

The Honourable Justice Middleton
President, Australian Competition Tribunal

By Email:

registry@competitiontribunal.gov.au

Dear Justice Middleton

I am writing on behalf of the COAG Energy Council's Senior Committee of Officials (SCO), regarding the Tribunal's consideration of ACT 1 of 2019, relating to Flexigroup Limited's application for review of the Australian Competition and Consumer Commission's (ACCC) December 2019 decision to authorise the voluntary New Energy Tech Consumer Code (the Code).

SCO would like to express its support for the importance of the Code generally. It notes the need to ensure strong consumer protections are maintained, including in relation to unregulated consumer credit arrangements. The Code will play an important role in improving protections for consumers in a changing energy market, where innovation and greater choice is leading to greater complexity and risks for consumers.

The Energy Council (Council) wrote to the Applicants for the authorisation in August 2017 to ask that they collaborate to develop a single, industry-wide code of conduct to apply to providers of new types of electricity products and services that are situated 'behind the meter' (BTM) such as roof-top Solar PV and battery storage systems.

The request to industry followed a 2016 consultation process on what consumer protections should apply to new BTM products and services. This process confirmed that the universal consumer protections offered by the Australian Consumer Law (ACL) would apply to BTM products and services and that those protections are generally sufficient. However, the Council noted two key areas of concern where stakeholders considered action was needed to reduce risks to consumers. These are:

- Improvements to the consistency and quality of information available to

consumers – Consultation identified an urgent need to ensure information available is sufficient to ensure BTM customers are better equipped to make informed decisions. Information asymmetry was identified as a particular issue given the often complex and new product offerings. Stakeholders supported the need to ensure clear and consistent information is available to BTM customers on issues such as, their rights and obligations and whether a product is fit-for-purpose; as well as the financial, legal and practical (e.g. system maintenance) implications of long-term contracts. (I note Energy Consumers Australia were separately tasked with developing Consumer Information products and fact sheets to complement the Code and these are to be launched alongside any authorised Code).

- Accessible, simple and affordable complaints and dispute management – Energy ombudsman schemes do not handle BTM related complaints and although Jurisdictional ACL regulators can receive complaints and attempt to resolve disputes they cannot force a settlement, meaning to pursue the matter further a consumer would need to go through a lengthy and costly court process. Stakeholders supported the need for simple, consistent and affordable arrangements.

The Council decided to approach industry to facilitate a solution to these issues, rather than impose heavy-handed regulation on a fledgling industry. It was considered that a voluntary industry code could address these issues by establishing minimum standards of behaviour and good industry practice for providers in their dealings with residential and small business customers. The Code addresses Ministers' minimum requirements to industry (information provision; dispute resolution mechanisms; ensuring the product is fit-for-purpose; and customers in financial difficulty) and more.

SCO continues to be of the view that the proposed voluntary industry code is an appropriate mechanism to balance the need to enhance protections for consumers, with market efficiency and the promotion of innovation. Further, we understand the ACCC's decision to authorise the Code was based on a view that it will provide a net public benefit. That being the case, SCO is concerned that any significant delay to the Code being finalised and coming into force will be to the detriment of the increasing number of consumers choosing BTM products and services every day.

Thank you for considering this submission.

Regards

A handwritten signature in blue ink, appearing to read 'Sean Sullivan', is centered on the page.

Mr Sean Sullivan

Chair

COAG Energy Council Senior Committee of Officials

2 April 2020