy Council accredited installer of PV systems.
- **Manufacturer** – Includes a person who:
 - a) grows, extracts, produces, processes or assembles goods
 - b) portrays themselves 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 themselves 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** – See ‘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
- Install Guidelines
- Accreditation Code of Conduct
- Accreditation Terms and Conditions

The Code

- Code Compliance Procedure (breach of the Code procedure)
- Code Review Panel terms of reference
- Brandmark guidelines
- Code flyer (consumer guide to the Code)

Consumer Information

- CEC Consumer guide to buying household solar panels:
cleanenergycouncil.org.au/resourcecentre/Consumer-Info/solarPV-guide.html

- CEC guides to connecting to the grid:
cleanenergycouncil.org.au/resourcecentre/gridconnection.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
accg.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 acc.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)).

SOLAR PV RETAILER CODE OF CONDUCT APPLICATION



Thank you for your interest in signing on to the Clean Energy Council (CEC) Solar PV Retailer Code of Conduct (the Code). We congratulate you on taking this step to demonstrate to consumers that your business operates using the highest industry standards.

We would be grateful if you could tell us here where you heard about the Code of Conduct.

1. APPLICATION PROCESS AND FEES

1.1 Application process

The applicant must complete this application form and submit it to the CEC by:

- Email to CodeofConduct@cleanenergycouncil.org.au or
- Post or courier service to
The Code Administrator
Clean Energy Council
Level 15, 222 Exhibition Street
Melbourne VIC 3000

Alternatively, you can complete our [online application form](#).

1.2 Summary of the application process

- You submit a completed application form and supporting documentation
- You pay your Application Fee
- We will assess your application in accordance with the criteria in section 4 of the Code
- Successful applicants will be issued with a tax invoice for the Annual Fee
- You pay the Annual Fee
- We will send confirmation of your Approved Retailer status, and an e-pack including the Approved Retailer logo and other marketing material
- You watch your list of satisfied customers grow

1.3 Disclaimer

The Applicant acknowledges and agrees that it has no claim and is not entitled to make any claim against the CEC for delays in processing an application or for rejection of an application.

1.4 Fees

All fees are stated exclusive of GST. All fees are subject to GST.

- (a) **Application Fee:** This is a non-refundable fee of \$100 and applies to all applications. When we receive your application, we will send a tax invoice for the Application Fee to your Primary Contact. When we receive payment of this fee, we will assess your

application. The Application Fee will not be charged to signatories undertaking their annual renewal.

- (b) **Annual Fee:** Signatories are required to pay an Annual Fee. The Annual Fee is calculated at \$0.80 per kilowatt (kW) installed by your company in the last financial year or calendar year, whichever concluded more recently. The Annual Fee is subject to a minimum of \$600 and a maximum of \$6,000.

In accordance with clause 4.2.4 of the Code of Conduct, the Clean Energy Council may vary the fees from time to time.

2. COMPANY SIZE

2.1 Installations completed by your company

At the CEC's request, applicants/signatories must provide supporting materials to verify annual installation figures. Providing false or misleading information will result in revocation of your signatory status.

2.2 Total number of number of PV installations completed by your company last financial year or calendar year, whichever concluded more recently

2.3 Total kW of PV installed by your company last financial year or calendar year, whichever concluded more recently

2.4 Number of your company's employees involved in PV

2.5 Proportion (percentage) of your company's business dedicated to PV

3. COMPANY DETAILS

3.1 Company name

Only the company and/or business named on an approved application form will be entitled to use the Approved Retailer logo or publish or otherwise advertise that it is a signatory to the Code. Separate applications must be made for each business owned and operated by the applicant company.

3.2 Your legal name (company name)

3.3 Your trading name (business name) if different to your legal name

3.4 Your Australian Business Number (ABN) or Australian Company Number (ACN)

3.5 Company address

Street number and name

City

State

Postcode

3.6 Postal address if different from above

PO Box number

Street number and name

City

State

Postcode

3.7 Company contact details

The details provided in this section 3.8 will be made public.

Phone

Fax

Email

Web address

3.8 Region of Operation

Please tick all regions in which your company operates.

ACT

Victoria

New South Wales

Western Australia

Northern Territory

Tasmania

Queensland

South Australia

National

Head Office:

4. PRIMARY CONTACT FOR YOUR COMPANY

4.1 Your Primary Contact

The Applicant must nominate a person who is authorised by the company to be the Primary Contact for all matters and correspondence relating to the Code. The CEC will refer any consumer disputes directly to your Primary Contact.

4.2 Primary contact details

Name	Position/Title
Email	Phone

If details of your Primary Contact change, you must notify the Code Administrator of new contact information within 28 days of that change.

5. DOCUMENTATION REQUIRED TO SUPPORT YOUR APPLICATION

In order to properly assess your application, we need to consider the documentation you provide to your customers. Applications will be processed only when you have provided all documentation requested in this section 5.

Documentation provided to the CEC in support of this application may be given to an external firm for legal assessment and review. All information that is commercial-in-confidence will be treated with appropriate confidentiality.

5.1 Please attach the following information to this application:

(a) All documentation a consumer would receive from you if they purchased a PV system from your company.

Ensure, where appropriate, that the documentation is filled in, i.e. provide de-identified actual paperwork sent to a consumer. The documentation should include:

- (i) the quote provided to a consumer
- (ii) the contract issued to a consumer, including your company's standard terms and conditions
- (iii) details of warranty policy/policies provided to a consumer
- (iv) an example of a performance estimate provided to a consumer. This must be the average daily kWh for each month of the year. Please see CEC Design Guidelines for more information.

(b) An example of your company's complaints process and/or template used to log complaints.

- (c) **Details of what, if any, advertising your company has undertaken in the previous year and examples of that advertising.**

5.2 Sales process

In accordance with Australian Consumer Law, documentation should be provided in the following order.

1. Quote
2. Contract with all terms and conditions
3. Details of warranty policy/policies
4. Performance estimate outlining average daily kWh for each month of the year

- (a) **Does your company provide documentation to customers in the above order?**

Yes No

- (b) **If 'No', please re-number the above list to demonstrate the order in which you provide those documents to your customers.**

Any application that fails to include the above documentation, and to state the order in which the documentation is received by the consumer, will be deemed incomplete and will be rejected.

5.3 Finance

- (a) **Does your company provide its customers with finance arrangements (such as leasing or Power Purchase Agreements)?**

Yes No

- (b) **Does your company offer its customers finance arrangements with independent lenders?**

Yes No

If yes, please name the lenders to whom you refer customers.

5.4 Solar PV Retailer Code of Conduct Self-Assessment Compliance Check

As part of the application process you will be asked to declare that you have truthfully answered all the questions in this Self-Assessment Compliance Check. Verification audits will be carried out on a selection of applicants to verify the information provided is correct. If you are audited you will be asked to supply evidence to confirm compliance.

Please answer Yes or No to the following questions:

- | | | |
|---|-----|----|
| (a) Has your company been in operation for a minimum of 12 months? | Yes | No |
| (b) Does your company comply with all aspects of the Code? | Yes | No |
| (c) Are your company's consumer-facing staff and contractors aware of the requirements of the Code? | Yes | No |
| (d) Do your company's standard terms and conditions of contract comply with Australian Consumer Law? | Yes | No |
| (e) Do your company's advertising and sales promotion materials comply with Australian Consumer Law? | Yes | No |
| (f) For unsolicited sales, does your company inform consumers that there is a 10 business day cooling-off period, during which the customer may cancel the contract without penalty and receive a full refund of their deposit? | Yes | No |
| (g) Does your company provide consumers with a minimum 5-year full system warranty, including workmanship and all products? | Yes | No |
| (h) Does your company systematically log all complaints received from consumers? | Yes | No |
| (i) Does your company give a written contract as defined in section 2.1.6 of the Code? | Yes | No |
| (j) Does your written contract include: | | |
| (i) site-specific average daily performance estimate for each month of the year | Yes | No |
| (ii) manufacturer and capacity of panels and inverter | Yes | No |
| (iii) any site conditions that may result in extra charges not covered in the contract | Yes | No |
| (iv) estimated timetable for supplying and installing system | Yes | No |
| (v) all warranty details including claim periods and exclusions | Yes | No |
| (vi) itemised value of any STCs, discounts or rebates? | Yes | No |
| (k) If your application is approved, will your company add a clause into your contract stating that you must comply with the Code? | Yes | No |
| (l) If there are any significant changes to the design of the PV system after a contract is signed, including the estimated performance, does your company seek consumer approval or offer a full refund? | Yes | No |

- | | | |
|--|-----|----|
| (m) Does your company only use CEC-accredited designers and installers for designing and installing your PV systems? | Yes | No |
| (n) Will your company provide consumers with written information explaining the Code prior to sale? | Yes | No |
| (o) Does/will your company advise consumers of the process between system installation and network connection, and potential problems that may arise? | Yes | No |
| (p) Does/will your company advise consumers of potential billing issues or changes to electricity tariffs that may occur following installation and changeover of the meter? | Yes | No |
| (q) I confirm that, during the past five years, no director, manager, partner or shareholder of this organisation, or any of their close family members, has been involved as a director, executive, manager, partner or shareholder of any business that has: | | |
| (i) been placed into voluntary or involuntary administration, liquidation or receivership or been dissolved; | | |
| (ii) brokered an agreement with its creditors; | | |
| (iii) been expelled from the Code; | | |
| (iv) received any court judgments against it; | | |
| (v) received any formal or informal undertakings, civil or criminal, against it that the CEC would reasonably deem relevant to this application; | | |
| (vi) otherwise engaged in any activity which could cause the code to fall into disrepute; | | |
| (vii) had a complaint upheld, in part or in full, by the Australian Competition and Consumer Commission or any state based consumer affairs agency; or | | |
| (viii) have any complaints outstanding or currently under investigation with a consumer affairs agency. | Yes | No |

Please do not submit this application if you have not answered 'Yes' to all questions in the Self-Assessment Compliance Check in this section 5.3.

If you are unable to answer 'Yes' to Question 5.3(q) above, please send us relevant supporting documents such as the administrator's report and statement of affairs in respect of a liquidated business. You can contact the CEC to discuss your application further.

Please provide any relevant comments relating to the Self-Assessment Compliance Check here.

6. DECLARATIONS

By agreeing to the following statements you are giving a legal undertaking.

