

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Statement of Benjamin Charles Barnes

File Number: ACT1 of 2019

File Title: Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code and the determination made by the ACCC on 5 December 2019

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



DEPUTY REGISTRAR

Dated: 5/05/2020 7:03 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.



Statement

No. ACT 1 of 2019

IN THE AUSTRALIAN COMPETITION TRIBUNAL

Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited

Applicant

Statement of: **Benjamin Charles Barnes**

Address: 14/50 Market St, Melbourne 3000 in the state of Victoria

Occupation: General Manager, Retail Policy

Date: 5 May 2020

This document contains confidential information which is indicated as follows:

[Confidential to Brite] [REDACTED]

I, Benjamin Charles Barnes of 14/50 Market St, Melbourne 3000 in the state of Victoria, General Manager, say as follows:

1. I am the General Manager, Retail Policy for the Australian Energy Council Limited (**AEC**) and am authorised to make this statement on the AEC's behalf.

Filed on behalf of: Australian Energy Council, Clean Energy Council, Energy Consumers Australia and Smart Energy Council (the Authorisation Applicants)

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2. I make this statement from my own knowledge and from the AEC's records referred to below.
3. Now shown to me is a hyperlinked index marked **Exhibit BB-1** and a further hyperlinked index marked **Confidential Exhibit BB-2** which contains information that is commercially sensitive and confidential. When I refer to a document in this statement, I refer to it by its tab number and document ID in **Exhibit BB-1** or **Confidential Exhibit BB-2**.

A. BACKGROUND

4. In July 2018, I joined the AEC as Director, Retail Policy, reporting to Sarah McNamara, Chief Executive of the AEC. In that role, I was primarily responsible for:
 - (a) formulating the AEC's response to developments which affect the suppliers and consumers of retail energy (principally, gas and electricity) in Australia; and
 - (b) advocating for policy and reform positions formulated by the AEC with respect to retail energy in Australia.
5. On 1 April 2020, I was appointed to my current role, which is largely the same as my previous role, save that I now have two people reporting to me.
6. Between 2011 and July 2018, I was employed by Red Energy, an energy retailer.
7. From 2011 to March 2012, I held the role of Senior Customer Solutions Consultant.
8. From March 2012 to November 2015, I held the role of Quality and Compliance Adviser, where I was primarily responsible for issues relating to retail energy compliance matters.
9. From November 2015 to June 2018, I held the role of Regulatory Manager, where my previous role expanded to include matters relevant to the legal and regulatory aspects of future energy frameworks. In that role, I was responsible for the formulation and presentation of Red Energy's views on matters of retail energy policy and proposed regulatory changes in the retail energy sector.
10. Prior to 2011, I was travelling and studying commerce/law at Deakin University.

B. THE AEC

11. The AEC is the peak industry body for 23 major electricity and downstream natural gas businesses competing in Australia's wholesale and retail energy markets. The AEC's members collectively generate the overwhelming majority of electricity in Australia and sell gas and electricity to over 10 million homes and businesses.

12. The AEC was established in January 2016, following a decision by the Energy Supply Association of Australia and the Energy Retailers Association of Australia to reorganise and rationalise their representative associations into a single organisation, which became the AEC.
13. The AEC acts as a representative body for its members, advocating and making submissions in relation to government and regulatory policies which may impact its members. It also engages with the broader community in relation to matters affecting energy consumers.
14. The AEC has a direct interest in any policy or regulatory developments which have the potential to impact their members, and developments relating to the area of new energy technology (***new energy tech***) products and services is one area of particular interest to the AEC.

C. ESTABLISHMENT OF THE BEHIND THE METER WORKING GROUP

15. Red Energy is a member of the AEC and, in or around mid-2017, I was contacted by Tess Fitzgerald from the AEC. Ms Fitzgerald was, at that time, responsible for dealing with matters of retail energy policy on behalf of the AEC. Ms Fitzgerald told me that the COAG Energy Council (***COAG EC***) had written to a number of industry bodies (including the AEC), requesting that those industry bodies work together to develop an industry code for behind-the-meter products and services (the ***Tech Code***).
16. I understand the term “behind-the-meter products and services” to describe products and services that operate on the consumer’s side of the meter. That is, that they are the principal responsibility of the consumer, rather than the energy retailer. One example of a “behind-the-meter” product is a solar panel, which is acquired by the consumer and installed by a qualified installer, for the benefit of the consumer.
17. The term “new energy tech” broadly describes goods or services using new forms of technology (e.g. solar and batteries), in a decentralised manner, as distinct from traditional methods of energy generation, which are centralised and delivered through the grid. Many new energy tech products (although not all) are designed to be installed “behind-the-meter”. As discussed below, it was always my understanding that the focus of the new Tech Code was to be on new energy tech products and services installed “behind-the-meter”, being principally acquired by residential consumers.
18. In my capacity as Regulatory Manager at Red Energy, I had a particular expertise in relation to the regulatory issues associated with solar energy generation and battery storage, both being forms of new energy tech. I was also familiar with the voluntary

solar industry code (the **Solar Retailer Code of Conduct**) which applied to the supply of solar products and services to consumers.

19. Ms Fitzgerald told me that:
 - (a) a working group was to be established to progress the development of the Tech Code (the **BTMWG**); and
 - (b) additional subject matter experts were being approached to join the BTMWG to assist the industry associations.
20. Following a meeting of interested AEC members, I nominated myself – and was selected by the AEC – to join the BTMWG as a subject matter expert for solar power and storage, the principal initial form of new energy tech likely to be covered by the Tech Code.
21. I joined the BTMWG (while still in my broader role at Red Energy) in late 2017, and participated in its meetings from its inception.
22. Prior to my commencement at the AEC, my predecessor at the AEC (Ms Fitzgerald) was the AEC representative on the BTMWG. When I commenced at the AEC in July 2018, I continued to participate in the BTMWG but, from that point in time, I did so as the AEC representative. Given my familiarity with issues relating to the retail solar sector and the fact that my replacement at Red Energy did not have the same degree of industry familiarity, Red Energy ceased participating in the BTMWG shortly after my move to the AEC.
23. In essence, my role changed from simply participating as a subject matter expert, to being the “process owner” responsible for ensuring that the AEC’s members’ views were adequately represented on the BTMWG.
24. The BTMWG’s membership was designed to – and, in my opinion, did – ensure that it reflected the views of an appropriate cross representation of industry and consumer interests. It included:
 - (a) the Clean Energy Council (**CEC**). The CEC is the peak body for the clean energy industry in Australia and represents businesses operating in, or supporting, the development of renewable energy. The CEC was also the administrator of the Solar Retailer Code of Conduct;
 - (b) Energy Consumers Australia (**ECA**), a national energy consumer advocacy body for residential and small business energy consumers;
 - (c) the Smart Energy Council (**SEC**), as the peak body for the solar, storage and smart energy industry in Australia;

- (d) Energy Networks Australia (**ENA**), representing Australia's electricity transmission and distribution and gas distribution networks;
 - (e) Renew, a not-for-profit association that advocates for sustainable living practices (previously known as the Alternative Technology Association);
 - (f) Public Interest Advocacy Centre (**PIAC**). PIAC is an association which focuses on social problems that impact on the lives of Australians;
 - (g) Energy Queensland, which is responsible for the Queensland government's electricity networks and retail businesses;
 - (h) the Consumer Action Law Centre (**CALC**). CALC advocates on behalf of consumers for changes to policy, laws and industry practices across a range of consumer issues; and
 - (i) national electricity generator and retailer, AGL.
25. Participation in the "behind-the-meter" goods and services sector was not a core business for most of the AEC's members (given that the AEC represents licensed generators and retailers) and only a smaller sub-set of the AEC's members were directly interested in the development of the Tech Code (through related entities active in the new energy tech industry).
26. As a result, I perceived that my role on the BTMWG evolved from one of being designated to advocate on behalf of the AEC's stakeholders, into more of an independent role. In that capacity, I was able to objectively assess the often divergent positions advocated for by the consumer advocates (on the one hand) and the new energy tech market participants (on the other) and suggest compromise positions to members of the BTMWG from time to time.
27. In my opinion, I was well placed to undertake this role because:
- (a) I had a high-level understanding of the key issues facing retailers of new energy tech. During my time as Regulatory Manager at Red Energy, Red Energy had commenced selling solar and battery solutions to retail customers and I had developed an understanding of the regulatory, marketing and operational issues facing sellers of this form of new energy tech;
 - (b) I was familiar with the broad consumer protections provided for under the National Energy Retail Law (**NERL**), from my retail regulatory work at Red Energy. This was relevant to the Tech Code, as it was my understanding that one of the intentions behind the COAG EC's request, was for the basic

consumer protections provided for in the NERL to be replicated in the Tech Code; and

- (c) I had pre-existing relationships with the consumer advocacy organisations, having often dealt with them in my previous role.

D. DEVELOPMENT OF THE NEW ENERGY TECH CONSUMER CODE

28. The BTMWG started to meet in or around October 2017 and held regular meetings – usually monthly – throughout the process of the development of the Tech Code.
29. During the course of the initial meetings of the BTMWG, there was a lot of discussion around what specific products and services would be covered by the Tech Code, as there was no existing recognised definition of new energy tech.
30. At that point in time, the primary forms of new energy tech being sold to consumers were solar and, to a far lesser degree, battery storage solutions. However, it was envisaged that a broader range of technology options would become available over time and that the Tech Code would therefore need to have the flexibility to incorporate future innovation and development.
31. As stated above, I was familiar with the Solar Retailer Code of Conduct. However, that code was tailored to the solar industry and was therefore not designed to cater for new energy tech more generally. For example, it focused on technical specifications related to solar which had no application to other forms of new energy tech.
32. It was my understanding that once the Tech Code was developed, the Solar Retailer Code of Conduct would cease to apply and the Tech Code would cover solar as well as other new energy tech products and services.
33. With that in mind, the members of the BTMWG agreed that the development of the Tech Code should be based around the principles that:
- (a) it be technology “agnostic”. By this, I understood that it should be designed in such a way that it would be able to apply equally to all forms of new energy tech;
- (b) it be principles based. By this, I understood that it should reflect general concepts arising in the sector and focus on consumer outcomes, rather than focusing on specific technical requirements (which would have been difficult in a sector-wide code in any event);
- (c) it reflect the consumer journey. By this, I understood that the Tech Code was to be designed having regard to each aspect of the consumer’s interaction

with new energy tech – from the initial marketing, through the sales process and up until the end of life of the products or services; and

- (d) it ensure that consumers were provided with adequate information in order to enable them to make informed decisions around new energy tech products and services.
34. The CEC – on behalf of the BTMWG – engaged external consulting firms to assist with the development and drafting of the Tech Code (being Nexa Advisory and Cameron Ralph Khoury (**CR Khoury**)). CR Khoury were engaged given that they had drafted the Solar Retailer Code of Conduct and the BTMWG considered that their experience would make the preparation of the Tech Code more efficient.
35. The BTMWG received an initial draft of the Tech Code in early October 2018. Following some further input from BTMWG members, the draft Tech Code was released for stakeholder consultation in late November 2018, with responses due by February 2019. An organisation called Straight Talk was engaged to run public workshops.
36. Once the drafting process commenced, it became apparent to me that the application of the principles set out at paragraph 32 above meant that the Tech Code was going to have a greater focus on the earlier, largely pre-contractual, stages of the “consumer journey”. This is because, while it was possible to develop common principles for pre-contractual matters such as advertising, fitness for purpose, sales and warranties, it was harder to develop principles around installation, operation and “end of life”, which depended a lot more on the specific new energy tech products in question.
37. During the development of the draft Tech Code, and prior to its release for public consultation, several consumer related topics were discussed and considered by the BTMWG including the inclusion of requirements on a range of different financial arrangements. I recall CALC’s representative on the BTMWG at that time, Zac Gillam (who was then the Senior Policy Officer at CALC), stating that CALC had significant concerns about unregulated finance providers and unregulated finance. In particular, he strongly advocated for the Tech Code to exclude finance of the kind known as “buy now pay later” (**BNPL**) from being available for sales of new energy tech products or services.
38. On the basis of Mr Gillam's representations in support of this approach, and having regard to the guiding principle that the Tech Code should focus on consumer outcomes, the BTMWG agreed to amend the draft Tech Code to include such a provision.

