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4 June 2015

Australian Competition & Consumer Commission
Adjudication
Level 35, The Tower
360 Elizabeth Street
Melbourne Vic 3000

Attention: Tess Macrae

Dear Ms Macrae

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

Thank you for the opportunity to respond to the submissions from interested parties. We make the following comments on each submission:

1. Energy Australia

Clean Energy Council (CEC) appreciates Energy Australia's support for changes to the code of conduct, particularly clarification of grid connection procedures and introduction of provisions to address solar finance practices.

2. Consumer Action Law Centre

CEC acknowledges and appreciates the support of the Consumer Action Law Centre (CALC) in our efforts to raise standards in the solar industry and to increase awareness among and protection of energy consumers.

We agree on the need for, and the power of, the comparative cost being made clear to the consumer. CEC is willing to adopt CALC's suggestion to require code of conduct signatories to include warnings that encourage consumers to consider other means of financing their solar purchase. Such warnings should not place an unreasonable burden on the solar PV retailer to provide financial advice, or information that may be construed as constituting financial advice. Consumers should assume a degree of responsibility for researching finance options available to them and the effect of those options on their particular circumstances. To that end, we have inserted the following section 2.1.24 in the Code:

Signatories must provide a simple warning to consumers to the effect that they should consider other options for financing their purchase of solar and should seek their own financial advice.

CEC agrees on the need for “finance arrangement” to be used as a defined term in the Code. We have capitalised that term throughout the Code and inserted the following definition in section 5.1 Glossary and Definitions:

Finance Arrangement – Finance Arrangements, or any similar term used in this Code, means a method by which a consumer can purchase a solar PV system other than initial outright purchase, including but not limited to, lease and power purchase agreement. Finance Arrangement includes finance provided by a credit provider that is regulated by the *National Consumer Credit Protection Act 2009* (Cth), any other finance or credit provider, such as those purporting to offer “no interest” finance, and finance provided by the Signatory itself.

CEC appreciates CALC’s comments on privacy and the importance of protecting customer data. We reject the assertion that there is a need for an opt-in provision to replace the opt-out provision on marketing material. Signatories to this code of conduct are accountable for providing legal and ethical pre- and post-sales service and it is not in their commercial interests to misuse customer data collected for the purpose of facilitating the sale of a solar PV system.

The Code Administrator and the Code Review Panel have discussed the matter of opt-in and opt-out provisions at length. We have also consulted with current signatories on this matter. We hold the view that encouraging the building of relationships between a consumer and a solar PV retailer provides added accountability on the retailer and is good for the industry.

CEC maintains that the proposed sections 2.2.11 to 2.2.14 confer the appropriate level of responsibility and accountability on signatories for legal, ethical and responsible treatment of customer data.

CALC’s final suggestion is that the Code be further amended to extend to battery storage technologies. The Code Administrator and Code Review Panel have been considering the question of how the Code addresses battery storage technology, more accurately referred to as “energy storage devices”. CEC has investigated the manufacturer warranties available on current energy storage devices. We have also consulted with Code signatories with a view to understanding how many of them currently sell and/or install energy storage devices, and what liability it would place on signatories to require them to provide a five year warranty on those devices.

CEC considers that energy storage devices supplied and installed by a code signatory form part of the solar PV system and are therefore covered by all provisions of the code, including

- five year whole-of-system warranty provided by all signatories;
- privacy; and
- consumer finance.

The Code requires all signatories to use only CEC-accredited installers. ‘Battery installers’ are required to hold the correct type of accreditation, namely accreditation to install grid-connected and stand-alone systems. To the extent that an energy storage device forms part of the solar PV system,

the Code does currently cover battery storage technology. CEC proposes the following amendment to the Code for clarity on this matter:

Warranty

2.2.1 A standard minimum retailer's warranty period of five years on the operation and performance of the whole solar PV system, including workmanship and ~~products~~ all components of the solar PV system (including, but not limited to, an energy storage device supplied and installed by the Signatory), 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).

3. Ethnic Communities Council of Victoria

CEC appreciates the submission made by Ethnic Communities Council of Victoria (ECCV) in relation to this Code. CEC accepts the point made by ECCV that the information in this Code may not be adequately accessible to people for whom English is not their first language, people who do not speak any English, or people who have other English language challenges.

CEC would require more time to consider how this Code could be made more accessible to people from non-English speaking backgrounds. We would also require access to external funding to make changes to the Code in this regard. CEC would appreciate any information and advice from the Australian Competition & Consumer Commission (ACCC) on how other organisations and code administrators deal with the matter of multi-lingual access.

If the ACCC encourages or requires CEC to further consider ECCV's submission, we respectfully request permission to do so within a separate timeframe to that set out for the ACCC's authorisation process for this Application for Revocation and Substitution.

4. Northern Alliance for Greenhouse Action

CEC thanks Northern Alliance for Greenhouse Action (NAGA) for making a submission on the application for revocation and substitution of the CEC's Solar PV Retailer Code of Conduct. CEC acknowledges the positive work done by NAGA and the synergies between NAGA and its members, and the CEC.

5. Demand Manager

CEC thanks Demand Manager for making a submission to the ACCC on proposed changes to this Code. We appreciate the point made by Demand Manager in relation to metering solutions for power purchase agreement (PPA) products but do not consider the Code to be the mechanism by which inadequate metering is addressed. CEC takes the view that if metering requirements are inadequate, then that would be best regulated via a mandatory requirement enforced by the Australian Energy Regulator, not via a voluntary provision encouraged by the CEC. Residential and business consumers are responsible for ensuring they have metering that is fit for purpose and this is not an obligation that could or should fall on signatories to this Code or on the CEC itself.

CEC does not propose to amend the Code based on Demand Manager's submission.

Conclusion

CEC has carefully considered all submissions made in relation to this application for revocation and substitution of the Solar PV Retailer Code of Conduct. After conferring with CEC's Operations, Accreditation and Policy teams, we have responded as we see appropriate by way of this letter and have marked up changes accordingly in the attached Code document.

We thank you for this opportunity to respond to submissions made on the Public Register and would be pleased to discuss this response with ACCC Adjudication if required.

Kind regards

Anna Sexton



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