- 6.1 I hereby apply on behalf of the company named in section 3.2 of this application to be certified as an Approved Retailer under the Solar PV Retailer Code of Conduct.
- 6.2 I agree on behalf of the company named in section 3.1 of this application to be bound by its terms and conditions.
- 6.3 I have completed the Self-Assessment Compliance Check in section 5.3 of this application and truthfully answered all of the questions.
- 6.4 I declare that I, together with all relevant individuals in this organisation, have read, understood and agree to comply with the Code insofar as it applies to the business of this organisation. In agreeing to abide by the Code, I also agree to abide by all documentation used to support the administration of the Code.
- 6.5 I declare that the information provided in this form is true and accurate. I agree to inform the Code Administrator as soon as practicable should any change in circumstances mean that any of the declarations made in this section 6 of the application are no longer valid.
- 6.6 I am aware that providing false or misleading information as part of this application process may result in rejection of this application.
- 6.7 I acknowledge that where an application is rejected, the applicant is not eligible to reapply to the Code for a period of three months from the date on which that applicant was notified of its unsuccessful application.
- 6.8 I understand that the CEC may provide my company paperwork, which is submitted in support of this application, to external parties for legal review and assessment as required.
- 6.9 I acknowledge that a non-refundable Application Fee of \$100 (ex GST) must be paid to the CEC before this application is processed.

Applicant's signature

Applicant's full name

Date

Position in applicant company

Name of applicant company

Submission in Support of Application for Authorisation

Voluntary Code of Conduct for PV Retailers

1. Introduction

This submission has been prepared to provide further context and support for the Clean Energy Council (CEC)'s application for authorisation made under subsection(s) 88 (1A)/88(1) of the Competition and Consumer Act 2010.

Subject to authorisation, the proposed scheme outlined below will enable solar photovoltaic (PV) retail companies to implement a scheme designed to self-regulate and promote high standards and best practice in the PV retail industry.

1.1. The Clean Energy Council

The CEC is an incorporated not-for-profit association which operates nationally. It is funded principally by membership fees, with additional income generated by events and activities such as industry accreditation programs. The CEC is the peak body representing Australia's renewable energy and energy efficiency industries. Its priorities are to:

- Create the conditions in Australia to stimulate investment in the development and deployment in Australia of the world's best clean energy technologies;
- Work to reduce costs and remove all other barriers to accessing clean energy;
- Develop and advocate effective policy to accelerate the development and deployment of all clean energy technologies; and
- Promote awareness of the industry, thought leadership and clean energy business opportunities through industry events, meetings, newsletters, directorates and the media.

The CEC, in partnership with solar members, is working with governments to expand the range of households and businesses that can access the benefits of PV electricity.

2. The Proposed Scheme: PV Retailer Code of Conduct

2.1. Overview

The PV Retailer Code of Conduct (the Code) aims to promote best practice measures and activities for retail businesses that are selling PV systems. This Code is for retail businesses who want to demonstrate the commitment they have to promoting responsible activity and development in the renewable energy sector across Australia. The 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 on the PV retail industry, leading to improved PV experiences for consumers.

The Code addresses four broad areas in the marketing and sale of PV systems: pre-sale activities, post-sale activities, documentation, and general business and obligations of signatories. Further detail on the Code's scope and objectives and on the Code rules and standards, can be found in Section 1 and Section 2 of the Code respectively. The Code administration and compliance arrangements are

outlined in Section 3, and include an enforcement regime to sanction signatories for failure to comply with the Code or supporting procedural documents.

The scheme will be voluntary and will include any PV retailer, both non-CEC members and CEC members who choose to subscribe to, and meet the required standards of, the Code. Subject to authorisation being granted, signatories will be required to comply with the Code and supporting procedural documents, including the Code Compliance Procedure, and Code Review Panel Terms of Reference. A copy of these documents are provided at **Attachment A and B**.

A recognisable Code landmark is being developed for participating companies that will provide consumers with reassurance that retailer signatories will adhere to the standards outlined in the Code, including delivering a quality product, adhering to all relevant consumer protection laws, and backing the operation of their PV system for a five year period.

2.2. Code Administration & Compliance

The Code will be administered by the CEC, and independently overseen by a Code Review Panel (CRP). The CEC will be responsible for carrying out administration and day-to-day supervision of Code compliance, including:

- Determining when breaches of the Code have occurred.
- Determining appropriate action when breaches of the Code have occurred.
- Enforcing sanctions.
- Referring cases to the CRP for consideration as required.
- Providing secretariat functions for the CRP.
- Overseeing promotion of the Code.
- Developing training and supporting material on the Code to assist signatories to comply with the Code.
- Develop supporting materials for consumers including information on PV and a flyer on the Code.

The Code administrator will investigate all reported breaches of the Code but will not resolve a dispute between the Code signatory and the consumer. Consumers requiring a dispute resolution body will be referred to either the Code signatory or the relevant consumer protection organisation.

Alleged breaches of the Code will be investigated by the Code administrator, in accordance with the Code Compliance Procedure. Where a breach is found to have been made, depending on the severity of the breach (determined in Breach Matrix, Section 3.5 of the Code) the Code administrator will either allocate a sanction in accordance with the Code Sanctions Matrix (Section 3.6 of the Code), or provide documentation relating to the breach along with a recommended course of action to the CRP for consideration. Where a breach is handled solely by the Code administrator, a Code signatory is entitled to appeal the ruling to the CRP, whose final decision is then binding.

The CRP will be an independent body, containing no representative of the Code administration team. The CRP's powers and functions are set out in its Terms of Reference. The Panel will consist of at least three individuals from a range of professional backgrounds, suitably qualified to arbitrate cases referred by the Code administrator, and to hear appeals against sanctions imposed by the Code administrator. The CRP will be responsible for:

- Arbitrating cases referred to it by the Code administrator.
- Arbitrating appeals against sanctions imposed by the Code administrator.
- Conducting inquiries into Code compliance.
- Meeting regularly to look at revisions to the Code, policy changes, how the Code operates, and complaints data.

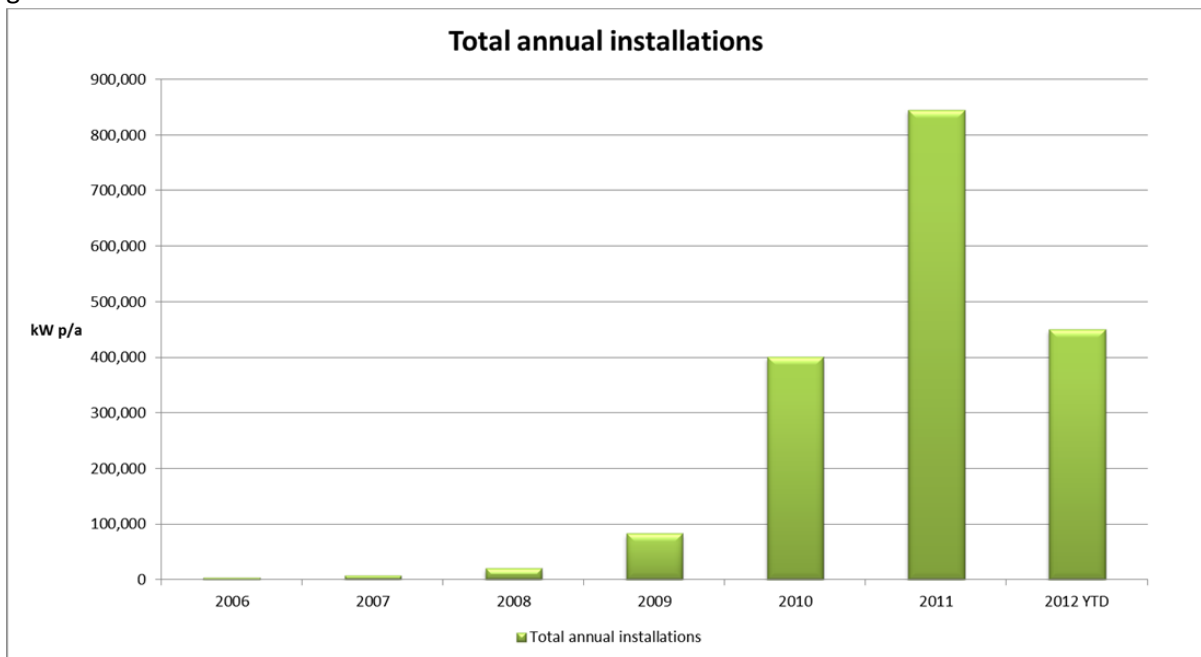
- Producing an annual report assessing the Code’s operation and effectiveness.

3. PV Retailing in Australia: the PV Market

3.1. Changing Nature of the Market

The PV market has changed radically over the last four years. Australia installed more than 859 MW of PV in 2011, doubling the 400 MW installed in 2010; itself growth of 400% on the previous year.¹ Residential sales dominate PV installations, at over 95 per cent of the market. An estimated 392,500 small residential systems were installed in Australia in 2011.² Approximately 17 per cent of suitable housing stock is now fitted with PV. The graph and table below show the uptake of PV annually in Australia up to the end of July 2012.

Figure 1: Total Annual PV Installations



Source: Clean Energy Council, *Solar Power Australia 2011-12*, prepared by Solar Business Services and SunWiz

Table 1: kW of sub-100kW installations by year

Year	kW Installed
2000	554
2001	409
2002	1,499
2003	976
2004	1,599
2005	1,127
2006	1,376
2007	4,652
2008	13,614
2009	84,573
2010	388,408

¹ Clean Energy Council, *Solar Power Australia 2011-12*, prepared by Solar Business Services and SunWiz

² *Ibid*

2011	859,642
2012 to end July	450,109
Total	1,808,537

Source: Clean Energy Council, *Solar Power Australia 2011-12*, prepared by Solar Business Services and SunWiz

This rapid increase in the amount of PV installed in Australia has altered the nature of the PV market. Prior to the boom the – much smaller – PV market was dominated by small businesses with local customers. Typically, these small businesses were run by the installer, and therefore had a focus on technical quality.

Now the PV market is dominated by larger players operating across state boundaries. As these companies usually subcontract their installations, this means that those running the business are less likely to be accredited installers (see Section 4.1 below), or to understand the technical aspects of installing PV. The industry has moved from one where sales came from word of mouth referrals, to one where call centre sales are common. This has radically changed the nature of the industry and consequently the issues arising in the sector.

3.2. The PV Retailer Market

The PV market is made up of a number of different parties who will be affected by the proposed scheme. These parties are outlined below.