39. The stakeholder consultation process sought submissions from a broad range of consumer representatives, industry, government bodies and other organisations.
40. Stakeholders were also invited to attend workshops in Adelaide, Brisbane, Sydney and Melbourne in mid-December 2018 to provide feedback on the draft Tech Code. Significant feedback was received through these workshops and from additional submissions, all of which was shared with the BTMWG.
41. Towards the end of the public consultation period, technical workshops were held in Brisbane and Melbourne, with attendees providing their feedback on the extent to which various draft provisions applied to different categories of new energy tech products and services. Further changes were made to the draft Tech Code following feedback from those workshops.
42. In parallel with this activity, the senior executives of the BTMWG members worked with the BTMWG to develop a Memorandum of Understanding (**MOU**), which addressed the governance, stewardship and administration of the proposed Tech Code. This was agreed in late January 2019 and its key provisions were reflected in the draft Tech Code. A copy of the MOU appears at tab 1 of **Exhibit BB-1** ([ANA.001.001.0014](#)).
43. As requested by the BTMWG, written submissions from stakeholders were received by the BTMWG in February 2019 (with some later submissions received in early March 2019).
44. In my opinion, the Tech Code created significant public benefits, through:
 - (a) consolidating a consistent minimum expected standard of conduct by all suppliers with respect to new energy tech products and services;
 - (b) ensuring that the Tech Code not only reflected existing consumer law obligations, but went beyond those obligations to set standards which, I considered, best catered for consumers' broader interests. Examples of these included:
 - (i) ensuring that claims relating to the performance of new energy tech products and energy costs savings were based on reputable sources, where available (paragraph 2(g));
 - (ii) clearly stating the impact of any alternative credit arrangement on the total price to be paid by the consumer (paragraph 2(m));

- (iii) providing clear guidelines relating to direct marketing and ensuring that those same guidelines would be observed by the agent of any signatory (paragraph 3);
- (iv) providing consumers with a Consumer Information Product that explains the applicable consumer protection framework and sets out other key information (paragraph 3(f));
- (v) taking specific steps to mitigate the risks associated with high pressure sales tactics (paragraph 4);
- (vi) taking extra care if the supplier becomes aware that the customer may be facing vulnerable circumstances (illness, impairment, victim of abuse, financial stress) (paragraph 5);
- (vii) obliging the supplier to enquire about the customer's specific circumstances and needs with respect to the new energy tech products in question, and then ensuring that any products ultimately supplied, were fit for that consumer's particular purpose and circumstances (paragraph 6);
- (viii) detailed quote requirements, including information as to how the new energy tech operates, supply timeframes, details of any guarantees and warranties that apply and details of any accreditation held by the supplier and required to supply the goods (paragraph 8);
- (ix) providing a clear explanation of the details of any alternative finance arrangement offered by the supplier (paragraph 24);
- (x) providing a summary of the relevant warranty provisions and rights in relation to contract termination (paragraphs 41 – 49);
- (xi) undertaking responsibility for the training of sales agents and other representatives (paragraph 57); and
- (xii) ensuring that the Tech Code was in plain English and capable of being readily understood by consumers and suppliers. This was supplemented by the use of a pictorial representation of the key elements of the consumer journey (in the Overview, at pages 3 – 4).

45. In my opinion, the Tech Code generates three broad categories of public benefit. These are:

(a) Clarity for consumers and vendors

The Tech Code clearly sets out the applicable terms and conditions arising in the marketing and sale of new energy tech products. New energy tech products (including their features, operation and benefits) are, by their very nature, complex goods and services. In particular, the benefits associated with any new energy tech product can vary dramatically depending on the circumstances in which it is used. My experience in dealing with solar power demonstrated to me a real potential for misunderstandings to arise with respect to these matters. One common area of misunderstanding relates to the benefits that a new energy tech product may have on a consumer's overall energy costs and savings.

The Tech Code seeks to demystify some of these complexities and ensure that consumers are fully informed as to how a new energy tech product is likely to impact their energy costs based on their personal circumstances (for example, in the case of solar, having regard to matters such as the geographic location of the consumer's property and the precise location in which the product is to be installed) and the nature of any limitations on the performance of a new energy tech product.

(b) Consistency of approach

The Tech Code ensures that information is provided in an appropriate and consistent form from vendors (both by way of general advertising/marketing and direct representations to consumers) and allow consumers to compare "apples with apples". This allows consumers to make an informed choice and, in turn, is likely to reduce the number of complaints that might arise in relation to new energy tech products and services.

(c) Framework for product specific guidance

As discussed above, the nature of the Tech Code means that it is not capable of descending into all of the technical detail with respect to specific forms of new energy tech products and services. However, it was the BTMWG's intention that as each technology matured and appropriate minimum technical standards became known, they could be included in the Tech Code framework in the form of mandatory standards, which would provide appropriate technology specific guidance. The publication, and binding nature, of such standards is specifically provided for at paragraph 60 of the Tech Code submitted to the ACCC for authorisation. As such, the Tech Code provides a framework for the development and implementation of such further standards as may be required to protect consumers' interests.

46. Many of these benefits already exist in the NERL with regards to the sale and supply of energy, but do not exist with respect to new energy tech products and services.
47. Submissions were received from many interested parties, and the draft Tech Code was revised substantially over the course of, and as a consequence of, the consultation period.
48. I was conscious that a balance needed to be struck between extending the consumer protection provided under the Tech Code beyond that provided by existing legislation, while at the same time encouraging the take up of the voluntary code by signatories, in circumstances where new obligations were imposed on them under the Tech Code.
49. Notwithstanding varying views among some BTMWG members, the BTMWG resolved that it was not the role of the Tech Code to be in front of what they perceived were basic community expectations; rather it should – but do no more than – reflect those expectations (even if doing so imposed obligations more extensive than those which currently existed under consumer protection legislation).
50. For the reasons discussed above, many of the obligations in the draft Tech Code exceeded the minimum obligations imposed under relevant consumer legislation and had been developed in a clear and concise manner so as to reflect a standard that the BTMWG considered met consumer expectations when dealing with suppliers, based on feedback from stakeholders.
51. In the case of unlicensed credit providers and unregulated credit, there was significant discussion amongst the members of the BTMWG. In particular, I recall discussion around research undertaken by CALC for a report published by it in around April 2019 titled “Sunny Side Up” which canvassed consumer protection issues in the solar panel industry (including CALC’s concerns with respect to consumer protection issues arising from the provision of unregulated finance). A copy of CALC’s final report, which also addressed the draft Tech Code appears at tab 2 of **Exhibit BB-1** ([ANA.001.001.0049](#)).
52. While I understood that BNPL was a source of finance commonly used for new energy tech (particularly solar purchases), I also understood – based on CALC’s submission to the BTMWG and discussions amongst members of the BTMWG – that there were some concerns held by some BTMWG representatives about potential consumer harm associated with BNPL finance.
53. Submissions received from each of CALC and Brighte Capital (**Brighte**) addressed the proposed prohibition against BNPL (CALC’s being in support of the prohibition and Brighte’s being against it). I do not recall seeing any other submission at that time

which addressed the issue of BNPL or hearing about any other stakeholder feedback on that topic during the public workshop process.

54. While I was aware that BNPL finance was not regulated in the same way – and to the same extent – as other forms of credit, I was conscious that it was a legitimate form of finance, generally available to consumers.
55. Similarly, while I was aware that there were some restrictions on unsolicited sales in certain contexts, such marketing practices were, I understood, generally permissible. Nevertheless, I was aware of the potential consumer harm arising from unsolicited sales in the retail electricity sector, from my experience in the sector.
56. In developing the draft Tech Code, CALC had advocated strongly for a provision which sought to prohibit the availability of BNPL in conjunction with the supply of new energy tech products or services. It was my impression that, with the exception of CALC, no other member of the BTMWG had a strong initial view on BNPL, one way or the other.
57. On 22 March 2019, I received an email from Sabiene Heindl (then ECA's representative on the BTMWG). In her email, she stated that, following a discussion with Brighte's Chief Risk Officer (Ms Ann Devine), it was agreed that representatives of Brighte would meet with representatives of the BTMWG to further explain Brighte's business and its concerns with the Tech Code. That meeting was scheduled for 27 March 2019.
58. While Gerard Brody (of CALC) sent an email expressing his reticence about meeting with Brighte, the BTMWG agreed to proceed with the meeting at the CEC's offices. A copy of a chain of emails in relation to the scheduling of that meeting (and Mr Brody's email) appears at tab 3 of **Exhibit BB-1** ([ANA.001.001.0041](#)).
59. On 27 March 2019, Ms Devine addressed a sub-group of the BTMWG. Brighte's CEO, Ms Katherine McConnell, participated in the meeting by phone. The sub-group comprised Ms Heindl (ECA), Mr Brody (CALC), Mindy Lim (CEC), Dean Lombard (Renew) and Wayne Smith (SEC), accompanied by Stephanie Bashir of Nexa Advisory.
60. I did not attend the meeting, but received an email from Ms Bashir on 28 March 2019, which recorded the BTMWG's conclusions following that meeting. A copy of Ms Bashir's email appears at tab 4 of **Exhibit BB-1** ([ANA.001.001.0119](#)).
61. Notwithstanding the discussions on 27 March 2019, having regard to concerns raised by the consumer advocates and the absence of a strong view by any of the other BTMWG members to the contrary, the BTMWG subsequently resolved to retain the

prohibition on BNPL in the Tech Code (this appeared at then paragraph 24 of the Tech Code).

62. However, (and as reflected in Ms Bashir's email referred to above), it was my understanding – and, I perceived that of other members of the BTMWG – that this issue was likely to be the subject of further discussion and engagement with the BNPL sector in the future, particularly in light of what I understood was the imminent development of an industry code by BNPL industry participants (the **BNPL Code**).
63. One other area of significant interest and discussion amongst BTMWG members throughout late 2018/early 2019 was that of unsolicited sales, with a number of submissions supporting an outright prohibition on the unsolicited sale of new energy tech.
64. However, it was my view – and, I perceived, the majority of other BTMWG members – that it was not appropriate to impose such a sector-specific prohibition, where other products and services in the broader community were not generally subject to such a prohibition. In the circumstances, the BTMWG resolved not to include such a prohibition.
65. The draft Tech Code was finalised by the BTMWG in late March 2019, following some further consultation with government. It was agreed by the BTMWG members that the AEC, the CEC, the SEC and ECA (the **Authorisation Applicants**) would be the designated applicants for seeking authorisation from the ACCC, given that they were the principal bodies initially approached by the COAG EC. It was also agreed that the CEC, would bear responsibility for direct communications with the ACCC, on behalf of the Authorisation Applicants.
66. Under cover of a letter dated 29 April 2019, the CEC lodged the authorisation application with the ACCC on behalf of the Authorisation Applicants.

E. THE AUTHORISATION PROCESS

67. I was aware of the public consultation which was carried out by the ACCC as part of the authorisation process, and of the fact that various submissions were received by the ACCC as part of that process.
68. In the initial phases of the ACCC's public consultation process, the ACCC also sought some further information from the CEC in relation to the application and the CEC provided responses on behalf of the Authorisation Applicants.
69. The ACCC published its Draft Determination on 1 August 2019.

70. In its Draft Determination, the ACCC stated that it proposed to grant authorisation to the Authorisation Applicants, but invited further submissions in relation to the prohibition with respect to BNPL in light of the perceived public detriment if consumers are prevented from accessing unregulated finance arrangements that include appropriate safeguards.
71. On or about 21 August 2019, I received a call from a personal contact of mine, Kris Funston, who worked at Deloitte. Mr Funston said that Deloitte had been commissioned by Brighte to undertake a customer and vendor study into Brighte's BNPL product offering, and he asked me if I would be prepared to meet with him and Brighte's Chief Risk Officer, Ann Devine, to review the results of the study. I agreed to his request and a meeting was scheduled for 3 September 2019, to be held at the AEC's offices.
72. On or about 22 August 2019, Ms Lim of the CEC called me and said that she had received a letter from the ACCC dated 16 August 2019, notifying her that a pre-decision conference had been requested, and would be held on 9 September 2019. A copy of the ACCC's letter of 16 August 2019 appears at tab 5 of **Exhibit BB-1** ([ANA.001.001.0123](#)).
73. Later that afternoon (22 August 2019), Ms Lim sent an email to representatives of the BTMWG, informing them that a pre-decision conference was to be convened and suggesting a meeting of the BTMWG to discuss the substantive issues on which the ACCC was seeking further submissions. A copy of Ms Lim's email to members of the BTMWG appears at tab 6 of **Exhibit BB-1** ([ANA.001.001.0036](#)). This meeting of the BTMWG was subsequently scheduled for 2 September 2019.
74. On the morning of 30 August 2019, Ms Lim called me and said that she had spoken with representatives of the ACCC. She said that the ACCC had asked the Authorisation Applicants to be in a position to specifically address various issues at the pre-decision conference. She then sent me an email confirming that discussion and setting out the points which she understood that the ACCC wanted the Authorisation Applicants to address. Ms Lim and I agreed that the BTMWG should meet to discuss the response to the ACCC's request.
75. Later that day, Ms Lim sent an email to the members of the BTMWG, stating that:
- (a) the ACCC had specifically asked the BTMWG to respond to the points raised at paragraphs 3.3(b) – (e) of the Draft Determination;
 - (b) set out the ACCC's specific questions for the BTMWG to consider and respond to; and

- (c) stated that a written statement should be developed by the BTMWG prior to the pre-decision conference.

76. A copy of Ms Lim's email of 30 August 2019 appears at tab 7 of **Exhibit BB-1** ([ANA.001.001.0125](#)).

F. THE AUTHORISATION APPLICANTS' PROPOSED AMENDMENT TO PARAGRAPH 24(b) OF THE TECH CODE IN THE CEC'S LETTER OF 6 SEPTEMBER 2019

77. The BTMWG met by phone on 2 September 2019 to discuss the issues raised by the ACCC (as set out in Ms Lim's emails of 22 and 30 August 2019) and to consider the BTMWG's position with respect to those issues.

