

On 26 June 2020, ACCC staff spoke with representatives from the Office of the Australian Information Commissioner (OAIC) in relation to the Clean Energy Council's application for re-authorisation (AA1000514). The OAIC noted the following to ACCC staff:

- The OAIC notes the interaction between Australian Privacy Principle (APP) 7 and sections 2.2.12 and 2.2.13 of the CEC's solar retailer code of conduct.
- The OAIC is satisfied that 2.2.12(a) and 2.2.12(c) align with APP 7.
- However, the OAIC is concerned that:
  - 2.2.12(b) may include instances where the consumer has not opted in for future marketing, and
  - 2.2.13 appears to convey discretion in the need to seek a consumer's consent to receive marketing material.
- The OAIC recommends that 2.2.12(b) be:
  - removed altogether
  - made to more explicitly specify the need for consumer consent with the addition of 'for future marketing of its products and services that relate to the sale *where consent has been obtained from the consumer for that purpose*', or
  - reviewed by the ACCC to ensure the ACCC is satisfied that it aligns with APP 7.
- The OAIC recommends that 2.2.13 be reworded as: *If personal information is used for the purpose of direct marketing, signatories must seek the consumer's consent, by way of an opt-in clause in the contract or other appropriate document, to receive marketing material.*
- The OAIC notes the addition of the *Privacy Act* to the Breach Matrix at 5.3 and considers the classification of the breach as 'severe' is appropriate.