1) Sales:

- PV retailers
 - Large: Represented by an estimated 150 large PV retailing companies, larger retailers are highly proficient at consumer marketing, sales and operations. They dominate sales volumes in Australia with the top 20 PV retailers providing approximately 40% of all sales in 2011. Satisfying widespread demand for small residential systems has necessitated the development of various consumer-based marketing and sales techniques, and some of these companies now employ hundreds of staff across multiple locations.³
 - Medium: Represent a broad range of companies, small or medium sized and increased from an estimated 700 companies to more than 1,000 in 2011. They serve local areas and some have been highly successful at building profitable and competitive businesses. Individually, they generally sell far less volume than large PV retailers.⁴
 - Small: Although sales volumes are small and there are perhaps 300 companies classified in this space. This segment reduced substantially in 2011 as total market volumes grew and many evolved into medium or large retailers. However a combination of start-ups and contractors converting to retailing increased the number of active small companies in early 2012.⁵
- Utilities
 - Several electricity retailers also sell PV systems. Utility companies have continued to diversify into the PV industry although their approach and focus on PV varies greatly.

³ *Ibid*

⁴ *Ibid*

⁵ *Ibid*

- Electrical contractors
 - Electrical contractors who are installers accredited by the CEC represent the vast majority of companies with an estimated 2,500 companies active in PV. Most of these focus purely on installation, servicing the needs of retailers as sub-contractors.⁶

2) The Current Market

The PV retail market is extremely competitive, and as it continues to grow, there is a regular flow of new entrants. Given the changing nature of the market, clear data is difficult to obtain around the market shares of participants. However the CEC's *Solar Power Australia 2011-12* report recently reached a number of conclusions based on analysis of the numbers of accredited installers, small-scale technology certificates (STC) created, and other available intelligence.

A recent analysis of Victorian PV companies showed that the top 20% of companies (measured in STC creation levels) held less than 45% market share. The top ranks of the PV retailers change regularly, and generally none is able to hold more than 10% market share (see Table 2 below).⁷ There are a large number of small and medium sized companies in the industry and the use of subcontracted installers is now widespread. The *Solar Power Australia 2011-12* report stated that:

“An analysis of 2011 installers by company name...[shows that] [a]round 12% of the companies have three or more accredited installers listed under their company name, nine companies host four or more accredited installers and one has 36 on its books. Almost 80% have only one accredited installer listed under a company name, an indication of the very strong presence of small and medium sized companies in the industry and the use of subcontracted installers. There are 3,946 named companies listed with accredited installers.

Whilst the Accredited Installer List is a valuable indication of the level of trade-based employees and companies, not all PV retailers appear on this list. Companies who subcontract 100% of installation, supervision and/or design work or who specialise in value chain activities that don't require installation (such as wholesaling, on-line sales, marketing or franchising and/or new entrants) adds to the total number of active companies in the industry. Based on recently updated historical analysis, the total number of companies active in the market is estimated to number approximately 4200-4500”.⁸

Table 2: Top ranks of PV retailers, based on analysis of the REC Registry undertaken by Sunwiz at August 2012.

Company	Rank 2012 (Aug)	Rank 2011
True Value Solar	1	2
Origin Energy	2	1
Solar Gain	3	5
Green Engineering	4	14
Great Solar	5	22
AGL Solar	6	12
Infinity Solar	7	17
Modern Solar	8	8
Zen Technologies	9	7
Unleash Solar	10	13

Source: Clean Energy Council, *Solar Power Australia 2011-12*, prepared by Solar Business Services and SunWiz.

⁶ *Ibid*

⁷ *Ibid*

⁸ *Ibid*

4. Need for Self-Regulation

4.1. CEC Accreditation for PV Designers and Installers

PV accreditation is a qualification that demonstrates competence in design and/or installation of stand-alone (SPS) and/or grid-connected solar photovoltaic power systems. The CEC is the body responsible for the accreditation of PV designers and installers. Consumers wanting to take advantage of the Federal Government financial incentives available under the Small Scale Renewable Energy Scheme (SRES), are required to use a CEC accredited installer and designer. This requirement is determined defined by the Federal Government in accordance with the *Renewable Energy (Electricity) (Cth) Regulations 2001*. CEC accreditation is not linked to membership with the CEC.

A CEC accredited PV designer/installer:

- Has completed necessary PV specific training courses.
- Has provided a practical example of their work to the CEC.
- Is bound by an Accreditation Code of Conduct and the Accreditation Terms and Conditions.
- Complies with the CEC Design and Install Guidelines, relevant Australian Standards and all other relevant regulations.

The aims of the CEC accreditation scheme are:

- To improve the safety, performance and reliability of PV systems installed in the field.
- To encourage industry best practice for all design and installation work involving PV systems.
- To provide a network of competent PV power systems designers and installers.
- To increase the uptake of PV power systems to generate electricity, by giving customers increased confidence in the design and installation work.

The CEC accreditation system enables the CEC to penalise any accredited installer that fails to install a PV system to the relevant Australian Standards and CEC guidelines. Both the standards and guidelines are technical documents focusing on safety and the correct operation of the PV system. More information on the PV Accreditation Program is available at:

<http://www.solaraccreditation.com.au/>.

4.2. PV Retailer Code of Conduct: Filling the Gap

While there are a range of state and federal regulatory regimes in place overseeing the activities of retail businesses interacting with customers in the PV sector, there is a view that the current level of regulation is not effectively ensuring the integrity of retailers selling systems to consumers. There are a number of reasons why a voluntary industry code of practice can contribute to, and build upon, this regulatory space.

Currently the CEC PV accreditation scheme is the only national PV Accreditation system. There are one or two 'Best Practice' schemes, but nothing that 'accredits' PV designers and installers.

PV accreditation is a qualification that is available to individual PV power system designers and installers only. It is the individual installer that is accredited, not companies. It is now the case that there are PV retailers in the market continuing to demonstrate unsatisfactory or unethical behaviour towards consumers. However the CEC has no jurisdiction under the accreditation scheme to address the behaviour of these companies. Furthermore, as many larger PV retailers also sub-contract out

their installations, it is increasingly common for the PV retailer to walk away leaving the installer to be penalised for actions that were the result of the PV retailers' behaviour.

The Code aims to close this gap and will enable the CEC to take action against Code signatories behaving unethically. It will also provide an incentive for some PV retailers to improve their behaviour towards consumers beyond what may be required under existing legislation, and take responsibility for the whole PV system. For example, Section 2.2, 10 of the Code requires the PV retailer to provide a five year whole of system warranty on the operation and performance of the whole PV system including workmanship and products. Currently if there is something technically wrong with the PV installation, or the system fails to operate as expected, the installer can be held responsible. If the installer is no longer accredited there is no action the CEC can take to ensure the consumer issue is resolved. This Code will enable the CEC to assign responsibility of the PV system working correctly for five years with the retailer, and ensure the retailer addresses any issues in that time. The Code deliberately makes the PV retailer accountable for installers across a variety of areas. Another example is Section 2.3 of the Code which requires the retailer oversee and ensure that the responsible parties provide the consumer with the necessary documentation after they have purchased a PV system.

Another theme deliberately addressed in the proposed scheme relates to consumer education. A PV installation is a complex, technical product with a complicated connection process. Most domestic consumers are not experts in solar technology, and quite often a solar installation is a once off purchase for the consumer. With the increased range of products and suppliers on the market, being an informed consumer has never been more important. It is thus essential that PV retailers provide consumers with the information they need to choose the most suitable system for them and to get the best from it. PV retailers have a role to play in ensuring consumers are better equipped to make choices about a product that is right for them, and ensuring that they have all the information required to make smart decisions and to help avoid any problems down the line.

Many of the problems that currently exist in the industry are a result of lack of education or understanding. A market where consumers are poorly informed will continue to encourage operators who rely on high-pressure sales techniques that can make a consumer feel regret later down the track. By emphasising the role of the PV retailer in educating the consumer around PV, the Code provides a standardised national framework for signatories and addresses some systemic issues in the industry not currently addressed by existing regulatory regimes. For example, lengthy delays between system installation and meter installation/connection of the PV system to the electricity network by the electricity retailer and/or distributor are a common problem, and Section 2.2, 7-8 of the Code requires signatories play a role in informing the consumer of the process, expected timing, and potential problems that can arise.

Finally, the Code facilitates greater education for PV retailers and consumers about their obligations and rights under the law. Anecdotal evidence, a look at investigations undertaken, or infringement notices issued, by the ACCC against solar companies for misleading advertising, and even a simple analysis of some advertisements being used in the industry, indicates that many companies may not be currently following the law. In particular, stakeholders consulted consistently indicated strong concerns around unethical advertisements and sales tactics used by PV businesses. One example is a case where the ACCC issued an infringement notice after a company advertised a solar system in a method which implied the maximum capacity was equal to the size of the inverter, when in fact the maximum output of the panels was below the advertised capacity of the inverter.⁹ More recently,

⁹ ACCC, "True Value Solar Pays infringement notices for misleading advertising", 4 November 2011: <http://www.accc.gov.au/media-release/true-value-solar-pays-infringement-notices-for-misleading-advertising>.

the ACCC investigated and sanctioned two solar panel companies for claiming that cost of electricity would go up by 400 per cent under the carbon tax.¹⁰

While it is recognised that legislative requirements should be complied with regardless of the existence of any proposed Code, and the benefit of compliance with such laws should not be attributed to any arrangements in the Code, it is proposed that the Code will facilitate increased compliance with the law by making PV retailers more aware of their obligations, through the provision of examples specific to PV. The above issue potentially arising from advertising of inverter capacity is deliberately addressed in section 2.1, 1(vii) of the Code.

There is also an ongoing need to educate consumers about their legal rights, and particularly what to be aware of when purchasing a solar system. This will occur, for example, through the PV retailer providing their customers with a Code flyer containing links to further information. References to Australian Consumer Law have also been provided in the Code in particular areas of concern.

A broader summary of the evidence used to identify this regulatory gap (Section 5), and of the public benefits arising from the proposed scheme (Section 6) is provided in below.

5. Identifying Systemic Issues

5.1. Stakeholder Consultation

The proposed scheme has been developed through an Industry Integrity Working Group with the support of CEC solar members who deliberately called for an initiative to improve retail standards in the PV industry. However the range of systemic industry issues addressed in the Code were identified through a much broader stakeholder consultation process. The overwhelming majority of stakeholders indicated their strong support for the proposed scheme. Those consulted with are outlined below (and in more detail at Figure 2) and include government, regulatory bodies, consumer organisations and industry.

- PV Retailers (small, medium and large)
 - Engagement with non-CEC members and CEC members, including over 120 PV retailers and a range of other businesses operating in the PV industry
 - Targeted engagement with the top 15 PV retailers with largest market share
 - 16 meetings with companies equating to more than 23.55% of market share¹¹
- Consumer Groups
 - Consumer Utilities Advocacy Centre
 - Consumer Action Law Centre
 - Alternative Technologies Association
 - Choice
 - St Vincent de Pauls Society

¹⁰ACCC, “ACCC accepts informal undertaking for alleged misleading carbon price claims”, 5 July 2012: <http://www.accc.gov.au/media-release/accc-accepts-informal-undertaking-for-alleged-misleading-carbon-price-claims>.