78. While CALC resisted any moderation of the initial BNPL position contained in the Tech Code (i.e. that it be excluded entirely), it was my opinion that some moderation was appropriate, having regard to:

- (a) the apparent consumer demand for, and support of, BNPL as a method of financing consumer purchases of new energy tech products and services;
- (b) the risk of reduced competitive options being available to consumers seeking to purchase new energy tech products and services;
- (c) my uncertainty as to the full extent of consumer harm associated with BNPL products when considered in a broad market context and with appropriate safeguards; and
- (d) the ACCC's concerns about the complete exclusion of BNPL. My impression was that the ACCC considered that excluding BNPL entirely might give rise to a public detriment. I was concerned to ensure that this – from my perspective – relatively narrow issue under the Tech Code did not risk the granting of the authorisation of the Tech Code and the introduction of the other, significant, benefits for consumers in the new energy tech sector.

79. Ultimately, the consensus position from the BTMWG was to seek to moderate the exclusion of BNPL, but only if that could be achieved without introducing any additional risk for consumers.

80. The BTMWG discussed potential changes to (what was then) paragraph 24 of the Tech Code and ultimately proposed amending paragraph 24(b) of the Tech Code to permit BNPL finance to be offered, so long as it complied with a regulator approved code of conduct that delivered substantively equivalent consumer protections to those

contained in the National Consumer Credit Protection Act 2009 (**NCCPA**) and the National Credit Code (**NCC**).

81. The reference to a “regulator approved code” was intended to incorporate into the Tech Code the proposed BNPL Code, the publication of which – according to BNPL advocates – was imminent, and which I understood Brighte had told the members that the BNPL Code would provide for adequate and appropriate consumer protections.
82. On that understanding (i.e. that a BNPL Code would provide adequate and appropriate consumer protections to overcome the concerns that had previously been raised within the BTMWG about the consumer risks associated with the provision of unregulated finance), I considered that moderating the BNPL exclusion in the Tech Code in the manner proposed would introduce more consumer choice, without any risk of additional consumer detriment (or, at least, that any potential detriment would be largely mitigated).
83. In my opinion, amending the Tech Code to require that the BNPL Code be approved by a relevant regulator ensured that the broad assertion made by Brighte’s representatives (in the meeting in late March 2019) as to the BNPL Code providing adequate and appropriate consumer protection, was able to be verified by an appropriately qualified party. It also avoided any burden to the Tech Code administrator of otherwise determining whether or not a BNPL provider’s arrangements did in fact provide adequate consumer protections – a task which it would be unlikely to have the expertise to undertake.
84. The consensus view of the BTMWG was that the proposed amendment was acceptable and that the Authorisation Applicants should seek to provide written confirmation of the BTMWG’s position as soon as possible, in order to allow it to be considered ahead of the pre-decision conference, which was scheduled for 9 September 2019. A copy of an email I sent following that meeting on 2 September 2019, which summarised the discussions and conclusions of the BTMWG, appears at tab 8 of **Exhibit BB-1** ([ANA.001.001.0126](#)). I address the earlier emails in that email chain (which relate to a different topic) further below.
85. On 3 September 2019, I met with Mr Funston (of Deloitte) and Ms Devine (of Brighte) at the AEC’s offices. There was no specific reference to the impending authorisation pre-decision conference, although it was my understanding that the presentation had been offered to me in that context and, I presumed, in order to see if I was amenable to adopting a position in which the Tech Code’s blanket prohibition against BNPL finance might be relaxed.

86. The focus of the presentation was on the consumer advantages of Brighte's BNPL product, when compared to other payment methods. A copy of the presentation (the **Deloitte Presentation**) appears at tab 1 of **Confidential Exhibit BB-2** ([ANA.001.001.0001](#)) [Confidential to Brighte]. [Confidential to Brighte] [REDACTED]
[REDACTED]
- (a) [REDACTED]
[REDACTED]
- (b) [REDACTED]
[REDACTED]
[REDACTED]
87. [Confidential to Brighte] [REDACTED]
[REDACTED]
[REDACTED]
88. In addition to the material in the Deloitte Presentation, Ms Devine also updated me on the development of the BNPL Code.
89. As noted above, in order to provide the ACCC (and other interested parties) with an opportunity to consider the BTMWG's revised position ahead of the pre-decision conference, the CEC sent a letter to the ACCC on 6 September 2019, setting out the proposed amendment endorsed by the BTMWG at its meeting on 2 September 2019. A copy of the CEC's letter of 6 September 2019 appears at tab 9 of **Exhibit BB-1** ([ANA.001.001.0132](#)).
90. The letter clearly noted that, in formulating the original draft of the Tech Code, it had never been the intention of the BTMWG to exclude BNPL finance *per se*; rather, that in the absence of adequate consumer protection (which we understood was then the relevant regulatory context), it should not be available. In light of the proposed requirement as to the provision of adequate consumer protections, the BTMWG (and therefore the Authorisation Applicants) considered that BNPL finance should no longer be automatically excluded from the Tech Code.
91. I am aware that paragraph 24(a) of the Tech Code (as drafted in the original version submitted to the ACCC in April 2019) imposed an obligation on any provider of a "deferred payment arrangement" (i.e. credit) to hold a credit licence under the NCCPA, and that the proposed amendment to paragraph 24(b) did not address this requirement under paragraph 24(a).

92. While that might suggest that it was the intent of the BTMWG to retain the BNPL exclusion in the case of unlicensed providers of BNPL, this was not my understanding of the approach to amending paragraph 24(b).
93. Rather, it was my understanding – incorrectly, as it turned out – that all providers of BNPL finance were holders of credit licences under the NCCPA. This misunderstanding was based on the fact that I was – at that time – only aware of Brighte and FlexiGroup, both of whom held credit licences under the NCCPA (due to offering regulated credit through other parts of their businesses).
94. With the exception of the correspondence I address below, I do not know what each of the other members of the BTMWG thought with respect to paragraph 24(a); only that I understood the consensus position to be as was stated in the letter to the ACCC – that the BTMWG was content with BNPL finance being offered by any entity, so long as consumers benefited from substantively the same rights which arose under the NCCPA and NCC.
95. On 1 September 2019, Mr Brody (from CALC) sent an email to the other members of the BTMWG in which he addressed the possibility of alternative accreditation of BNPL (i.e. under a BNPL Code). In that email, he noted the development of the BNPL Code, but identified concerns with it. He suggested that, in the absence of a BNPL Code approved by ASIC, the Tech Code should retain a requirement that a BNPL provider hold a credit licence under the NCCPA.
96. By email sent on 2 September 2019, Mr Lombard (of Renew) responded to Mr Brody's email, copying the members of the BTMWG and sought clarification of the difference between a licensed credit provider (on the one hand) and an "approved" credit product (being the word Mr Lombard used to describe what I understood to be a reference to a regulated credit product).
97. Mr Brody responded later that day, copying the members of the BTMWG and noting, in substance, that there is no real practical benefit for consumers where BNPL is supplied by the holder of a credit licence as opposed to BNPL supplied by a provider without a credit licence. A copy of the email chain referred to above appears at tab 10 of **Exhibit BB-1** ([ANA.001.001.0044](#)).
98. Ultimately:
- (a) I did not consider Mr Brody's suggestion in his email dated 1 September 2019 any further, particularly as I understood it to only relate to circumstances in which there was no regulator approved BNPL Code, and that was no longer

relevant given the language of the proposed amendment to paragraph 24(b) (i.e. it required the BNPL Code to be approved by a regulator); and

- (b) as stated above, I was not aware of any BNPL providers being – as a matter of fact – unlicensed.

99. The proposed amendment to paragraph 24(b) as set out in the CEC's letter dated 6 September 2019 refers to a "regulator approved Code of Conduct" and "an industry code". It was always my intent – and, I understood, that of the BTMWG – that the BNPL Code (whether a "regulator approved Code of Conduct" or "an industry code") be subject to regulator approval, as the BTMWG did not have any visibility as to the substance of the BNPL Code or the skills to assess its compliance with the various consumer protections under the NCCPA and NCC.
100. I understood that the ACCC had also requested the Authorisation Applicants to address the topic of unsolicited sales of new energy tech products. However, as stated above, the BTMWG had decided not to proscribe unsolicited sales of new energy tech products under the Tech Code, and the CEC's letter dated 6 September 2019 addressed that point as well.

G. THE PRE-DECISION CONFERENCE ON 9 SEPTEMBER 2019

101. Together with other representatives of the Authorisation Applicants and interested parties, I attended the ACCC's pre-decision conference on 9 September 2019.
102. I addressed the meeting in relation to a number of issues, relevantly stating that:
- (a) the Tech Code needed to strike a balance between customer protection and competition;
 - (b) that I considered that with the proposed amendments to paragraph 24(b), the Tech Code adequately addressed concerns about BNPL finance offering lower standards of consumer protection; and
 - (c) that consumer groups had indicated to the BTMWG that a code delivered in accordance with NCCPA principles would likely be acceptable to them.
103. A copy of the minutes of the pre-decision conference, published by the ACCC, appears at tab 11 of **Exhibit BB-1** ([ANA.001.001.0023](#)), which I consider to contain an accurate summary of my statements to the conference.

H. THE CEC'S LETTER OF 25 SEPTEMBER 2019

104. The letter dated 6 September 2019 had been prepared on quite short notice (in order to allow the BTMWG's position as determined at the meeting on 2 September 2019 to be considered ahead of the pre-decision conference) and, following the pre-decision

conference, the BTMWG members considered that it would be appropriate to formally submit an updated version of the Tech Code to the ACCC, together with a response to other issues discussed at the pre-decision conference.

105. An updated and amended Tech Code (the **September Version of the Tech Code**) was sent to the ACCC by the CEC under cover of a letter dated 25 September 2019. A copy of that letter and the attached amended Tech Code appears at tab 12 of **Exhibit BB-1** ([ANA.001.001.0134](#)). Relevantly, that letter addressed both paragraph 24 and unsolicited sales.

Paragraph 24 – BNPL Finance generally

106. In terms of the proposed amendment to paragraph 24 of the Tech Code, the letter stated that the BTMWG was supportive of the development of a BNPL Code and that the proposed amendment to paragraph 24(b) had been designed to permit BNPL finance to be offered where it was regulated under such a code.
107. The letter went on to note that regulatory approval by ASIC would significantly assist the Tech Code administrator in assessing whether or not the BNPL Code satisfied the requirement of it providing substantively similar benefits to consumers as were provided under the NCCPA (the proposed amendment having been drafted on the basis that the BNPL Code receive regulatory approval).

Unsolicited supply of BNPL finance

108. While the Authorisation Applicants' position had not changed with respect to unsolicited sales of new energy tech products and services (i.e. that it should not be proscribed under the Tech Code), some time after pre-decision conference, I became aware of the fact that the decision to permit BNPL finance under paragraph 24 of the Tech Code required the Authorisation Applicants to revisit the topic of unsolicited conduct, at least insofar as it related to BNPL finance.
109. The reason for this, was that the BTMWG wanted to ensure that the circumstances in which BNPL finance could be offered were – having regard to consumer interests – consistent with those of regulated finance.
110. Relevantly, it was my understanding that the NCCPA and its supporting regulations operated so as to effectively prevent the offering of regulated finance by any person in circumstances where the sale of the underlying goods or services was the result of unsolicited contact with the consumer, unless the person offering the finance (in this instance, the new energy tech supplier) was, themselves, licensed.
111. As unregulated finance (i.e. BNPL) had previously been excluded entirely from the Tech Code, this issue (i.e. the consistent treatment of the offering of regulated and

unregulated finance where the underlying goods or services were supplied on an unsolicited basis) had not arisen for consideration.

112. In essence, under the version of the Tech Code initially submitted to the ACCC (which prohibited unregulated finance from being offered in conjunction with the supply of new energy tech), no finance could be offered by a person where the original supply of goods or services was the result of unsolicited contact with the customer (unless the person offering the finance to the consumer was, themselves, licensed).
113. It was my intention that the inclusion of paragraph 3(d) (in the September Version of the Tech Code) continue, as a practical matter, to preserve this position. In my view, a failure to include this amendment could result in the situation where a new energy tech supplier could be permitted to offer unregulated finance in circumstances where it was forbidden to offer regulated finance (i.e. where the supply of the new energy tech products or services was the result of unsolicited contact with the consumer).
114. This desired outcome was specifically addressed in the CEC's letter to the ACCC of 25 September 2019, which stated (at page 2) that the intent behind paragraph 3(d) of the Tech Code was to prevent signatories from being able to offer finance products during unsolicited sales unless they, themselves, held a relevant licence.
115. I considered that each of the members of the BTMWG ultimately accepted the content of the letters sent to the ACCC on 6 and 25 September 2019.