¹¹Based on figures on the top ranks of PV retailers at May 2012, formed by analysis of the REC Registry undertaken by Sunwiz. Of this list, the CEC engaged directly with all of the top 12 retailers equating to 27.59% market share. ‘Engaged’ companies include 9 companies (23.55% market share) who the CEC met with, plus one company who provided feedback electronically and two companies who were contacted and did not respond. It is important to note that these figures are based on REC creation, and an additional 29.17% of REC creation at that time was attributed to brokers, and a further 29.55% to a category described as the ‘rest of Australia’. Based on updated figures on the top ranks of PV retailers at January 2013, the CEC engaged with all of the top 16 retailers, bar two.

- State Ombudsmen
 - Engaged all state bodies, met/talked with Victoria and NSW
- Consumer Affairs bodies
 - Engaged all state bodies, met/talked with Victoria, Queensland and ACT
- Federal Government
 - Commonwealth Department of Climate Change and Energy Efficiency
 - Clean Energy Regulator
 - Office of Minister for Climate Change and Energy Efficiency, Greg Combet
 - Office of Shadow Minister for Climate Action, Environment and Heritage, Greg Hunt
- REC Agents Association
 - Greenbank Environmental and Green Energy Trading
- Administrators of other industry codes
 - Energy Assured Limited Scheme to monitor and improve door to door marketing standards.
 - United Kingdom Renewable Energy Assurance Ltd. Consumer Code set up by the Renewable Energy Association for consumers of small-scale energy generation systems.
 - Code Compliance Monitoring Committee who administer the Code of Banking Practice in Australia

Figure 2: Stakeholder Consultation Process

Phase	Progress/Stakeholder
Round 1: Project Scoping	
Initial Scoping & Development	<ul style="list-style-type: none"> • Preliminary identification of Code objectives and systemic industry issues • Consultation with Industry Integrity Working Group and CEC members • Development of skeleton draft • Industry Workshop: confirmation of support for core concepts of draft Code, obtain views on implementation approaches and industry expectation
	<i>Incorporated edits and additions to draft Code as required</i>
	<i>Distributed draft to Industry Integrity Working Group and CEC members for feedback</i>
Round 2: Broader Consultation	
Development & Stakeholder Consultation	Feedback on draft Code & identification of systemic industry issues via: <ul style="list-style-type: none"> • Clean Energy Regulator • Department of Climate Change and Energy Efficiency • Office of Minister for Climate Change and Energy Efficiency, Greg Combet • Australian Competition and Consumer Commission • Consumer Utilities Advocacy Centre • Alternative Technologies Association • Energy and Water Ombudsman Victoria • Renewable Energy Installation Guarantee Agency • Renewable Energy Assurance Ltd. • Energy Assurance Ltd. • PV Retailers: Meetings with ‘focus group’ of ten individual companies, targeting those in top fifteen largest market share
	<i>Incorporated edits and additions to Code as required</i>
	<i>Re-distributed draft to Industry Integrity Working Group and CEC members for feedback</i>
Round 3: Broader Consultation	

Development & Stakeholder Consultation	Further feedback draft Code & identification of additional industry issues via: <ul style="list-style-type: none"> • Consumer Action Law Centre • Consumer Affairs Victoria • St Vincent de Pauls Society • Choice • Banking Code of Practice Code Compliance Monitoring Committee • Greenbank Environmental • PV Retailers: Meetings with additional ‘focus group’ of individual companies targeting those in top fifteen largest market share
	<i>Incorporated edits and additions to Code as required</i>
	<ul style="list-style-type: none"> • Clean Energy Regulator (2nd meeting) • Department of Climate Change and Energy Efficiency (2nd meeting) • Office of Minister for Climate Change and Energy Efficiency, Greg Combet (2nd meeting) • Office of Shadow Minister for Climate Action, Environment and Heritage, Greg Hunt
	<i>Incorporated edits and additions to Code as required</i>
	<i>Re-distributed draft to Industry Integrity Working Group and CEC members for feedback</i>
Round 4: Broader Consultation	
Finalisation of Code Draft & Stakeholder Consultation	<ul style="list-style-type: none"> • State and Territory consumer affairs bodies • Australian Competition and Consumer Commission (2nd meeting) • PV Retailers: Re-distribute Code to “focus group” of retailers. Hold further individual meetings as requested. Continued targeted retailer engagement with top fifteen largest market share
	<i>Distributed final draft to Industry Integrity Working Group and CEC members for feedback</i>
	<i>Legal Review</i>
	<i>Final edits and additions to Code as required</i>
Formal Submission of final draft to ACCC	

5.2. Solar Complaints

Solar related consumer complaints continue to be a concern for regulators of Australian Consumer Law. Recent media reports have stated that solar complaints increased by more than 30 per cent in 2012, and that the Australian Competition and Consumer Commission (ACCC) received 1613 complaints about solar in 2012.¹² When WA Consumer Protection released details of its top five complaints of 2012, solar products were identified as “the burning issue of the year”. Of the 10,808 complaints Consumer Protection handled in 2012, solar products (installation delays and warranties) accounted for 234 of those complaints.¹³ Acting Commissioner for Consumer Protection David Hillyard also stated that:

“As we began 2012 Consumer Protection had just secured an enforceable undertaking from a major PV system provider to deal with extended installation delays which were concerning a high number of consumers”.¹⁴

¹² Daily Telegraph, “Avoid Shady Dealers”, 11 February 2013: <http://www.pressdisplay.com/pressdisplay/viewer.aspx>.

¹³ Government of Western Australia, Department of Commerce: Consumer Protection, “Hottest Complaint of 2012: Solar Products”, 31 December 2012: http://www.commerce.wa.gov.au/Corporate/Media/statements/2012/December/Hottest_complaint_of_2012_sola.html.

¹⁴ Government of Western Australia, Department of Commerce: Consumer Protection, “Hottest Complaint of 2012: Solar Products”, 31 December 2012: http://www.commerce.wa.gov.au/Corporate/Media/statements/2012/December/Hottest_complaint_of_2012_sola.html.

The Victorian Energy and Water Ombudsman (EWOV) *Annual Report 2012* also identified solar as an ongoing area of concern. In 2011-12, EWOV received 9,777 solar cases, 269 enquiries and 9,508 complaints. The number of solar cases received represented an increase of 79% from 2010-11. Around 796 cases were about solar installation companies, which were referred to Consumer Affairs Victoria.¹⁵ Particular trends identified related to billing problems after the installation of solar, and concern around delays to the completion of a new solar installation, meaning a customer would miss out on eligibility for a feed in tariff. More specifically:

- Billing delays or errors, back-billing, concern that electricity retailers hadn't applied the correct solar tariff or credits, inaccurate/higher than expected bills being received after switching to solar.
- Solar installation companies delaying the installation process and paperwork submission.
- Connection delays, upgrade costs and metering issues, including delays in solar meter upgrades.
- Confusion around solar paperwork required. EWOV stated that:
"There was evident confusion about the solar paperwork, a situation customers said wasn't helped when they received incorrect or conflicting information about the aspects of the process from their electricity retailer, distributor or solar installer".¹⁶

Previous reports produced by EWOV also identified concerns relating to solar marketing. In particular:

- Customers with very large expectations of cost savings which aren't always delivered.
- Customers with unrealistic expectations of bill reductions they could expect and the credits they would be offered for the solar electricity they generated.
- Concern that some installers were over-selling the benefits of solar.

EWOV's *Annual Report 2010* also reported a number of consumers who were later referred to Consumer Affairs Victoria contacting EWOV about the solar installation company to complain about delays in the refunding of deposits, solar installation not being completed, and poor quality work being undertaken.¹⁷

Similarly, complaints to the New South Wales Energy and Water Ombudsman (EWON) about solar and feed-in tariff issues doubled in 2012, with 1247 complaints received compared to 621 in 2010–2011.¹⁸ In addition to confusion about the NSW Solar Bonus Scheme and complaints around confusing or misleading marketing, customers contacted EWON about similar types of issues as those identified by EWOV.¹⁹

The information outlined above is by no means an exhaustive analysis of available data. EWOV, EWON, and WA Consumer Protection have been selected as examples as to the types of trends occurring. They provide an insight into the status of consumer complaints in the solar industry generally. While some of the complaints categories referred to above relate primarily to the behaviour of electricity retailers rather than the PV retailer, PV retailers also have a role to play in addressing some of these problems, even those that may not lie directly/solely within the solar company's area of responsibility.

Jurisdictional variations in reporting and data collection make it difficult to obtain quantitative figures on the types of solar complaints at a national level. The fact that some solar related complaints can

¹⁵ Energy and Water Ombudsman (Victoria) *2012 Annual Report*.

¹⁶ *Ibid*

¹⁷ Energy and Water Ombudsman (Victoria) *2010 Annual Report*.

¹⁸ Energy and Water Ombudsman (NSW) *2012 Annual Report*.

¹⁹ *Ibid*

be dealt with by state ombudsmen, and many are referred to consumer affairs bodies also adds complexity to the process. Nevertheless, despite the lack of a nationally consistent approach to categorising solar complaints, revision of available reports and data, consultation with regulators of Australian Consumer Law, consumer protection organisations, and other stakeholders outlined in Section 5.1 enables a consistent picture of issues arising in the sector to be formed. This builds upon the CEC’s own knowledge obtained from complaints the CEC receives about PV retailers (which are referred to the relevant consumer protection body).

Broadly, complaints tend to fall into the following thematic categories:

- Misleading or deceptive conduct. For example, misrepresentation of state and Commonwealth incentive schemes, marketing which over-sells the benefits of solar and the impact solar will have on electricity bills.
- Systems not performing as expected, for example, customers not receiving the benefit on power bills as expected.
- Issues relating to misrepresentation of product, or incorrect products received.
- Issues around contract cancellations and refund requests.
- Supply issues including delays in the supply and installation of a system, installation not being completed, goods not being supplied.
- Panels placed in the wrong location.
- Faulty systems, failures or defects with goods, and unsatisfactory or defective workmanship.
- Warranty or price disputes.
- Queries relating to implied warranties, cooling off rights.
- Feed in tariff and rebate related disputes.
- Lost paperwork or delays in supply of paperwork required to connect the system to the grid, or get access to feed in tariffs and STCs, leaving households facing financial detriment.
- Problems associated with the electricity retailer (and if relevant, the distributor), in making a transition to a new customer category with the electricity retailer. For example:
 - Connection delays (delays in connection of the system to the electricity network)
 - Metering issues associated with the installation of solar-capable meter/change to a time of use meter, upgrade costs
 - Delays/errors in billing such as inaccurate bills being received after switching to solar, incorrect solar tariff or credits being applied.