I. FURTHER ACCC CONSULTATION FOLLOWING THE CEC'S LETTER OF 25 SEPTEMBER 2019

116. Together with representatives of each of the other Authorisation Applicants, I participated in a further meeting with the ACCC on 2 October 2019. During the course of that meeting, one of the ACCC's representatives said that the ACCC still had some concerns with the form of the amendments to paragraph 24 proposed by the Authorisation Applicants (now paragraph 25 in the September Version of the Tech Code). As I understood them, the ACCC's broad concerns were that the drafting was not clear enough and that signatories would be unclear as to what the BNPL Code would be required to cover. I recall saying that the ACCC should let the Authorisation Applicants know if the ACCC had a specific form of amendment that it had in mind, which could address the concerns.
117. By letter dated 22 October 2019, the ACCC wrote to interested parties to inform them:
 - (a) that its assessment of the Tech Code was ongoing;

- (b) of the Authorisation Applicants' proposed further amended version of the Tech Code (being the September Version of the Tech Code) and noting that it was available on the ACCC's website;
- (c) that the ACCC's preliminary view was that the proposed amendments to paragraph 24 (now paragraph 25 in the September Version of the Tech Code) failed to provide sufficient certainty to signatories or consumers as to what specific consumer protections were required (and that this was impacted by the uncertainty as to the development of the BNPL Code); and
- (d) in the circumstances, the ACCC had formulated an alternative version of paragraph 24 (now paragraph 25 in the September Version of the Tech Code) which more explicitly outlined the consumer protections that BNPL providers would be required to provide and attached that as an Annexure to its letter.

118. A copy of the ACCC's letter dated 22 October 2019, together with the relevant Annexure appears at tab 13 of **Exhibit BB-1** ([ANA.001.001.0037](#)).

J. EVENTS FOLLOWING THE ACCC'S LETTER OF 22 OCTOBER 2019

119. Following the ACCC's letter of 22 October 2019, I formed the view that the ACCC was not likely to authorise the Tech Code in the form submitted by the CEC on behalf of the Authorisation Applicants on 25 September 2019.

120. While I considered that:

- (a) the September Version of the Tech Code (including paragraph 25) adequately protected consumer interests and mitigated any detriment arising from the introduction of BNPL; and
- (b) the ACCC's concerns about the development of the BNPL Code were unnecessary, given that unless – and until – a satisfactory BNPL Code was developed, BNPL providers would not be permitted to supply BNPL finance,

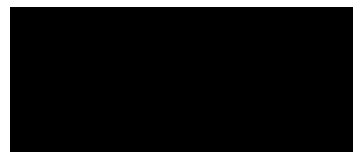
I also considered that, as a pragmatic matter, the Authorisation Applicants should accept the ACCC's formulation of paragraph 25. That is, while I did not consider the changes necessary, I did not want to risk authorisation of the Tech Code more generally (with all of its significant consumer benefits) in the face of opposition to the drafting of language dealing with respect to one narrow issue.

121. Notwithstanding the above, I was concerned that the ACCC's formulation of paragraph 25:

- (a) removed the reference to the BNPL Code;
- (b) removed the requirement for regulatory approval of the BNPL Code; and

- (c) imposed an ongoing obligation on the Tech Code administrator to effectively act as a financial regulator in assessing the BNPL provider's compliance with the relevant obligations, designed to largely mirror those under the NCCPA.
122. I remained of the view that the best approach to protecting consumers in an efficient and effective manner was through the development of a robust BNPL Code, to be approved by an appropriate regulator.
123. In the circumstances, I told the other BTMWG members that it was my view that the Authorisation Applicants should agree to the ACCC's formulation of paragraph 25, subject to an appropriate amendment which ensured that the Tech Code administrator did not shoulder the responsibility of determining whether a BNPL provider complied with the various obligations set out in the ACCC's draft of paragraph 25 contained in its letter of 22 October 2019.
124. This was discussed by the members of the BTMWG and resulted in the CEC sending a further letter to the ACCC on 11 November 2019, accepting the ACCC's proposed formulation of paragraph 25, but subject to encouraging the ACCC to further amend paragraph 25 to limit the Tech Code administrator's role to one of confirming that the BNPL provider was a signatory to an industry code of conduct which provided the relevant consumer protections. This proposed further amendment was designed to ensure that the Tech Code administrator was not required to undertake a detailed examination of the policies and processes of each BNPL provider. A copy of the CEC's letter of 11 November 2019 appears at tab 14 of **Exhibit BB-1** ([ANA.001.001.0163](#)).
125. It was my understanding that, subject to the changes to paragraph 25 of the Tech Code suggested by the ACCC on 22 October 2019 (as modified by the CEC's request of 11 November 2019), the version of the Tech Code submitted for authorisation was the September Version of the Tech Code.

Date: 5 May 2020



Benjamin Charles Barnes

Exhibit certificate

No. ACT 1 of 2019

IN THE AUSTRALIAN COMPETITION TRIBUNAL

Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Flexigroup Limited

Applicant

This is the exhibit marked "**BB-1**" to the statement of Benjamin Charles Barnes dated 5 May 2020.

Filed on behalf of: Australian Energy Council, Clean Energy Council, Energy Consumers Australia and Smart Energy Council (the Authorisation Applicants)

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Exhibit BB-1: Index

Re Application for authorisation AA1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia in respect of the New Energy Tech Consumer Code

Tab	Document Description	Document ID
1.	Memorandum of Understanding for the Behind the Meter Working Group as to 'Governance, Accountability and Administration' dated January 2019	ANA.001.001.0014
2.	Consumer Action Law Centre Report titled "Sunny Side Up" dated April 2019	ANA.001.001.0049
3.	Email chain between members of the Behind the Meter Working Group, Stephanie Bashir (Nexa Advisory) and Phil Khoury (Cameron Ralph Khoury) on 22 March 2019	ANA.001.001.0041
4.	Email from Stephanie Bashir (Nexa Advisory) to members of the Behind the Meter Working Group and Phil Khoury (Cameron Ralph Khoury) dated 28 March 2019	ANA.001.001.0119
5.	Letter from the ACCC to Mindy Lim (CEC) dated 16 August 2019	ANA.001.001.0123
6.	Email from Mindy Lim (CEC) to members of the Behind the Meter Working Group dated 22 August 2019	ANA.001.001.0036
7.	Email from Mindy Lim (CEC) to members of the Behind the Meter Working Group dated 30 August 2019	ANA.001.001.0125
8.	Email from Ben Barnes (AEC) to members of the Behind the Meter Working Group dated 2 September 2019	ANA.001.001.0126
9.	Letter from the CEC to the ACCC dated	ANA.001.001.0132

	6 September 2019	
10.	Email chain between members of the Behind the Meter Working Group dated from 30 August 2019 to 2 September 2019	ANA.001.001.0044
11.	Minutes of the ACCC Pre-Decision Conference on 9 September 2019	ANA.001.001.0023
12.	Letter from the CEC to the ACCC dated 25 September 2019 enclosing the amended Tech Code	ANA.001.001.0134
13.	Letter from the ACCC to interested parties dated 22 October 2019 including Attachment A which proposes an alternative version of clause 24 of the Tech Code	ANA.001.001.0037
14.	Letter from the CEC to the ACCC dated 11 November 2019	ANA.001.001.0163

January 2019 – Final agreed by BTM Stakeholder Panel

Memorandum of Understanding - Behind the Meter Code - Governance, Accountability and Administration

This Memorandum of Understanding sets out an agreement between the Behind-the-Meter Code Stakeholder Panel as to the governance, accountability and administration of the Behind-the-Meter Code (the Code).

1. Background

The Code is a single, industry-wide code of conduct that has been developed by a group of industry bodies and consumer representatives (collectively referred to as the BTM Working Group) and engagement with other key stakeholders in response to a request by the Council of Australian Governments' Energy Council of August 2017.

The Code aims to protect consumers by setting good practice standards for providers of behind the meter goods and services (BTM) and provide consumer protections..

To achieve these aims, it is agreed that there need to be clear and robust governance, accountability and administration arrangements for the Code in line with the Australian Competition and Consumer Commission's (the ACCC) guidelines (the ACCC Guidelines) for developing effective voluntary, industry-based codes.

It is acknowledged that the wider the coverage of the Code, the more effective it will be.

2. Key guiding principles

It is intended that the governance, accountability and administration structure of the Code will be guided by the following principles:

- a) Customer focused
- b) Fair and not anti-competitive
- c) Relevant expertise
- d) Independent and avoiding conflicts of interest
- e) Inclusive
- f) Adequately resourced

3. Structure

The structure supporting the Code is in four parts as set out in Schedule 1:

- a) The Council – strategic oversight responsibility.
- b) The Steward - legal and financial responsibility.
- c) The Administrator - day-to-day operations of the Code.
- d) The Code Monitoring and Compliance Panel – independent body set up to monitor Code compliance, enforcement and drive better practices.

4. Code branding and promotion

The Code is a single, industry-wide code of conduct which is branded to include the logos of all members of the Council, unless agreed otherwise by the Council. The Council is responsible for the promotion of the Code to their own organisation's members (as appropriate), stakeholders and to consumers more broadly.

Guidelines for the branding, marketing and promotion of the Code will be jointly developed and agreed by the Council, the Steward and the Administrator, with the final guidelines to be approved by the Council.

5. The Council

The Council, with secretarial support, is a forum for co-operation in relation to the Code and will ensure that the Code achieves wide coverage and achieves its overall aims, as set out in Part A – Key Commitments (as amended from time to time), namely:

- a. Provide consumers with clear, accurate and relevant information to help them make informed choices
- b. Encourage consumers to be aware of their rights under the law and the Code
- c. Ensure that sales practices are responsible
- d. Ensure that products, systems, services and documentation provided under the Code are suitable and fit for purpose
- e. Support staff training and work processes that ensure that signatories comply with the law and the Code
- f. Ensure that signatories will be responsive to customer needs and take prompt, appropriate action if they make a complaint.

6. Responsibilities of the Council

The Council's responsibilities will be:

- a) Promoting the benefits of the Code, including encouraging signatories to the Code
- b) Agreeing to the branding of the Code and its marketing and promotion to ensure widespread consumer and industry awareness
- c) Appointing a Steward for the Code
- d) Appointing an Administrator for the Code
- e) Appointing individuals to the Code Monitoring and Compliance Panel
- f) Participating in the setting of the fees to be paid by signatories to the Code
- g) Engaging an independent body to review the Code and Code governance every three (3) years.

7. Appointment of the Council

Chair

A position description for the Chair of Council will be agreed by the Council, together with remuneration.

A Chair of the Council will be initially appointed by the BTM Working Group in line with the ACCC Guidelines. This will be a person of high standing and with an extensive understanding of consumer protection issues. They must be able to demonstrate that they are:

- a) Capable of reflecting the viewpoints and concerns of consumers
- b) Have expertise in consumer affairs and the confidence of consumers, consumer organisations, industry and other key stakeholders

- c) Have knowledge of the industry and the issues involved in the Code.

Members

It is agreed that representatives of key stakeholders, including industry associations and consumer bodies may appoint a representative to the Council, if they apply to the Chair of the Council to do this and the Chair of the Council decides in favour of this. The initial criteria and terms for such appointment will be agreed by the BTM Working Group.

The Council will be made up of between [INSERT NUMBER] industry and [INSERT] consumer representatives and other key stakeholder representatives. It is possible for other key stakeholders such as regulatory authorities or government to have observer status on the Council if appropriate.

The term of the appointee is to be not less than 12 months and no more than 3 years. Members can be reappointed after their initial term.

It is understood that the success of the Council depends on productive relationships and a shared commitment to the development of this industry, with a focus on good consumer outcomes.

8. Meetings of the Council

The Chair and Council members will agree a Ways of Working (WoW) document for the purposes of the Council.

Members of the Council must be given at least two (2) weeks' notice of a meeting (although they may unanimously agree to short notice if there is urgent business to be considered). If a member of the Council is not able to attend, the appointing organisation is entitled to send an alternate in the person's place.

A Council decision must be made at a meeting (whether in person or technology enabled) attended by 75% or more of members of the Council or their alternates. The decision must be supported by a majority of members attending that meeting. If there is a tied vote on any matter for decision by the Council, the Chair will have a casting vote.

9. Costs of participating in the Council

The Council will agree on the fees and contributions to the Council on a yearly basis.

Council members must pay any costs associated with their representative's attendance at meetings. The costs of the Chair and the consumer representatives be covered by industry.

Council members are not, however, responsible for contributing to any shortfall in Code revenue to meet the cost of governing and administering the Code. It would be open to a Council member to choose to contribute towards a particular program of activity for a period of time such as marketing the Code to its members – the terms of which could be reached in a side agreement.

10. Appointment of the Steward and Administrator

Prior to the operation of the Code, the Council must put in place financial and legal stewardship and Code administration arrangements for a period of [3] years, subject to an initial review date of 12 months. These functions can be carried out by the same or separate organisations, as is appropriate.

The Council will agree on a set of criteria and process for the appointment of the Steward and the Administrator. Separate agreements will be put in place between the Council and the appointed Steward and Administrator respectively on appointment.

The following applies to ongoing appointments of the Steward and Administrator at the end of their term of appointment:

- a) If the Steward or Administrator wish to continue in their respective roles, the Council will negotiate a review date prior to the end of the term of appointment. The reviewer must be chosen jointly by the Steward or Administrator respectively and the Code Monitoring and Compliance Panel. The costs of the review will be borne by the Steward or Administrator respectively.
- b) On the basis that the independent review finds that the Steward's or Administrator's performance in that role during its initial term has been adequate, they may be reappointed into that role by the Council for a further [3] year term.
- c) On the basis that the independent review finds that the Steward's or Administrator's performance in that role during its initial term has been inadequate, the Council may appoint another organisation/s into the respective role in the same terms as set out above.
- d) If for any reason, the Steward or Administrator respectively ceases in its role at the end of its initial year term, no compensation is payable to it for any losses it has incurred in connection with the Code to that point in time.

11. Role of the Code Steward

The Steward will take responsibility for legal and financial stewardship of the Code including:

- a) Applying to the ACCC for authorisation of the Code
- b) Entering into contracts in relation to the Code (for example, with signatories to the Code and any third party providers of services in relation to the governance of the Code)
- c) Deciding what, if any, remuneration is paid to Code Monitoring and Compliance Panel members
- d) Preparing an annual budget for the Code (revenue and all expenses associated with governing and administering the Code and the costs of the Code Monitoring and Compliance Panel)
- e) Funding any shortfall in Code revenue
- f) Overseeing the administration of the Code
- g) Providing staff to act as secretariat to the Council
- h) Providing staff to act as secretariat to the Code Monitoring and Compliance Panel.

12. Role of the Code Administrator

The Administrator will take responsibility for administration of the Code including:

- a) Carrying out the responsibilities of the Code Administrator set out in the Code in Part C, namely:
 - Managing administration process, including applications and renewals to the Code
 - Monitoring compliance, both responsive to complaints and proactive inquires
 - Determining breaches and sanctions of the Code
 - Developing standards and guidelines for the Code
 - Referring matters to Code Monitoring and Compliance Panel

- Provide training and consumer information.
- b) Entering into contracts in relation to the Code (for example, with signatories to the Code and any third party providers of services in relation to the administration of the Code)
- c) Collecting fees payable by signatories to the Code as well as any contribution made by other stakeholders and paying all costs associated with the Code.

13. Fees by Code signatories

Each financial year, the following process must be followed to set the fees payable by signatories to the Code (application fees, annual fees and any other fees):

- a) As part of its annual budgeting process, the Administrator will develop a fees proposal for consultation with the Council and the Steward, at least three months prior to the intended date of effect
- b) If the Council is not willing to endorse the fees proposal, the Steward must engage an independent accountant to review the reasonableness of the fees proposal in light of the budget for the Code and, if relevant, the extent of revenue shortfall that the Steward has indicated it is willing to fund. The Steward must bear the accountant's costs. Fees for the coming year will then be set by the Administrator taking into account any recommendations made by the independent accountant.

14. Role of the Code Monitoring and Compliance Panel

The Code Monitoring and Compliance Panel is an independent body and will carry out the responsibilities set out in the Code in Part C, namely:

- a) Overseeing the monitoring of compliance and enforcement with the Code
- b) Responding to matters referred to it by the Administrator
- c) Hearing and arbitrating appeals from any signatory affected by a decision of the Administrator
- d) Referring systemic breaches to the relevant regulators
- e) Conducting its own inquiries into Code compliance
- f) Publishing an annual report on the Code's operation online
- g) Driving best practice standards in the industry.

15. Appointment of the Code Monitoring and Compliance Panel

The Code Monitoring and Compliance Panel will be comprised of between three (3) and seven (7) people and appointed by the Council. The appointees to the Code Monitoring and Compliance Panel must be eligible for appointment in accordance with the Code.

When appointing individuals to the Code Monitoring and Compliance Panel, the Council will ensure:

- a) There are at least two (2) industry representatives
- b) There is at least one (1) consumer representative

- c) In addition to industry representatives and consumer representative, there may be one or independent experts who have expertise that would be relevant to the work of the Code Monitoring and Compliance Panel, as set out in the Code.

The Council will appoint one of the Code Monitoring and Compliance Panel consumer representative members or independent expert members to chair the Code Monitoring and Compliance Panel. If there is a tied vote on any matter for decision by the Code Monitoring and Compliance Panel, the Chair will have a casting vote.

In other respects, the Code Monitoring and Compliance Panel may decide how its meetings are to be conducted.

16. Relationship between the parties

None of the individual members of the Council will be entitled to hold themselves out as speaking publicly on behalf of the Council, the Steward, the Administrator or the Code Monitoring and Compliance Panel. The Steward has no liability for anything done or omitted to be done by any other member of the Council.

17. Further agreements

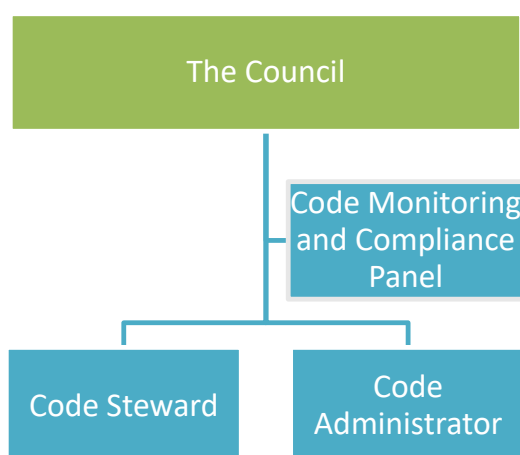
The signatories to this Memorandum of Understanding agree to work in good faith to reach agreement about any other matters necessary in order to:

- a) enable the effective operation and coverage of the Code
- b) establish clear and robust governance, funding and administration arrangements for the Code
- c) achieve the Code's authorisation by the ACCC as soon as possible.

Dated 2019

Execution clauses

Schedule 1: Table - Behind the Meter Code - Governance, Accountability and Administration



Body	Role and responsibilities
The Council	<ul style="list-style-type: none"> • The Council will ensure that the Code achieves wide coverage and achieves its aims (set out in Key Commitments in the Code) • Providing strategic oversight for the Code • Promoting the benefits of the Code, including encouraging signatories to the Code • Agreeing to the co-branding of the Code and its marketing and promotion to ensure widespread consumer and industry awareness • Appointing a Steward for the Code • Appointing an Administrator for the Code • Appointing individuals to the Code Monitoring and Compliance Panel • Participating in the setting of the fees to be paid by signatories to the Code • Engaging an independent body to review the Code every three (3) years.
The Steward	<ul style="list-style-type: none"> • Overall responsibility for legal and financial stewardship of the Code including: <ul style="list-style-type: none"> ○ Applying to the ACCC for authorisation of the Code

Body	Role and responsibilities
	<ul style="list-style-type: none"> ○ Entering into contracts in relation to the Code (for example, with signatories to the Code and any third party providers of services in relation to the governance of the Code) ○ Deciding what, if any, remuneration is paid to Code Monitoring and Compliance Panel members ○ Preparing an overall annual budget for the Code (revenue and all expenses associated with governing and administering the Code and the costs of the Code Monitoring and Compliance Panel) ○ Overseeing the administration of the Code ○ Funding any shortfall in Code revenue ○ Providing staff to act as secretariat to the Council ○ Providing staff to act as secretariat to the Code Monitoring and Compliance Panel.
The Administrator	<ul style="list-style-type: none"> ● Carrying out the responsibilities of the Code Administrator set out in the Code in Part C (from time to time), namely: <ul style="list-style-type: none"> ○ Managing administration process, including applications and renewals to the Code ○ Monitoring compliance, both responsive to complaints and proactive inquires ○ Determining breaches and sanctions of the Code ○ Developing standards and guidelines for the Code ○ Referring matters to Code Monitoring and Compliance Panel ○ Provide training and consumer information. ● Entering into contracts in relation to the Code (for example, with signatories to the Code and any third party providers of services in relation to the administration of the Code) ● Collecting fees payable by signatories to the Code as well as any contribution made by other stakeholders and paying all costs associated with the Code.
The Code Monitoring and Compliance Panel	<ul style="list-style-type: none"> ● Overseeing the monitoring of compliance and enforcement with the Code ● Responding to matters referred to it by the Administrator ● Hearing and arbitrating appeals from any signatory affected by a decision of the Administrator ● Referring systemic breaches to the relevant regulators

Body	Role and responsibilities
	<ul style="list-style-type: none">• Conducting its own inquiries into Code compliance• Publishing an annual report on the Code's operation online• Driving best practice standards in the industry.

**Australian Competition
&
Consumer Commission**

PRE-DECISION CONFERENCE

Minutes

**Authorisation AA1000439
lodged by**

Australian Energy Council
Clean Energy Council
Smart Energy Council
Energy Consumers Australia

in respect of

The New Energy Tech Consumer Code

9 September 2019

The information and submissions contained in this minute are not intended to be a verbatim record of the pre-decision conference but a summary of the matters raised. A copy of this document will be placed on the ACCC's public register.

Pre-Decision Conference: Authorisation A1000439 lodged by Australian Energy Council, Clean Energy Council, Smart Energy Council, Energy Consumers Australia

9 September 2019
Hotel Grand Chancellor,
131 Lonsdale Street, Melbourne VIC 3000

Attendees

Australian Competition and Consumer Commission

Stephen Ridgeway, Commissioner
Joanne Palisi, General Manager, Adjudication
Susie Black, Director, Adjudication
Theo Kelly, Senior Analyst, Adjudication
Kaitlin Hanrahan, Senior Analyst, Adjudication
Helen Anness, Principal Lawyer

Clean Energy Council

Mindy Lim, Code of Conduct Manager
Anna Sexton, Risk and Compliance Manager
Harry Smythe, Senior Code of Conduct Administrator

Australian Energy Council

Ben Barnes, Director – Retail Policy

Energy Consumers Australia

Jacqueline Crawshaw, Associate Director – Advocacy & Communications

Brighte Capital

Katherine McConnell, Chief Executive Officer
Ann Devine, Chief Risk Officer

Solar Naturally

Heuson Bak, General Manager
Richard Clamp, Director

Flexigroup

Timothy Graham, Flexigroup
Elizabeth Minogue, Flexigroup

Australian Securities and Investments Committee

Nick Kavass, Lawyer
Kevin Foo, Senior Manager — Credit, Retail Banking and Payments, Financial
Services Group (by phone)

Energy Australia

Lawrence Irlam, Industry Regulation Lead

One Stop Warehouse

Anthony Buckwell, Technical Development Manager

Victorian Department of Environment, Land, Water and Planning

Tim Benjamin, Senior Policy Officer – Distributed Energy Resources Strategy,
Paul J Corkhill, Director – Risk Assurance & Standards, Office of Solar Homes

Ratesetter

Glenn Riddell, Chief Operations Officer

Arise Solar

Jack Patel, Chief Executive Officer

Energy Wise

Michael Berris, Operations Manager (by phone)

Sunboost & National Solar Energy Group

Yudisthra Seomangal, Inhouse Counsel

Minutes of conference

Conference commenced: 10:00 am

Introduction

Commissioner Stephen Ridgeway welcomed attendees, outlined the purpose of the conference, and declared the pre-decision conference open.

Representatives from the parties that requested the conference, Brighte Capital and Solar Naturally, made opening statements.

Introductory comments from businesses that requested a pre-decision conference

Katherine McConnell, Chief Executive Officer, Brighte Capital:

- The New Energy Tech Consumer Code (the **Consumer Code**) will harm Brighte's business and consumers unless it is amended so that buy now pay later finance (**BNPL**) suppliers such as Brighte are not excluded.
- Brighte supports the Applicants' submission of Friday 6 September which proposed amendments to clause 24 of the Code (**proposed BNPL amendments**). BNPL providers are currently developing an industry code of conduct (**BNPL industry code**). The proposed BNPL amendments reflect the best interests of the industry, consumers and ensure healthy competition remains in the finance market.
- Interim arrangements are needed because it may take some time to complete and finalise the BNPL industry code. During an interim period, BNPL would seek to continue to be an approved form of finance.
- Brighte recognises the need for adequate consumer safeguards in the Consumer Code. However, excluding BNPL providers as a whole is disproportionate way of protecting consumers given:
 - Brighte is not regulated under the National Consumer Credit Protection Act (**NCCPA**) because its products are not "credit", however its products are subject to a range of regulations. These include the general consumer protections under the ASIC Act, Privacy Act, the Anti-Money Laundering and Counter-Terrorism Financing Act 2006. Brighte is a member of the Australian Financial Complaints Authority (**AFCA**) and is aware of other BNPL providers who are also AFCA members. Further, Brighte's, and other BNPL, products are subject to intervention by ASIC under Product Intervention Powers (**PIPs**) if ASIC identifies "significant risk of consumer harm".
 - Brighte's products have been used by over 35,000 households to purchase over \$300 million worth of new energy tech. Brighte's products are offered at the point of sale by over 1,000 retailers. It has received feedback that BNPL is an essential product for retailers at the point of sale as it provides cost effective and transparent finance.

- BNPL products may be more transparent than NCCPA regulated products. Brighte commissioned a Deloitte survey (**Deloitte survey**) which found that fees and charges expressed as a dollar amount rather than a percentage are easier for consumers to understand.