A summary of how these categories of complaints are addressed in the Code is provided at Table 3.

Table 3: Consumer Complaints and how they are addressed in the Code

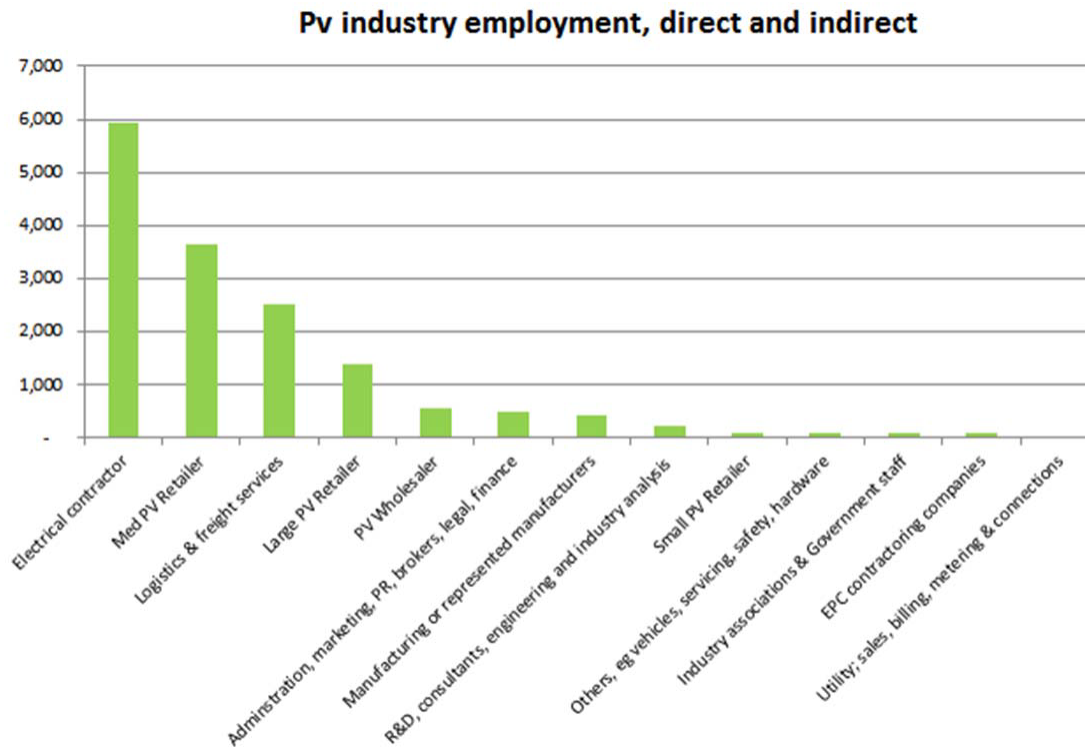
Issue	Section of Code Addressing Issue
Misleading or deceptive conduct	Section 2.1
Performance & bills after installation of solar. Systems not performing as expected	Section 2.1, including clauses 1, 4 (f-h, m), 14, 15 Section 2.2, including clauses 5-6
Issues relating to misrepresentation of product, or incorrect products received	Section 2.1, including clauses 1 (b), (f)(ix), 4 (e)
Issues around contract cancellations and refund requests	Section 2.1, including clauses 4, 6 Section 2.2, including clauses 3, 4
Supply issues including delays in the supply and installation of a system, installation not being completed, goods not being supplied.	Section 2.1, clause 4 (j) Section 2.2, clause 4 (c)
Panels placed in the wrong location	Section 2.1, including clauses 4 (f-g) Section 2.2, including clauses 3, 4
Faulty systems, failures or defects with goods, and unsatisfactory or defective workmanship	Section 2.2, clause 10

Warranty or price disputes	Section 2.1, clauses 4 (i, l) Section 2.2, clause 10
Queries relating to implied warranties, cooling off rights	Section 2.1, clause 4 (l) Section 2.2, clauses 1-2
Feed in tariff and rebate related disputes	Section 2.1, including clauses 1, 3, 4 (c-d, m), 13
Lost paperwork or delays in supply of paperwork required to connect the system to the grid, or get access to feed in tariffs and STCs	Section 2.2, clauses 7-9
Problems associated with the electricity retailer (and if relevant, the distributor), e.g. delays in connection of the system to the electricity network, metering issues associated with the installation of solar-capable meter, upgrade costs, delays/errors in billing after switching to solar, incorrect solar tariff or credits being applied.	Section 2.1, including clause 4 (l), 14-17 Section 2.2, clauses 7-9
Consumer confusion about the operation of STC Clearing House	Section 2.1, clauses 3, 4 (d), 13

6. Public Benefits

It is proposed that the Code will have substantial public benefits which would outweigh any potential detriments constituted by any lessening of competition arising from the scheme. These benefits have been discussed briefly in Section 4.2 and are further outlined below. Given the number of consumers that are impacted each year through their interactions with PV retailers, and with an estimated 15,550 people directly and indirectly employed in the PV industry across 3,250 companies in 2011 (see Figure 3), the impact of these benefits will be distributed widely beyond the primary parties involved in the Code (the PV retailer and consumer), and beyond the PV industry itself.²⁰

Figure 3: PV employment in Australia



Source: Clean Energy Council, *Solar Power Australia 2011-12*, prepared by Solar Business Services and SunWiz

²⁰ Clean Energy Council, *Solar Power Australia 2011-12*, prepared by Solar Business Services and SunWiz

Broadly speaking, the proposed scheme will lessen the risk of exploitation of susceptible consumer groups, improve the flow of information to consumers and PV retailers, and facilitate increased compliance with federal and state legislative requirements. Being a Code signatory will also be a point of competitive difference from non-signatories and therefore may ultimately increase competition.

6.1. Improved standards in the PV Sector, increased consumer confidence and consumer protection

The Code will:

- 1) Guarantee a high quality experience for consumers wishing to buy small-scale PV systems for their homes.
- 2) Protect the public from unethical behaviour and bring about increased accountability in the PV retail industry and address current issues in the industry, in particular:
 - Concern around misleading businesses practices.
 - 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, and the PV retailer not taking responsibility for the actions and work of subcontracted parties.
- 3) Protect consumers against dishonest and misleading advertising and sales tactics, and ensure that sales representatives act ethically at all times during marketing campaigns and when dealing with customers.
- 4) Ensure that the consumer is provided with the necessary information in writing to enable full education about their purchase prior to entering into a contract.
- 5) Ensure that consumers' legal rights relating to cooling off periods, deposits, and refunds are respected and upheld, and that the consumer has the opportunity to cancel a contract where significant or unreasonable changes are made after point of contract that are not approved in writing.
- 6) Ensure that the consumer is receiving a system that is installed correctly, in accordance with existing legislation, regulations, standards and CEC accreditation guidelines.
- 7) 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.
- 8) 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.
- 9) Provide consumers with confidence that the retailer will act in compliance with relevant federal and state based laws and regulations.
- 10) Ensure that the retailer maintains consistent business practices, including, but not limited to, effective complaint handling procedures and cancellation procedures.
- 11) Facilitate education for PV retailers and assist them to comply with their legal, regulatory and ethical obligations as well as to understand their rights.

6.2. Educate consumers and enable them to make more informed choices

The Code will:

- 1) Provide a mechanism for consumers to distinguish between players in the market and identify companies who are committed to conducting their business in line with best industry

practices. The development of a Code landmark and a range of communications collateral for consumers including a Code flyer will further facilitate this consumer recognition.

- 2) Facilitate greater education for consumers around the purchase of PV, including potential problems that may arise, and factors impacting on system performance, and place greater accountability upon the PV retailer in expediting this education.
- 3) Facilitate greater education for consumers about their rights and obligations under the law.

EWOV specifically referred to a lack of consumer education as an underlying cause of complaints:

“Our overall assessment is that customers had trouble resolving complaints themselves because they found it hard to obtain good information on (and then understand) the complex solar process, the required forms and the responsibilities of the different parties involved in the process”.²¹

The Ombudsman further noted that once consumers had been provided with general information, nearly 80% of their solar cases in 2011-12 were referred back to the customer’s electricity retailer or distributor.²²

6.3. Provide nationally uniform practices and address jurisdictional challenges

The Code will:

- 1) Create a standardised national framework which addresses systemic issues in the industry not currently addressed by existing regulatory regimes. This will assist in streamlining the way that PV retailers interact with consumers, creating consistency and certainty.
- 2) Educate consumers in the navigation of sometimes complex and varied requirements across jurisdictions. For example, differing requirements of electricity retailers or distributors relating to available financial incentives or the connection of solar systems to the electricity network, which are a challenge even for companies operating in the industry.

6.4. Reduced regulatory cost

The Code will:

- 1) Facilitate regulatory compliance.
- 2) Through its reporting and administration regimes, provide a mechanism for the CEC to disseminate information relating to the industry, identify new and emerging issues, and act as an additional resource and point of call for regulators and other concerned stakeholders. Systemic concerns identified by the CEC will be referred to the relevant regulators, as would any potential contraventions of Australian Consumer Law. Likewise, the ability of the Code administrator to communicate with signatories will provide a resource for regulators who wish to disseminate information to parties relating to regulatory matters.
- 3) Reduce costs to consumer affairs bodies, industry ombudsmen, and state and federal government departments arising from administration and enforcement required to address solar complaints. It is proposed that this self-regulatory scheme would likely reduce the quantity of complaints received by these bodies, given that the Code has been designed to directly address common complaints (as per Table 3).

6.5. Reduced risk and cost for other stakeholders operating in the market

The Code will:

- 1) Reduce risk to REC agents and provide additional safeguards for participants interacting in the STC market. Examples include the risk of fraud and risks arising from the provision of misleading information to consumers around the operation of the STC Clearing House.
- 2) Reduce risk and administrative cost for state and federal government bodies who administer government incentive schemes, by for example, discouraging the misrepresentation of government schemes, electricity prices, and operation of the STC market.

²¹ Energy and Water Ombudsman (Victoria) *2012 Annual Report*.

²² *Ibid*

- 3) Reduce risk for the over four thousand CEC accredited installers, (particularly sub-contracted installers) by providing clarity about what the PV retailer is responsible for, preventing retailers from unfairly blaming the installer when something goes wrong, or from pressuring installers to undertake work that is low quality or unsafe.
- 4) More ethical behaviour and the five year warranty provision should promote appropriate care and attention being given to the choice of product, choice of installers, and volume of work allocated to installers, and this should lead to increased safety for installers and consumers.