Heuson Bak, General Manager, Solar Naturally:

- Solar Naturally shares Brighte's and Flexigroup's¹ concerns about the exclusion of BNPL under the Consumer Code. Exclusion of BNPL would result in substantial detriment.
- Solar Naturally has supplied solar products to 12,000 BNPL customers in recent years. Solar Naturally's customers value BNPL: 77% of Solar Naturally's income is derived from sales facilitated through BNPL products.
- BNPL offers cash flow management advantages for Solar Naturally. BNPL providers offer next day settlement compared to 30 day settlement for some other forms of payment.
- There is no real evidence of consumer harm caused by BNPL.
- There are advantages from BNPL - saves consumers money. BNPL facilitates new energy tech purchases which pay for themselves in terms of providing savings on energy. Cash flow management can also help to avoid circumstances where traders become insolvent and then, for example, customers are left without warranty protection. Katherine McConnell of Brighte Capital made comments in support of this statement and Glen Riddell of Ratesetter noted all finance options offer similar cash flow advantages for retailers.

Applicant's comments

Mindy Lim, Code of Conduct Manager, Clean Energy Council:

- CEC has administered the Solar Code since it was authorised by the ACCC in 2013. It has approved 964 applicants. Only a very small number of applicants have made submissions in relation to the proposed authorisation of the New Energy Tech Code.
- It is intended that there will be oversight of the Code administrator by a Code Administration Council. The Council will appoint the Administrator and Steward of the Code.
- CEC has subsidised the Solar Code program in its role as Code Administrator. It has done so out of belief in the benefits of the Solar Code, particularly in providing accountability to retailers and delivering consumer benefit.

During the Conference, the Clean Energy Council addressed several points raised by Sunboost/NSEG (which are outlined below). **Harry Smythe, Senior Code of Conduct Administrator, Clean Energy Council** stated that the \$1,600 template price cited by NSEG refers to an optional template. The application fee under the Solar Code is

¹ Flexigroup's concerns outlined below.

currently \$200. **Mindy Lim, Code of Conduct Manager, Clean Energy Council** stated:

- While there is no right of appeal for rejected applicants under the Solar Code, the Applicants have made written submissions stating that they are prepared to amend the Consumer Code to allow appeals from rejected applicants.
- CEC takes misuse of its intellectual property seriously. For example, some companies have misrepresented that they are certified when they are not.
- The rationale for an exclusion period for unsuccessful applicants is that, when a voluntary Code is adopted as a requirement for eligibility for government programs/incentives, there is generally a rapid growth in the number of applications. The exclusion period is intended to manage this and ensure that applicants are aware of the obligations they are accepting when they sign up.
- The restriction on 'close family members and shareholders' who have gone into liquidation or received a court judgment is intended to combat phoenixing.

Ben Barnes, Director – Retail Policy, Australian Energy Council (AEC) made comments on behalf of the Behind the Meter Working Group:

- It is important to have a Code Administrator Council to sit above the Code Administrator to effectively oversee the appropriate administration of the Consumer Code. The Code Administration Council Chair has been appointed and is Claire Petrie, former New South Wales Energy and Water Ombudsman, with other roles and seats on the Council yet to be appointed
- The Working Group was formed in an attempt to deliver good customer outcomes. Its mandate includes to be provider and technology agnostic.
- AEC has had discussions with BNPL providers regarding a future BNPL industry code.
- The proposed BNPL amendments are intended to ensure the same customer outcomes for new energy tech purchased using different forms of finance. The AEC notes that there may still need to be some minor tinkering with the precise wording of any amendments to clause 24.
- The Consumer Code is intended to achieve balance between customer protections and competition. It addresses concerns that some finance providers are at a competitive advantage due to having a lower cost base due to offering lower standards of consumer protection. The Code is intended to sit above the legislation to deliver better customer outcomes than would otherwise be achieved.
- The Working Group has been strongly influenced by consumer voices in developing a Consumer Code which is transparent and delivers good customer outcomes. Consumer groups have indicated that a Code delivered in accordance with NCCPA principles would likely be acceptable.
- Some parties have called for a ban on unsolicited sales. The Working Group's view is that, at this late stage, incremental rather than fundamental changes can be made to strengthen the requirements on unsolicited sales.

- The Consumer Code is principles based. There will be technical schedules developed to support this approach. For example, technical standards will specify the best practice in relation to different new energy technologies.

Commissioner Stephen Ridgeway commented that it would be important for it to be clear to signatories what is required of them under the Code; and that it would be helpful if the Applicants developed guidelines. These guidelines should not impose obligations that go beyond the Code, but merely provide explanatory material to help clarify for signatories how the principles in the Code work in practice.

Jacqueline Crawshaw, Associate Director – Advocacy and Communications, Energy Consumer Australia (ECA):

- ECA supports the draft determination and welcomes the Applicants' proposed BNPL amendments. The Consumer Code will assist consumers and provide confidence for them to engage in the market.
- The Code will have good governance and accountability measures – there will be a Code Administration Council which will include consumer groups, and there will be appropriate checks and balances to ensure effective Code administration.
- The Code provides for appropriate flexibility to accommodate new energy tech products as they come to market. Technical details about these products will be contained in technical supplements to the Code.
- ECA will make a written submission following the Conference giving background to the engagement through the Behind the Meter Working Group which led to the development of the Code.

Other comments made during the Conference

Timothy Graham, General Counsel, Flexigroup:

- Flexigroup has facilitated over 190,000 new energy tech systems on roofs with loans valued at over \$2 billion.
- Flexigroup supports the intention of the Code, but is deeply concerned by the requirement that finance providers must be regulated under the NCCPA, to the exclusion of those that do not fall under the NCCPA.
- Flexigroup supports the Applicants' proposed BNPL amendments which focus on achieving high standards of consumer protection without excluding BNPL products. Flexigroup's primary concern is about the previous formulation of clause 24.
- The NCCPA does not apply to BNPL. ASIC and a Senate Economics Reference Committee have conducted reviews of the BNPL sector; neither recommended that BNPL's exemption be removed.

- There may be other unintended consequences should BNPL be effectively excluded under the Code. The loss of BNPL may result in each of (a) higher prices for consumers as they are forced to use more expensive forms of finance (b) greater concentration in the new energy tech finance market; and (c) a reduction in the uptake of new energy technologies due to a reduction in approaches to finance new energy tech.
- Without the Applicants' proposed amendment to clause 24, the Consumer Code would have affected the legitimate business activities of Flexigroup.
- Flexigroup is working with the Australian Finance Industry Group Association, which also includes Brighte, to develop a BNPL industry code. The Code would require among other things that BNPL providers be AFCA members, introduce mandatory hardship arrangements, and require disclosure of key requirements to customers.

Further comments by Flexigroup, including in response to Ratesetter submissions (outlined below):

- Flexigroup has had discussions with ASIC about the proposed BNPL industry code and the need to engage with consumer groups in developing the BNPL industry code.
- The BNPL industry code will be fit for purpose to meet the objective of consumer protection.
- Mr Graham did not agree with Ratesetter's comments about the BNPL regulatory environment. The regulatory environment is absolutely adequate to restrain poor behaviour.
- Inflating prices is a breach of Flexigroup's retailer and reseller agreements. Flexigroup deals with sellers identified as inflating prices and terminates merchants where necessary.
- AFCA has sufficient coverage to protect consumers and the capacity to do so in practice. AFCA is developing a 'fairness tool' to assess the conduct of participating institutions. Under the fairness tool, legal compliance will be only one factor.
- Flexigroup has taken on ASIC's feedback in its Report 600 about BNPL and is working with ASIC on a voluntary basis as part of updates to Report 600. ASIC has not expressed anything so far along the lines of the concerns expressed by Ratesetter.
- Under the Solar Code, CEC developed a proforma advising consumers that they did not have alternative dispute resolution rights or recourse in case of hardship. Flexigroup offers both of these things, but was required by CEC to provide the proforma to consumers. The fact sheet has been withdrawn. Consumers did not understand the proforma.
- BNPL providers must offer their services with 'due care and skill'.

- Every major bank is covered by NCCPA, yet that was not sufficient to restrain poor behaviour as shown by the findings of the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry.

Elizabeth Minogue, Chief Revenue Officer, Flexigroup stated that Flexigroup consistently achieve high standards of customer satisfaction: its Net Promoter Score is high, and half of its customers in the previous year reported having used Flexigroup's products in the past. Flexigroup is committed to high standards of consumer protection and has a shared interest in ensuring its products are affordable.

Michael Berris, Operations Manager, Energywise:

- If the CEC is appointed to administer the Consumer Code, it will be effectively granted a monopoly to the detriment of solar designers and installers. There are around 6,000 designers and installers who have experienced issues through the CEC's administration of the Solar Code. If CEC is appointed Code Administrator, it will effectively cater towards multinational providers with the finances to exercise control
- The Consumer Code lacks enforcement mechanisms. It only covers retailers, and offers nothing to prevent retailers from continuing to subcontract work out to the cheapest installer who has no concern for quality. The Consumer Code creates another set of red tape and paperwork. Compliance costs will ultimately be paid for by consumers.

Gerard Brody, Chief Executive Officer, Consumer Action Law Centre (CALC):

- CALC supports the ACCC's draft determination. Authorisation of the Consumer Code is an important step to address systemic issues in the new energy tech sector.
- CALC strongly supports the formulation of clause 24 of the Consumer Code before the proposed BNPL amendments. CALC considers that there are a lack of consumer protections offered by BNPL providers. BNPL is a regulatory avoidance mechanism and CALC is aware of significant harm suffered by consumers who have signed up to BNPL arrangements, including Flexigroup and Brighte.
- Last year, BNPL financing was present in over 20% of all insolvencies, according to a Senate Reference Committee.
- Allowing BNPL into the Code impacts competition. ASIC identified BNPL finance as inflating the price of goods to cover high fees charged to merchants who offer BNPL. Inflating the price of goods distorts market pricing.
- CALC would support a ban on unsolicited, high pressure sales of complex solar products. Unsolicited sales are not necessary to support sales of solar systems. Reports to CALC indicate that solar panels are one of the areas where the greatest consumer harm is experienced due to unsolicited sales. Salespeople can coerce consumers to not seek extra information when engaging in unsolicited sales practices.
- If the proposed BNPL amendments are implemented, there must be substantial equivalence with the NCCPA requirements, not just in rule but in the resources

committed to monitoring and compliance. The BNPL industry code is being developed without the involvement of consumer groups, in contrast to the extensive consultation undertaken in relation to the Consumer Code.

- CALC's support for the proposed BNPL industry code would depend on the details, including whether it provided substantial equivalence with the consumer protections required under the Consumer Code and the resources that were available for monitoring and compliance with the proposed code.

Glenn Riddell, Chief Operations Officer, Ratesetter:

- Ratesetter is the largest provider of NCCPA licenced credit. It holds an Australian financial services license (AFSL) and credit license. Since 2014, Ratesetter has financed \$50 million for new energy tech purchases and has 600 accredited merchants/installers.
- The proposed amendment to clause 24 of the Consumer Code is a late amendment brought and gives rise to a significant risk of poor outcomes for consumers.
- Genuine equivalence with the requirements of the NCCPA is not possible or necessary. ASIC's Product Intervention Powers are not a substitute for genuine regulation offered by the NCCPA. Licensed credit is subject to a regulated regime and ASIC is a good regulator.
- Findings about consumer outcomes when using BNPL for lower value purchases such as clothing cannot be applied to make findings about likely consumer outcomes when using BNPL for larger purchases, like new energy tech. There is greater potential harm from using unregulated credit in relation to the larger, more complex purchase.
- BNPL products result in inflated purchase prices for solar systems. There is insufficient margin on the solar product to cover the 20-30% merchant fee which applies to BNPL products, as such retailers inflate the price.
- Consumers may not be able to detect price inflation. Consumers are offered a bundle of solar and BNPL finance which means that they are unable to shop around for better deals on finance. Ratesetter "mystery shopped" 20 new energy tech retailers and found that all engaged in undisclosed price inflation (inflation varied from 10-51% and was 20% on average). Vulnerable or less financially literate consumers are most at risk. Ratesetter's mystery shopping revealed that some solar retailers use a calculator showing them how to inflate the cost of goods sold using BNPL finance.
- Responsible lending obligations which apply under the NCCPA place licenced credit providers at a structural disadvantage compared to BNPL providers. Allowing BNPL stifles competition compared to a transparent, regulated market. BNPL providers can approve borrowers who Ratesetter would not approve. Licenced credit providers cannot give immediate approval due to the need to perform a credit assessment, and cannot approve certain borrowers.
- AFCA membership does not give consumers effective recourse against BNPL providers. Avenues for redress are limited. Membership of AFCA is irrelevant for BNPL providers as they fall outside AFCA's Terms of Reference. Alternative

dispute resolution systems can only intervene in non-interest bearing loan contracts.

- Ratesetter, as an NCCPA regulated provider, accepts direct, primary responsibility for the conduct of its vendors. This creates a strong incentive for Ratesetter to monitor its vendors' conduct and alignment of interests.
- The NCCPA and ASIC already offer a good regulatory regime. There is no need, nor a compelling reason, to have a parallel scheme under the Consumer Code.
- Vendors ignore letters from BNPL finance warning them not to inflate the cost of goods. Flexigroup's and Brighte's acknowledgement that they need to closely monitor retailers' behaviour is an acknowledgement that inflation happens.
- The scope of alternative dispute resolution services is limited as consumers can only raise disputes on narrow grounds. AFCA has jurisdiction to look at disputes under general consumer law, but NCCPA licenced credit must do extra, specific things.
- Ratesetter would accept Brighte's views (that BNPL finance is more transparent than other forms of finance) if the actual cost of BNPL finance was clearly disclosed and not rolled into a single price (bundled finance and goods). That way, the end consumer would be aware that they are paying more than they would otherwise pay.

Yudisthra Seomangal, Inhouse Counsel, Sunboost & National Solar Energy Group (NSEG):

- NSEG is the ultimate holding company of Bell Solar Pty Ltd which trades under the name Sunboost. Mr Seomangal also trades as a sole trader in the new energy tech industry, separate to his role with NSEG.
- NSEG supports the intent of the Consumer Code, but has concerns about CEC as Code Administrator due to previous experience with CEC as administrator of the Solar Code. NSEG referred to the points raised in its submission of 23 August 2019 prepared by Terceiro Legal Consulting. These are as follows:
 - The Solar Code lacks an appeals mechanism for rejected applicants. Applications have been rejected on mistaken or highly technical grounds.
 - The consequences for rejection are high due to CEC's rigid application of an exclusion period where rejected applicants may not re-apply for 3 months, it was previously 6 months. The exclusion period may have a disproportionate burden on small businesses, as would the high compliance costs involved in being a signatory to the Solar Code. Compliance costs may reduce competition as it may result in smaller retailers exiting the market.
 - NSEG cited an instance where an exclusion period was applied due to use of a \$1,600 CEC template which had not been paid for. NSEG

stated that a more common-sense approach would have been to seek payment for the template.

- There is a heightened need for high standards of code administration where a code is adopted as a mandatory requirement for some government incentives/programs.
- The Solar Code includes irrelevant or too broad considerations, such as rules restricting signatories with shareholders or close family members who have gone into liquidation or received a court judgment in the last 5 years.
- Application fees are high and are non-refundable, resulting in a disproportionate amount of funding to operate the Solar Code coming from unsuccessful applicants.
- The CEC does not always afford signatories natural justice in hearing disputes under the Solar Code
- Obligations under the Solar Code are not always clear. The Consumer Code should spell out obligations rather than give the Code Administrator the ability impose new or discretionary criteria as this creates uncertainty.
- BNPL products are important for retailers and consumers and there is no good reason to exclude BNPL providers under the Consumer Code.

Jack Patel, Chief Executive Officer, Arise Solar:

- Reflecting on a recent example where an application was rejected by the CEC under the Solar Code, there should be an independent body involved in administering an appeal process under the Consumer Code (not the CEC or other industry participants).
- Small businesses have no way of knowing what their application should contain and find it difficult to manage the costs of seeking legal or other advice.

Anthony Buckwell, Technical Development Manager, One Stop Warehouse stated that smaller installers feel like they get lost in the discussion; that in terms of resolving disputes, it comes down to having sufficient financial resources. Small companies are some of the most ethical people in the market and will do what they can to assist consumers. Ultimately, the CEC's role as both industry governor and industry advocate is not sustainable.

Ann Devine, Chief Risk Officer, Brighte Capital:

- BNPL industry code development will have broad consultation across the industry, including with consumer groups.
- The BNPL industry code will operate effectively to ensure compliance and monitoring requirements are met. The Code Administrator will be empowered to deal with problems under the Code.
- The vast majority of consumers using BNPL are creditworthy. Many of Brighte's customers are home owners who are credit savvy, mature and responsible.

Brighte understands that CALC's observations are based on its role assisting the most vulnerable consumers.

- Brighte vendors are contractually bound to not engage in product price inflation, surcharge or add costs for the use of its BNPL products. Brighte engages in mystery shopping to detect breaches. ASIC is aware that Brighte has and will stop dealing with vendors.
- Brighte is a member of CEC and SEC.

Nick Kavass, Lawyer, Australian Securities and Investments Commission (ASIC) informed the Conference that ASIC was attending in observer capacity and that ASIC Commissioners are aware of the submissions in relation to this matter. Mr Kavass noted that the discussion at the Conference had been helpful and he would take the information back to his colleagues at ASIC and there would likely be further discussions with parties who attended the Conference on the issues raised.

Commissioner Stephen Ridgeway called for any further comments. No further comments were made. The Deputy Chair closed the conference by noting that the ACCC would be providing a further opportunity for parties to make written submissions in respect of its draft determination and that the ACCC would be writing to those who attended the conference to provide details of how such submissions could be made, as well as to provide participants with a record of the conference, which would also be placed on the ACCC's public register.

Conference closed at 12:15pm.

Jacqueline Crawshaw

From: Mindy Lim <MLim@cleanenergycouncil.org.au>
Sent: Thursday, 22 August 2019 3:17 PM
To: Kane Thornton; Rosemary Sinclair; Steve Blume (NoCarbon); John Grimes; 'Andrew Dillon'; 'Donna Luckman'; Gerard Brody; 'Jonathon Hunyor'; sarah.mcnamara@energycouncil.com.au; 'Dean Lombard'; Ben Barnes (Energy Council); Jacqueline Crawshaw; Mediri Weera (PIAC); Anna Sexton (CEC); michelle.taylor@energyq.com.au; Jennifer Gannon (EnergyQ); 'Kurt Winter'
Subject: FW: AA1000439 - New Energy Tech Consumer Code - Draft Determination [SEC=UNCLASSIFIED]
Attachments: AA1000439 - New Energy Tech Consumer Code - Letter to Applicant re PDC - 16.08.2019.pdf; PDC procedures.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Dear Working Group members,

Please find attached further correspondence from the ACCC regarding the draft determination of the NETCC. I apologise for the late notification as I've been away sick.

A Pre hearing Conference will be held by the ACCC on **9 September 2019** in Melbourne, commencing at 10am. This conference will be chaired by an ACCC Commissioner, and was requested by Brighte and Naturally Solar.

A pre-decision conference provides an opportunity for applicants and interested parties to make oral submissions to the ACCC about its draft determination. The applicant and other interested parties may attend the conference.

I am happy to collectively register our attendance with the ACCC if you would like to attend. The ACCC requests that all attendees provide notification by Monday **26 August 2019**. Further information on the Pre Decision Conference can be found in the attachment "PDC procedures" above.

As the Pre Decision Conference is fast approaching, it would be prudent to convene a meeting of the Working Group to discuss any related issues prior to the pre-conference date and before the final determination, particularly on issues raised by the ACCC inviting further submissions. The ACCC has made it clear that they view substantive issues of the Code as primarily the responsibility of the applicants to determine. Ben of the AEC will lead this discussion, primarily focusing on the ACCC's key issue relating to the Buy Now Pay Later exclusion. For reference, all correspondence can be found [here](#).

Subject to availability, I am proposing a meeting or a teleconference at 930am on 29th August or 2 September. Could you indicate your preference and I will send out a further invitation.

Looking forward to hearing from you. Many thanks.

Regards
Mindy



Our ref: AA1000439
 Contact officer: Kaitlin Hanrahan
 Contact phone: (03) 9290 1917

23 Marcus Clarke Street
 Canberra ACT 2601
 GPO Box 3131
 Canberra ACT 2601
 tel: (02) 6243 1111

22/10/2019

adjudication@acc.gov.au
 www.acc.gov.au

By email

Dear Madam/Sir

Application for authorisation AA1000439 – New Energy Tech Consumer Code— consultation on proposed amendments to draft Code

Following the pre-decision conference of 9 September 2019, the Australian Competition and Consumer Commission (the **ACCC**) is continuing its assessment including whether any amendments should be made in respect of certain clauses within the New Energy Tech Consumer Code (the **Code**), prior to making its final determination. The ACCC invites you to comment on its proposed amendments to the Code, which are based on submissions and further information received from interested parties, as well as the proposed amendments made by the Applicants.

Applicants' proposed amendments to the Code

Following the pre-decision conference, the Applicants have provided a further amended version of the Code on 25 September 2019, including:

- Amendment of Clause 24 – Payment and Finance
- Amendment of Clause 2¹ – Unsolicited Sales
- Addition of an appeal mechanism for applicants who are denied membership of the Code.

A copy of the Applicants' proposed amendments is available on the ACCC's website www.acc.gov.au/AuthorisationsRegister.

The Applicants' proposed amendments to Clause 24 (which we note has become Clause 25 in the amended version of the Code) would effectively allow "buy-now-pay-later" (**BNPL**) providers to provide finance in conjunction with signatory retailers if the BNPL provider is a signatory to a regulator approved BNPL industry code that delivers substantively equivalent consumer protections as required under the *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**).

Alternative proposed amendment to Clause 24

The ACCC's preliminary assessment of the Applicants' proposed amendments is that the current formulation would not provide sufficient certainty and clarity to BNPL providers, signatory retailers or consumers as to what specific consumer protections were required

¹ We note that the clause numbers referred to here are the clause numbers for the Code at draft determination; these clause numbers have changed in the Applicant's amended version of the Code to Clauses 25 and 3 respectively.

under the Code. In addition, there is uncertainty regarding the timing of development and approval of an industry code.

The ACCC has formulated an alternative version of Clause 24, based on information and submissions received following the pre-decision conference and during the course of the ACCC's assessment of this application for authorisation. The ACCC considers that adopting a version of Clause 24 that more explicitly outlines the consumer protections that BNPL providers would be required to provide would give greater clarity and certainty to BNPL providers, signatory retailers and consumers, and would also address any issue of delay that would arise before a BNPL industry code is developed and then considered and approved by ASIC, if it was ultimately approved.

This alternative proposed version of Clause 24 is found at **Attachment A** to this letter.

Request for submissions

The ACCC invites you to make a submission on the proposed amendments outlined at Attachment A. The ACCC also invites any submissions on the amendments as proposed by the Applicants.

If you intend to provide a submission in response to this letter, please do so by **8 November 2019**. Submissions should be emailed to adjudication@acc.gov.au with the subject 'AA1000439 – NETCC – submission'.

Submissions will be placed on the ACCC's public register subject to any request for exclusion.

Timetable

The ACCC's statutory deadline for its final decision is 6 December 2019. In order to provide feedback, please provide any submissions by 8 November 2019. Receiving submissions after this date may affect the ACCC's ability to fully consider them as part of its final assessment.

This letter has been placed on the ACCC's public register. If you wish to discuss any aspect of this matter, please do not hesitate to contact Kaitlin Hanrahan on (03) 9290 1917 or adjudication@acc.gov.au.

Yours sincerely



Susie Black
Director
Adjudication

Attachment A – Alternative proposed amendments to Clause 24 of the NETCC

24. We may offer you New Energy Tech with a deferred payment arrangement as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph 2.m)), we will ensure that:
- (a) this deferred payment arrangement is offered through a credit provider (whether ourselves or a third party) that is either:
- (i) ~~licenced under the National Consumer Credit Protection Act (2009) (Cth) (“NCCPA”)~~NCCPA and the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code (“NCC”);
or
- (ii) a licensee or a related body corporate (as defined in s5 of the NCCPA) of a licensee under the NCCPA and the deferred payment arrangement is exempt from the NCC and:
- (A) the Code Administrator has determined that the credit provider has policies that require the credit provider to:
- (I) resolve any complaints you may have using an internal dispute resolution process and if the complaint remains unresolved, an external dispute resolution process (which must include the scheme operated by the Australian Financial Complaints Authority)
- (II) have processes to identify whether you are experiencing payment difficulties due to hardship
- (III) offer you alternative and flexible payment options if you are experiencing payment difficulties so that you can meet your repayments
- (IV) comply with the following sections of the NCCPA as if the credit provider was a licensee and the credit contract was regulated by the NCCPA and the NCC:
- s 128 (obligation to assess unsuitability)
 - s 129 (assessment of unsuitability)
 - s 130 (reasonable inquiries about the consumer)
 - s 131 (when the credit contract must be assessed as unsuitable)
 - s 132 (giving the consumer the assessment) and

- s 133 (prohibition on entering, or increasing the credit limit of, unsuitable credit contracts)
- (b) the term of the deferred payment contract or lease is no longer than the expected life of the product or system
- (c) ~~ensure that~~ you receive the following clear and accurate information:
- (i) the name of the ~~licensed~~ credit provider to whom you will be contracted for the arrangement
 - (ii) a clear statement that the deferred payment arrangement is a voluntary finance option
 - (iii) the proposed total cost under the deferred payment arrangement compared with the cost of that same New Energy Tech product, system or service if you were to purchase it outright on that day
 - (iv) the disclosures required under the NCC (if applicable), including in relation to fees and charges, or if the finance arrangement is exempt from the NCC, the credit provider's fees and charges, including any merchant fees.
 - (v) whether at the conclusion of the deferred payment arrangement
 - (A) you own any elements of the New Energy Tech, or
 - (B) you have any entitlement to any ongoing services or pricing, and/or
 - (C) you have the option to purchase any elements of the new Energy Tech and if so relevant details, including any associated costs, and
 - (vi) a statement that questions and complaints about the payment arrangement should be directed to the ~~licensed~~ credit provider with whom you will be contracted.