6.6. Economic efficiency & environmental benefits

The Code should also contribute to economic efficiency and provide broad environmental benefits, which will be of value to the community generally. These include:

- 1) Consumers wasting less money on over-sized or otherwise inappropriate PV units.
- 2) Consumers wasting less money on repairs and through lost electricity generation due to down time.
- 3) Improved standards of service offered by retailers and in the design, sizing and installation of units should result in more efficient electricity generation which has an environmental as well as an economic benefit.
- 4) Less public complaints should result in a better uptake of PV by consumers, which in turn will be better for the environment due to further reduction in greenhouse gas emissions.
- 5) Reduction of risk and improved standards in the industry will assist consumers to be better equipped to harness the potential economic benefits of solar (for example, to better manage their electricity use in the context of the increasing cost of electricity), whilst also understanding that a range of potential financial outcomes for individuals exist. PV already appears to be a popular option for lower income households to reduce the burden of high electricity bills. Recent socio-economic analysis of PV uptake showed that more than 50% of system buyers earn less than \$100,000 p/a and more than 25% earned less than \$65,000 p/a.²³

The potential impact of any additional environmental and economic benefits brought about by this Code is apparent when consideration is given to the impact the industry is already having in Australia. PV contributes to the achievement of Australia's emission reduction targets, and by improving the strength, competitiveness and sustainability of the energy industry, contributes to the enhancement of Australia's economic prosperity, consistent with the principles of environmental responsibility and sustainable development. PV can "generate clean electricity where it is consumed at a price cheaper than the cost of transporting dirty energy from a distant generator, even before all health and environmental externalities are priced".²⁴

Solar power is projected to make a significant contribution to Australia's annual energy requirements over the next decade. "At current installed capacity, PV represents 3.2% of all current generation capacity".²⁵ The Australian Energy Market Operator (AEMO)'s August 2012 statement on the impact of PV and renewables in South Australia (SA), calculated that as a result of the contribution of renewables in SA, there is a five year deferral in any new generation investment required.²⁶ Furthermore,

"The Bureau of Resource and Energy Economics (BREE) now views PV as being cheaper than all fossil fuels by 2030 and Australia's cheapest energy source by 2040. AEMO has recognised that

²³ Clean Energy Council, *Solar Power Australia 2011-12*, prepared by Solar Business Services and SunWiz

²⁴ *Ibid*

²⁵ *Ibid*

²⁶ *Ibid*

PV will only become more cost competitive with retail electricity – as such a great way to improve small business competitiveness and ease cost of living pressures”.²⁷

6.7. Market Share of Signatories

The complexity of determining accurate market share data has already been discussed. However it is recognised that in order to deliver on the proposed public benefits, an appropriate proportion of the PV retailer market will need to sign on to the proposed scheme. To this end, consultation has been targeted towards the top ranks of PV retailers. Yet noting that this list regularly changes (even at the time of writing this submission one company in the top 10 ranked PV retailers entered voluntary administration), that generally no company is able to hold greater than 10% market share, and that there is a very strong presence of small and medium sized companies in the industry, the CEC has also been targeting the many smaller and medium sized companies in the sector.

To address the challenge arising from such a diverse and changeable industry, the CEC has commenced a broad campaign to engage with PV retailers, communicate the Code’s objectives, and to seek commitments and support for the scheme. This campaign will be ongoing, and continue long after the proposed scheme may be approved by the ACCC. The response to date has been positive. A list of parties in support of the proposed scheme is provided at **Appendix A**, and this list continues to grow each week.

As an initial target (subject to authorisation of this application), the CEC aims to sign on to the scheme 50% of the largest top 10 retailers, and 50 small to medium sized companies, which could represent 30-40% of the market. Given the growing list of confirmed companies in support of this initiative, the CEC has a reasonable and strong expectation of achieving the intended market share required to ensure the scheme achieves its proposed benefits.

Broader community and consumer recognition of the Code brand will also be important in ensuring the Code has its intended impact. The initial strength of the Code will come from marketing, and the benefit of becoming a signatory will be competitive advantage. To this end, a newly developed Code brandmark, combined with a strong communications campaign to market the Code to consumers and broadly within the community, will enable signatories to market their commitment to best practice and to stand out from non-signatories.

It may be argued that if the companies that sign on to the Code initially aren’t the problem, then the Code’s ability to achieve its intended public benefits will be diminished. On the contrary, if all such companies wanted to sign up immediately then that would be a strong indication that the standards outlined in the Code are too low. Also, by signing up the majority but not all of the top 10 PV retailers (by market share) there is an immediate marketing benefit for the PV Retailers who have signed up and meet the standards of the Code. This will encourage those signatories to promote the Code further, which will raise consumer awareness of the Code and provide incentive for non-signatories to meet the standards required of the Code in order to become signatories.

While the intent of the Code is to discourage disreputable behaviour, the CEC does not expect that every retailer will sign up to begin with – and this is not regarded to be a negative. There are several companies out there who would not currently become Code signatories due to their existing business practices. The CEC does not want such companies to become signatories until they have demonstrated that they will comply with the Code. Their doing so prematurely would risk damaging the Code reputation and rendering the Code brandmark untrustworthy in the eyes of consumers.

²⁷ *Ibid*

Furthermore, it is the nature of launching such a voluntary scheme that it is difficult to engage certain companies in the beginning, whose fundamental philosophy and business model may be based on minimal customer care, and pushing the limits as to their legal and ethical obligations. Changes to such behaviour do not happen overnight, yet this Code will provide a mechanism to trigger a change. It is anticipated that the market will ultimately force such companies to lift their standards in order to sign on to the Code, as the market develops through this Code, consumer recognition of the Code brandmark grows, and consumer expectations rise. More and more companies will be encouraged to change their behaviour if they want to have access to the benefits of a brand that their competitors have.

7. Public Detriments

The Code will be open to all PV retailers operating in the market. Membership to the Code will be actively encouraged and there will be no relationship between an applicant's membership or lack of membership with the CEC in the determination of their eligibility to become a Code signatory. It is proposed that the Code will have minimal, if any, impact on competition.

The sections of the Code which may be deemed to be anti-competitive are outlined and discussed in detail below.

Clause 2.4(17) of the Code provides that signatories must employ and contract CEC accredited designers/installers 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*. There may be a perception that requiring signatories to only deal with such installers/designers would unreasonably restrict or limit the ability of non-accredited persons to engage in the solar industry, and hence constitute an exclusionary provision.

It is not possible to obtain data on the numbers of unaccredited solar designers/installers operating in the industry, however it is likely that that this number is low, given that consumers wanting to take advantage of the SRES scheme must use a CEC accredited installer and designer. Furthermore, the Code reflects whatever the *Regulations* deem to be acceptable in the accreditation of PV installers/designers. The Clean Energy Regulator, through these *Regulations*, has determined the suitability, independence and transparency of ensuring appropriate standards in the industry are maintained. If other accreditation bodies are established under the *Renewable Energy (Electricity) (Cth) Regulations 2001*, such bodies would also be compliant with the Code as an accreditation provider. The inclusion of such a provision would also improve the delivery of the public benefits by ensuring that consumers are receiving systems designed and installed to an acceptable quality and safety standard.

It is possible that the conduct of signatories in agreeing amongst themselves as to the rules on which signatories will be admitted to, and expelled from, the Code (Sections 3 and 4 of the Code), amounts to an exclusionary provision because those rules have the purpose of preventing, restricting or limiting the services provided by the Code administrator for those who are not signatories (for example, benefits such as use of the Code brandmark, ability to claim membership to the Code). It may also be considered that Code reporting and compliance requirements may result in barriers to entry for potential signatories, and ultimately restrict a company from subscribing to the Code. For example, a company may not be able to sign on to the Code due to financial or administrative hurdles Code signatories are required to meet, and this may be deemed to be anticompetitive.

However all prospective signatories will be on even footing, and eligible to become a signatory so long as they comply with the relevant rules and standards outlined in the Code. While all companies

are treated equally in their assessment for eligibility to become a signatory, to ensure that the smaller companies are on equal footing with larger companies in the requirement for payment of an annual Code fee, the fee structure has been tiered according to the number of PV installations a company completes per year.

The CEC has also sought to mitigate potential bureaucratic/administrative burdens imposed by the Code where possible. A range of supporting documentation to assist Code signatories in digesting and adhering to the scheme will be developed. This may include for example, guides to complying with the Code, templates for Code reporting, a Code leaflet and fact sheets for consumers. Signatories will not be expected to re-write procedures that they already have in place, so long as they comply with the Code.

Where a member fails to comply with the Code, and faces sanctions, or even being publically named, this may result in negative publicity for a signatory, and in them being removed as a Code signatory, or discourage consumers from engaging with them, thus negatively affecting their ability to compete or conduct their business in future.

While the mechanics of the proposed scheme requires this state of affairs, all signatories are treated equally in regards to their requirement to comply with the Code. Code compliance procedures will be fully transparent, and the administration of the Code will be overseen and monitored by an independent body, the CRP. The members of the CRP will have no conflict of interest, be non-signatories to the Code, and be appropriately qualified to ensure due process is followed at all times in the administration and investigation of breaches of the Code, and application of sanctions.

Clear reporting processes have been put in place to ensure transparency, and clear guidelines around penalties, sanctions and compliance have been set out in the Code. These outline the circumstances in which penalties will be applied, and how they are applied. Where a signatory is suspected or found to be non-compliant with the Code, the imposition of any sanctions will be determined by the Code administrator, or where appropriate, referred to the CRP for consideration. Where a major breach has been made, signatories will be given an opportunity to rectify the breach within a reasonable timeframe before the company is publically listed on the CEC website. If the breach is rectified in this time, the breach will be publically listed de-identified. All Code signatories will be entitled to an independent right of appeal to the CRP, whose final decision will be binding.

The Code would not function effectively nor achieve its goals without appropriate monitoring, reporting and compliance requirements. Efforts have been made to reduce any administrative burden, but some is unavoidable if the scheme is to deliver the intended public benefits. Consumer confidence in the Code compliance and monitoring processes are also essential if the Code is to achieve the expected public benefits. The compliance regime must match the objectives of the Code. Without sanctions acting as an effective deterrent to breaching the Code, the ability of the proposed Code to achieve the expected consumer and public benefits would be minimal.

Sections 2 and 3 of the Code also may amount to an agreement amongst competitors as to the terms and conditions on which they deal with customers, which may give rise to a lessening of competition. For example, agreeing to terms of trade such as the warranty provision under Section 2.2, 10 of the Code may have an effect on competition. However it is proposed that such effect would not be substantial. In the case of warranty for example, signatories would be free to differentiate themselves and compete by offering a warranty that goes above what is required as a minimum standard in the Code. Furthermore, such agreements are essentially what constitute voluntary codes of practice, and are necessary if the Code is to achieve its goals and public benefits.

An additional possible detriment is that there may be a small average increase in the cost of PV installations. Providing a five year warranty on the whole of system will drive the use of better quality product. Higher quality generally costs slightly more than the lesser quality. Retailers that have not, historically, provided any support after the installation will be required to 'support' the system for five years. Consultation with the industry has revealed that some retailers' business models would be affected by this, and to provide this guarantee could increase their costs, hence the overall cost of install. However it is also expected that any price increases would also be matched with a concurrent increase in quality of product, and quality of installation in the industry, amounting to reduced risk and costs in the long term for consumers, and adding to the public benefits to be gained by the proposed scheme.

8. Additional Information

8.1. Prospective need for changes to the detail of the conduct

An annual report on the Code's operation, including reporting on Code compliance will be produced by the CRP, to enable a periodic assessment of the Code's effectiveness, ensure the Code standards meet the identified objectives and community expectation, and to identify systemic issues and areas for improvement. All breaches and sanctions occurring each year will be reported in the Code's annual report.

The Code, Code reporting, CRP and CRP 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. These reviews will be conducted in consultation with relevant stakeholders including consumer advocacy groups, government bodies and regulators of consumer law.

Appendix A: Interested Parties

Parties in support of the proposed scheme:

Company	Details of Business
Energy Matters	PV retailer
Infinity Solar	PV retailer
Ingenero	PV retailer
AGL	PV retailer
CSR	PV retailer
Juno Energy	PV retailer
Solaworx	PV retailer
Earthsave	PV retailer
Maxi Solar	PV retailer
Breaze	PV retailer
Eris Mccarthy	PV retailer
Springers	PV retailer
Sungevity	PV retailer
Central Solar	PV retailer
Sunshine Coast Solar/The Sun Works Solar Centres	PV retailer
Clean Green Power	PV retailer
Natural Technology Systems	PV retailer
Suntrix	PV retailer
The Green Power Company	PV retailer
Infinite Energy	PV retailer
Solargain	PV retailer
Zen Technologies	PV retailer
Sunergy Solar Water Wind	PV retailer
Ecovation	PV retailer
EcoSmart Solar	PV retailer
Millennium Solar Consultancy	PV retailer
Blue Mountain Solar	PV retailer
Clean Energy Solar	PV retailer
Evolve Energy	PV retailer
Applied Environmental Solutions	PV retailer
Sola Direct	PV retailer
Solar Australia	PV retailer
Surpass Solar	PV retailer
MJ Coonan Electrical	PV retailer
Corospark	PV retailer
Skyline Solar	PV retailer
Si Clean Energy	PV retailer
Solar Life	PV retailer
Shine on Solar	PV retailer
Metro Solar	PV retailer

Other interested parties:

- Consumer Utilities Advocacy Centre (David Stanford)
- Consumer Action Law Centre (Gerard Brody)
- Alternative Technologies Association
- Choice (Katrina Lee)
- St Vincent de Pauls Society
- Ombudsmen Victoria and NSW and ACT
- Consumer Affairs Bodies Victoria, Queensland
- Clean Energy Regulator
- Commonwealth Department of Climate Change and Energy Efficiency
- Office of Minister for Climate Change and Energy Efficiency, Greg Combet
- Office of Shadow Minister for Climate Action, Environment and Heritage, Greg Hunt
- REC Agents Association
- Greenbank Environmental
- Green Energy Trading

SOLAR PV RETAILER CODE OF CONDUCT

COMPLAINTS PROCEDURE

Code Compliance Procedure

This ~~procedure document~~ details the process for responding to alleged breaches of the Solar PV Retailers Code of Conduct.

Alleged Breaches

~~1.~~ The Code Administrator will investigate ~~potential~~ alleged breaches of the Code by signatories.

~~1.2.~~ Possible Breaches can be raised via:

- a) Self-reporting from Code signatories.
- b) Consumers using the dispute-complaints form available on the CEC website at <http://www.solaraccreditation.com.au/retailers/complaints-form.html>.
- c) Any other person or body using the dispute-complaints form on the CEC website.
- d) Evidence of breaches can also be taken from any other source including:
 - i. proactive audit compliance checks;
 - ii. mystery shopping;
 - iii. feedback from consumers obtained through consumer satisfaction surveys;
 - iv. investigation of cases in which signatories may have breached the Code;
 - v. analysis of conciliation and arbitration cases;
 - vi. analysis of consumer complaints;
 - vii. media reports;
 - viii. information received from other Code signatories; and
 - ix. any additional sources.

~~2.3.~~ When an ~~alleged~~ breach is reported ~~alleged~~ by a third person via the website, a written acknowledgment of receipt of the alleged breach complaint will be sent to the complainant within ~~24 hours~~ three business days of receiving the dispute-complaints form.

~~3.4.~~ The alleged breach will be classified to ensure it is within the jurisdiction of the Code Administrator. The Code Administrator only deals with alleged breaches of the Code. It does not attempt to resolve disputes between consumers and PV retailers.

~~4.5.~~ If the alleged breach is outside of its jurisdiction, the Code Administrator will inform the complainant within five business days that they ~~should need to redirect take~~ the complaint to the relevant body, for example, the PV retailer, or, if the consumer is unsatisfied with the resolution of a complaint by that retailer, ~~refer the issue~~ to the relevant industry-consumer protection organisation agency.

SOLAR PV RETAILER CODE OF CONDUCT

COMPLAINTS PROCEDURE

~~5.6.~~ Having lodged a complaint with either the PV retailer or the relevant ~~industry~~ consumer protection organisation, the complainant can still lodge a 'breach of the Code' complaint with the Code Administrator.

Investigating Alleged Breaches

1. Alleged breaches of the Code will be investigated by the Code Administrator. The steps that will be taken are:
 - a) The Code Administrator will contact all involved parties, providing details of the alleged breach to the Code signatory in writing within five business days of receiving a complaint.
 - b) Where the only source of information on a possible breach is raised by a third party, the Code Administrator will seek evidence of the breach ~~will be required~~ from the complainant.
 - c) The Code signatory will be given 21 days to respond to the Code Administrator, setting out their comments and providing any evidence relating to the alleged breach. ~~If the signatory chooses not to dispute the alleged breach, they must explain the actions they have taken to address the alleged breach.~~
 - d) The Code Administrator will investigate and assess the issue as soon as reasonably practicable in order to minimise customer dissatisfaction and improve industry standard.
 - e) After reviewing all ~~documentation information, the Code Administrator will~~ determine whether if the alleged behaviour constitutes a breach is valid, all parties will be informed of the progress regarding the alleged breach, and if required more. Further information will be requested if required.
 - f) All communication will be recorded in full and ~~retained~~ kept on electronic file by the Code Administrator.
 - g) ~~Complaints~~ ~~The dispute~~ will be investigated by various means, including one or more of the following:
 1. Talking with all involved parties.
 2. Requesting more information as required.
 3. Auditing the Code signatory's procedures where relevant.
 4. Talking to external organisations if required.
 5. The Code signatory presenting information to the Code Administrator as requested.
 - h) Where a breach of the Code is determined, depending on the severity of the breach (see Breach Matrix, Section 3.5, 3 of the Code), the Code Administrator will either:
 6. Impose a sanction on the Code signatory in accordance with Section 3.6 of the Code; or

SOLAR PV RETAILER CODE OF CONDUCT

COMPLAINTS PROCEDURE

7. Provide documentation relating to the breach, along with a recommended course of action to the Code Review Panel for consideration.
- i) In the event that the breach is handled solely by the Code Administrator, a Code signatory is entitled to appeal the ruling to the Code Review Panel (see Section 3.7 of the Code). An appeal may be made if:
 8. A Code signatory believes that the Code Administrator did not exercise reasonable discretion, or
 9. New evidence revealed that was not available at the time of original determination.
- j) Code signatories can lodge an appeal using the appeals form on the CEC website. Appeals must be lodged within ~~one month~~ **20 business days** of the original ~~determination by the~~ Code Administrator ~~determination~~. They must be submitted in writing, detailing the relevant issue, and reasons why the appeal is being made.
- k) 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 Code signatory. The Code signatory may be called to present information to the Panel.
- l) All parties involved in the breach will be notified in writing of the outcomes of the investigation, along with reasons for the determination, as soon as reasonably practicable.
- m) All decisions by the Code Review Panel are binding and there is no further right of appeal.**
- m)n) Where a Code signatory is expelled from the Code, fees will not be refunded.**

Data Collection and Reporting

1. It is critical to record and analyse data on industry complaints in order to ensure the Code remains effective. The Code Administrator will do this by:
 - a) Collating relevant data from state and federal consumer protection agencies; and
 - b) Collating complaints data supplied by Code signatories.
2. This data will be analysed and used to track the effectiveness of the Code, and to highlight newly arising problem areas that may need to be addressed by the Code. A regular summary of this data will be reported to the Code Review Panel by the Code Administrator.



SOLAR PV RETAILER CODE OF CONDUCT

COMPLAINTS PROCEDURE

3. All investigations of alleged breaches that result in a sanction or rectification will also be recorded. Quarterly data on the number of breaches and the sanctions applied will be available on the Code website (excluding company names).
4. This ~~compliance-Complaints p~~Procedure will be analysed in the annual review of the Code by the Code Review Panel.
5. This procedure will be located on the CEC website.

Code Review Panel Terms of Reference

Composition and Role of the Code Review Panel

1. The oversight, monitoring and direction of the Solar PV Retailer Code of Conduct (the Code) will be undertaken by the Code Review Panel (the Panel).
2. The Panel will adhere to these Terms of Reference (TOR), which sets out its powers and functions.
3. The Code, Code reporting, Code Review Panel and these TOR will be independently reviewed every three years following their commencement. The review will be undertaken by a suitably qualified, independent person/body.
4. 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 permitted to sit 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 three participants that are all non-signatories to the Code:
 - 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 solar PV representative with experience in the solar PV industry appointed by the Code Administrator.
 - 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.
5. Panel members will be appointed for a period of three years, and eligible for reappointment.
6. 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 of the Code.
 - c) Conducting inquiries into Code compliance.
 - d) Producing an annual report on the Code's operation, including reporting on Code compliance, to enable a periodic assessment of the Code's effectiveness, ensure the Code standards meet the identified objectives and community expectation, and to identify systemic issues and areas for improvement.
7. All decisions of the Panel are final. Signatories have no right of review beyond the Panel.

8. Panel members will serve in good faith in accordance with these TOR and shall put aside their own interests to work together for the benefit of consumer protection in the small-scale PV energy sector.
9. The Code Administrator may exercise its discretion to remove a Panel member if it considers that the Panel member has failed to discharge its responsibilities in accordance with these TOR. It will do so with the agreement of one other Panel member (the Chair if he/she is not the individual in question).
10. Where a Panel member retires or is removed by the Code Administrator, the Code Administrator shall exercise its discretion to select a replacement Panel member in accordance with Section 4 (d) above.
11. The Code Administrator shall publish details of all Panel members on the CEC website.

Code Review Panel Meetings

12. The Panel will meet regularly – a minimum of six-four times per year
13. During meetings, the Panel will:
 - a) Carry out its responsibilities listed in Section 6 above.
 - b) Adopt, maintain and update the documentation relating to the administration of the Code.
 - c) Monitor the performance of signatories to the Code in accordance with the methods set out in the Code and these TOR.
 - d) Monitor complaints data and changes in the industry that could lead to the identification of areas requiring future update in the Code.
 - e) Monitor the operation of the Code.
 - f) Approve any revisions to the Code, and comment on any proposed revisions of these TOR.
 - g) Establish such Expert Groups as it considers necessary to advise it in carrying out its responsibilities hereunder.
 - h) Review any reports presented to it by the Code Administrator.
14. A Panel meeting shall be quorate where three Panel members, or their representatives, are present.
15. Where a Panel member (excluding the Chair) is unable to attend a meeting, he or she may nominate an alternate to attend on his/her behalf providing that the alternate is made aware of and abides by the principles of service of Panel members.
16. Panel members must attend at least 70% of Panel meetings.
17. The Panel shall decide any matters requiring its approval by consensus, or by a simple majority of those present and voting at a properly convened and quorate meeting.
18. The Code Administrator shall take minutes of proceedings at each Panel meeting.

PV Code Review Panel Charter

The PV Retailer Code of Conduct (the Code) promotes best practice measures and activities for retail businesses that are selling photovoltaic (PV) systems. It aims to bring about increased accountability within the PV retail sector, leading to improved experiences for consumers.

The Code will be administered by the Clean Energy Council (CEC), and independently overseen and monitored by the Code Review Panel. The Panel's powers and functions are set out broadly in its Terms of Reference, and in detail in this Charter.

The Panel will adhere to this Charter which sets out its powers and functions.

Panel Roles

The Panel is an independent body with three members. All members must be independent of Code signatories. They must not have any direct conflict of interest, for example, having recently been employed by, or consultant to, any Code signatory. If a member of the Panel identifies any conflict of interest, potential for conflict or perceived conflict, they must let the Chair of the Panel and the Code Administrator know as soon as practical. Failure to do this can result in the removal of the Panel member as detailed below under 'Removal of Panel members'.

The Panel is made up of:

Chair:	Gerard Brody, CEO of Consumer Action Law Centre (CALC)
Consumer Representative:	TBC Damien Moyse, Alternative Technology Association
PV Industry Representative:	TBC Nigel Morris, Solar Business Services

The Chair is responsible for running the Panel meetings. The Chair will have 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.

The consumer representative is responsible for ensuring the interests of the PV consumer are maintained in the way that the Code operates. The consumer representative will have relevant experience and knowledge in, for example, consumer advocacy, protection and law, and understand the issues the PV consumer faces.

The PV industry representative will understand the PV industry, the issues and challenges within the industry, and be able to put forward practical suggestions on how to address the issues in the industry.

Panel members will serve in good faith in accordance with this Charter and shall put aside their own interests to work together for the benefit of consumer protection in the small-scale PV energy sector.

Panel Responsibilities

The oversight, monitoring and direction of the Code will be undertaken by this Panel. This includes:

- 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 of the Code.
- c) Adopting, maintaining and updating the documentation relating to the administration of the Code.
- d) Monitoring the performance of signatories to the Code in accordance with the methods set out in the Code and the Terms of Reference.
- e) Monitoring complaints data and changes in the industry that could lead to the identification of areas requiring future update in the Code.
- f) Monitoring the operation of the Code.
- g) Approving any revisions to the Code, and comment on any proposed revisions of this charter.
- h) Preparing the annual report on the Code.
- i) Overseeing the independent Panel reviews as required by the Code.
- j) Establishing such Expert Groups as it considers necessary to advise it in carrying out its responsibilities hereunder.
- k) Reviewing any reports presented to it by the Code Administrator.
- l) Conducting inquiries into Code compliance.
- m) Producing an annual report on the Code's operation, including reporting on Code compliance, to enable a periodic assessment of the Code's effectiveness, ensure the Code standards meet the identified objectives and community expectation, and to identify systemic issues and areas for improvement.

The Review panel must ensure procedural fairness is adhered to in the application of their responsibilities under this Charter including breaches of the Code.

Code Administrator Responsibilities

The secretariat functions for the Panel will be completed by the Code Administrator. The Code Administrator will also be responsible for:

- a) Having a representative at each Panel meeting.
- b) Preparing information required for arbitration of cases before the Panel.
- c) Investigating breaches of the Code and where appropriate providing relevant information to the Panel.
- d) Preparing communications to external stakeholders regarding the work of the Panel or information relating to the Code and its operations.
- e) Setting up and managing the reporting requirements as per the Code.
- f) Removing Panel members as detailed below under 'Removal of Panel members'.
- g) Publishing details of all Panel members on the CEC website.

The Code, Code reporting, Code Review Panel and this Charter will be independently reviewed every three years following their commencement. The review will be undertaken by a suitably qualified, independent person/body. This will be organised by the Code Administrator.

Meetings

The Panel will meet as required – several times per year. The meetings will be run out of the CEC offices and the schedule of meetings will be set at the first meeting of each year.

a. Voting

The Panel shall decide any matters requiring its approval by consensus, or failing a consensus by a simple majority of those present and voting at a properly convened and quorate meeting.

b. Quorum

A Panel meeting shall be quorate where three Panel members, or their representatives, are present. Where a Panel member, excluding the Chair, is unable to attend a meeting, he or she may nominate an alternative person to attend on his/her behalf providing that the alternate is made aware of and abides by the principles of service of Panel members. The Code Administrator must be informed of the name and contact details of the nominated representative before the meeting. The Chair may not send a substitute to a Panel meeting. Panel members must attend at least 70% of Panel meetings.

c. Cancellation of meetings

If a Panel member is unable to attend a set meeting the Code Administrator will endeavour to reschedule the meeting. If the meeting cannot be rescheduled within a reasonable timeframe the Code Administrator will either cancel the meeting or request that you send your nominated representative.

Terms

The term of each appointment to the Panel shall be for a period of three years, with the option of applying for a second term. If a person resigns from the Panel before this time the CEC can appoint a casual vacancy until a permanent recruit can be found. A permanent appointment will be decided by the CEC after consultation with key stakeholders and the remaining Panel members.

Removal of Panel members

Removal of Panel members can occur via one of the following:

- a) Resignation.
- b) Code Administrator requested.

The Code Administrator can, at its discretion, remove a Panel member if it considers that the Panel member has failed to discharge its responsibilities in accordance with this Charter. The Panel member will receive a written warning detailing the issue, and have one month to address the behaviour. If the behaviour is not addressed to the satisfaction of the Code Administrator within the month, a second written warning will be given to the Panel member with a final months' notice. Failing an improvement in the behaviour, the Code Administrator can then remove the Panel member with the agreement of one other Panel member (the Chair if he/she is not the one receiving the warning).

Panel members can be removed immediately from the Panel if they:

- a) Have an ACCC action against them.
- b) Are convicted of a relevant crime e.g. fraud.
- c) Have misrepresented their qualifications or experience.

- d) Become bankrupt or are an officer of an entity which is or becomes insolvent or is placed under administration.
- e) Fail to turn up to 3 consecutive meetings

Where a Panel member retires or is removed by the Code Administrator, the Code Administrator shall exercise its discretion to select a replacement Panel.

Confidentiality

The CEC asks that each Panel member respect the confidentiality of the information the Panel receives. The Panel is consulted regularly on issues pertaining to the operation of the Code. Members are thus privy to confidential information about the industry, signatories and operations of the CEC. Disclosure of such confidential information, unless agreed in writing by the CEC and representative on the Panel, is unauthorised as its release may harm signatories and/or the CEC.

Accordingly, the CEC requires that the Panel members undertake:

- f) Not to disclose any written or electronic information sent to them for the Panel purposes;
- g) Not disclose any information from discussions at Panel meetings unless otherwise agreed; and
- h) To use the information provided by the CEC for the sole purpose of discussion and decisions within the Panel meetings.

Conflict of Interest

If a member of the Panel identifies any conflict of interest, potential for conflict or perceived conflict, they must let the Chair of the Panel and the Code Administrator know as soon as practical.

A conflict of interest is any circumstance or set of circumstances whether potential, or actual, where personal or organisational business interests may or may be perceived to unfairly influence or compromise decisions, responsibilities, advice, or conduct in a way that may diminish confidence in Panel.

Where possible effort must be made to avoid conflicts of interest, and where a conflict cannot be avoided it must be managed. All conflicts of interest must be identified, disclosed and effectively managed in an open and transparent manner in order to ensure that Panel members exercise independent judgement in the performance of duties as part of the Panel. Where a conflict of interest has been identified, the Panel member may be required to remove themselves from involvement any decision relating to that conflict. Any failure to notify the Chair and the Code Administrator of a conflict of interest can result in removal of the Panel member as detailed above under 'Removal of Panel members'.

Any conflict will be discussed at the next Panel meeting and actions agreed upon and minuted.

Remuneration

Each Panel member will be paid \$150 for each hour of a meeting. The Chair will be paid \$200 per each hour of a meeting. It is anticipated that each Panel member will invoice the CEC after each

meeting. Alternative payment methods can be agreed upon if required. Any payment above and beyond this (e.g. travel costs) must be agreed upon with the CEC prior to accruing the expense.

Declaration

I have read and agree to abide by the Code Review Panel Terms of Reference and Charter. I understand the requirements of my role as a member of the Panel and confirm that I do not have any conflict of interest. I will declare any conflict of interest that arises in future, and will treat all commercial in confidence information provided to the Panel with appropriate confidentiality.

Signature: _____

Full name: _____

Name of Company: _____

Date: _____

Contact details

For any questions or comments regarding the Code Review Panel please contact:

~~Kate Allsopp~~ Anna Sexton on 9929 4109 aseyton@cleanenergycouncil.org.au or

~~Kate Teperman~~ David Sanders on 9929-4132 dsanders@cleanenergycouncil.org.au