Molony, Erin

From: Phil Khoury <phil@crkhoury.com>
Sent: Friday, 22 March 2019 4:23 PM
To: Dean Lombard; Mindy Lim; Gerard Brody; Sabiene Heindl; Stephanie Bashir; Kurt Winter; mnarayan@energynetworks.com.au; michelle.taylor@energyq.com.au <michelle.taylor@energyq.com.au>; Mediri Weera (PIAC); Steve Blume (NoCarbon); Claire Deane; John Grimes; Ben Barnes; Jennifer Gannon (EnergyQ); Kane Thornton
Subject: Re: Brighte

We can't attend as it happens - but this is not a drafting issue - it is a policy decision.

Gerard is entirely correct that BNPL only works because it moves the cost of the payment arrangement into the merchant's pricing - and therefore not transparent.

The only valid argument for inclusion of BNPL is pragmatism (everyone is doing it, other people have accepted, higher code take up, etc)

For what that is worth!

Phil

Phil Khoury
 Managing Director
 cameron.ralph.khoury
 (sent from phone)

From: Dean Lombard <dean.lombard@renew.org.au>
Sent: Friday, March 22, 2019 1:29 pm
To: Mindy Lim; Gerard Brody; Sabiene Heindl; Stephanie Bashir; Phil Khoury; Kurt Winter; mnarayan@energynetworks.com.au; michelle.taylor@energyq.com.au <michelle.taylor@energyq.com.au>; Mediri Weera (PIAC); Steve Blume (NoCarbon); Claire Deane; John Grimes; Ben Barnes (Energy Council); Jennifer Gannon (EnergyQ); Kane Thornton
Subject: RE: Brighte
 I can attend by phone at 3 and have until 4
Dean Lombard
 Senior Energy Analyst
 Renew (Alternative Technology Association Inc.)
 I don't work Wednesdays.

From: Mindy Lim <MLim@cleanenergycouncil.org.au>
Sent: Friday, 22 March 2019 1:22 PM
To: Gerard Brody <gerard@consumeraction.org.au>; Dean Lombard <dean.lombard@renew.org.au>; Sabiene Heindl <Sabiene.Heindl@energyconsumersaustralia.com.au>; Stephanie Bashir <stephaniebashir@nexasadvisory.com.au>; Phil Khoury <phil@crkhoury.com>; Kurt Winter <kwinter@agl.com.au>; mnarayan@energynetworks.com.au; michelle.taylor@energyq.com.au <michelle.taylor@energyq.com.au> <michelle.taylor@energyq.com.au>; Mediri Weera (PIAC) <mediriweera@piac.asn.au>; Steve Blume (NoCarbon) <CEO@nocarbon.com.au>; Claire Deane <claire.deane@consumeraction.org.au>; John Grimes <ceo@smartenergy.org.au>; Ben Barnes (Energy Council) <ben.barnes@energycouncil.com.au>; Jennifer Gannon (EnergyQ) <jennifer.gannon@energyq.com.au>; Kane Thornton <KThornton@cleanenergycouncil.org.au>
Subject: RE: Brighte
 Hello all,
 Just responding to Sabiene's email the CEC can host at 3pm on Wednesday 27 March.
 Stephanie will chair the meeting via teleconference. Please let me know if you can attend in person or dial in- dial in details will be provided.
 Regards

Mindy

From: Gerard Brody <gerard@consumeraction.org.au>

Sent: Friday, 22 March 2019 1:18 PM

To: Dean Lombard <dean.lombard@renew.org.au>; Sabiene Heindl <Sabiene.Heindl@energyconsumersaustralia.com.au>; Stephanie Bashir <stephaniebashir@nexaadvisory.com.au>; Phil Khoury <phil@crkhoury.com>; Kurt Winter <kwinter@agl.com.au>; mnarayan@energynetworks.com.au; michelle.taylor@energyq.com.au <michelle.taylor@energyq.com.au> <michelle.taylor@energyq.com.au>; Mediri Weera (PIAC) <mediriweera@piac.asn.au>; Steve Blume (NoCarbon) <CEO@nocarbon.com.au>; Claire Deane <claire.deane@consumeraction.org.au>; John Grimes <ceo@smartenergy.org.au>; Ben Barnes (Energy Council) <ben.barnes@energycouncil.com.au>; Mindy Lim <MLim@cleanenergycouncil.org.au>; Jennifer Gannon (EnergyQ) <jennifer.gannon@energyq.com.au>; Kane Thornton <KThornton@cleanenergycouncil.org.au>

Subject: RE: Brighte

Hi all

I'm quite reticent about meeting with Brighte.

Here at Consumer Action, we have met with Brighte a number of times and we maintain that the code should not be changed to accommodate one outlier business.

We consider that all credit providers, including BNPL (i.e. Brighte, Certegy etc), should be required to comply with the NCPPA and structure their finance products as regulated by the NCPPA and National Credit Code. It is actually pro-competitive for this to happen, as then all are finance providers are treated equally. In absence of that, we consider it entirely appropriate that this code regulate this because this code is designed to improve on consumer protections standards that exist in the law.

At its core, we consider BNPL to be structuring their products as they do because they are hiding the cost of credit. There is of course a charge going between the merchant and the BNPL provider, and not disclosing this in a transparent way makes it impossible to compare these products with other credit options. Not being regulated by the NCC also means that people miss out on important rights such as hardship. Any high-quality solar retailer should want to ensure that their customers benefit from these protections.

If it is considered absolutely necessary, I can join a meeting with Brighte – but note this should not change our position. I could dial in to something next Wednesday.

I am also happy to contribute to the submission to the ACCC so that we clearly articulate the public benefits of the approach taken by the code, that it is actually pro-competitive, and thus meets the threshold for authorisation.

If the code was wound back in any way, that would be a huge disappointment and against the existing wishes of the WG members.

Sabiene – I'm happy to talk to you more about this, and will try call you later.

Gerard

From: Dean Lombard <dean.lombard@renew.org.au>

Sent: Friday, 22 March 2019 12:31 PM

To: Sabiene Heindl <Sabiene.Heindl@energyconsumersaustralia.com.au>; Stephanie Bashir <stephaniebashir@nexaadvisory.com.au>; Phil Khoury <phil@crkhoury.com>; Kurt Winter <kwinter@agl.com.au>; mnarayan@energynetworks.com.au; Gerard Brody <gerard@consumeraction.org.au>; michelle.taylor@energyq.com.au <michelle.taylor@energyq.com.au> <michelle.taylor@energyq.com.au>; Mediri Weera (PIAC) <mediriweera@piac.asn.au>; Steve Blume (NoCarbon) <CEO@nocarbon.com.au>; Claire Deane <claire.deane@consumeraction.org.au>; John Grimes <ceo@smartenergy.org.au>; Ben Barnes (Energy Council) <ben.barnes@energycouncil.com.au>; Mindy Lim (CEC) <MLim@cleanenergycouncil.org.au>; Jennifer Gannon (EnergyQ) <jennifer.gannon@energyq.com.au>; Kane Thornton <kthornton@cleanenergycouncil.org.au>

Subject: RE: Brighte

I'll be in Adelaide. I could possibly be available on the phone between 2 and 4. Though I guess Consumer Action has more relevant expertise than me in this area.

Dean

Senior Energy Analyst
Renew (Alternative Technology Association Inc.)

I don't work Wednesdays.

From: Sabiene Heindl <Sabiene.Heindl@energyconsumersaustralia.com.au>

Sent: Friday, 22 March 2019 12:27 PM

To: Dean Lombard <dean.lombard@renew.org.au>; Stephanie Bashir <stephaniebashir@nexaadvisory.com.au>; Phil Khoury <phil@crkhoury.com>; Kurt Winter <kwinter@agl.com.au>; mnarayan@energynetworks.com.au; Gerard Brody <gerard@consumeraction.org.au>; michelle.taylor@energyq.com.au <michelle.taylor@energyq.com.au>

<michelle.taylor@energyq.com.au>; Mediri Weera (PIAC) <mediriweera@piac.asn.au>; Steve Blume (NoCarbon) <CEO@nocarbon.com.au>; claire.deane@consumeraction.org.au; John Grimes <ceo@smartenergy.org.au>; Ben Barnes (Energy Council) <ben.barnes@energycouncil.com.au>; Mindy Lim (CEC) <MLim@cleanenergycouncil.org.au>; Jennifer Gannon (EnergyQ) <jennifer.gannon@energyq.com.au>; Kane Thornton <kthornton@cleanenergycouncil.org.au>

Subject: Brighte

Dear all

You will recall that Brighte provided a submission on the Code – attached.

In light of the decision to further consult with stakeholders, I have just spoken to Ann Devine, the Chief Risk Officer of Brighte who contacted me earlier. She has agreed to a meeting with representatives of the BTM WG who can attend next Wednesday afternoon in Melbourne so that they can further explain their business and their concerns with the Code.

Mindy is this something that the CEC could possible host? I am available after 2pm.

Please let Mindy and I know whether you would like to attend and your availability.

Many thanks.

Best regards

Sabiene Heindl

Director, Strategic Engagement



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From: [Gerard Brody](#)
To: [Dean Lombard](#); [Mindy Lim \(CEC\)](#); [John Grimes](#); michelle.taylor@energyq.com.au; [Kurt Winter](#); [Mediri Weera \(PIAC\)](#); [Jennifer Gannon \(EnergyQ\)](#); [Steve Blume \(NoCarbon\)](#); [Ben Barnes \(Energy Council\)](#); [Jacqueline Crawshaw](#); [Anna Sexton \(CEC\)](#)
Subject: RE: ACCC pre hearing conference re. draft determination
Date: Monday, 2 September 2019 11:09:18 AM
Attachments: [image002.png](#)
[image003.png](#)

Hi Dean

As I understand it, Brighte offer a number of finance products.

The primary one it promotes is the (so-called 'no-interest' but vendor-pays-the-cost-of-credit) Buy Now Pay Later (BNPL) product.

Brighte also has a regulated credit contract (that is, a contract regulated by the National Credit Code, a schedule to the National Consumer Credit Protection Act – I think they call this their "green loan" which charges interest to the consumer).

It's a little complex, but a business needs a credit licence from ASIC (under the NCCP Act) if their activities relate to a credit contract or consumer lease which the National Credit Code applies.

Moreover, the responsible lending rules (which are in Part 3-2 of the NCCP Act) apply to licensees in relation to credit contracts or consumer leases regulated by the National Credit Code.

So, even if Brighte has a licence, this doesn't require them to do anything in respect of their unregulated BNPL products.

To be clear, a consumer can complain to the Australian Financial Complaints Authority (AFCA) in relation to Brighte, including in relation to BNPL. But AFCA won't be able to hear a complaint about a breach of responsible lending associated with its BNPL product as these rules don't apply to its BNPL product.

Hope that helps!
Gerard

From: Dean Lombard <dean.lombard@renew.org.au>
Sent: Monday, 2 September 2019 9:32 AM
To: Gerard Brody <gerard@consumeraction.org.au>; Mindy Lim <MLim@cleanenergycouncil.org.au>; ceo@smartenergy.org.au; michelle.taylor@energyq.com.au; Kurt Winter <kwinter@agl.com.au>; Miyuru Ediriweera <mediriweera@piac.asn.au>; jennifer.gannon@energyq.com.au; Steve Blume (NoCarbon) <ceo@nocarbon.com.au>; Ben Barnes (Energy Council) <ben.barnes@energycouncil.com.au>; Jacqueline Crawshaw <jacqueline.crawshaw@energyconsumersaustralia.com.au>; Anna Sexton <ASexton@cleanenergycouncil.org.au>
Subject: RE: ACCC pre hearing conference re. draft determination

Thanks Gerard

Can you clarify for me the distinction between a licenced credit provider and an approved (or accredited or whatever) credit product? Because my understanding is that Brighte *are* a licenced credit provider, but that their core product is not approved/accredited

Dean Lombard

Senior Energy Analyst

Renew (Alternative Technology Association Inc.)

I don't work Wednesdays.

From: Gerard Brody <gerard@consumeraction.org.au>

Sent: Sunday, 1 September 2019 2:15 PM

To: Dean Lombard <dean.lombard@renew.org.au>; Mindy Lim <MLim@cleanenergycouncil.org.au>; ceo@smartenergy.org.au; michelle.taylor@energyq.com.au; Kurt Winter <kwinter@agl.com.au>; Miyuru Ediriweera <mediriweera@piac.asn.au>; jennifer.gannon@energyq.com.au; Steve Blume (NoCarbon <ceo@nocarbon.com.au>; Ben Barnes (Energy Council <ben.barnes@energycouncil.com.au>; Jacqueline Crawshaw <jacqueline.crawshaw@energyconsumersaustralia.com.au>; Anna Sexton <ASexton@cleanenergycouncil.org.au>

Subject: RE: ACCC pre hearing conference re. draft determination

Thanks for this Dean – very helpful.

Just one thought from me on the possibility of an alternative accreditation basis for BNPL.

I understand that the BNPL industry may be establishing its own code of conduct (and thus could form an alternative way of accrediting providers). This was mentioned following the Senate Inquiry into these providers earlier this year, and was again mentioned in Flexigroup's market update last week. I think this may be being pursued through the [Australian Finance Industry Association](#).

The development of this code, however, is not occurring in a transparent fashion and falls way below the expectation of consumer groups. There appears to be no involvement of consumer groups, and thus is very different from the development of the NET Code. There is also a lot of changes in codes in the finance sector, following the Royal Commission – and it's likely that soon any code will have to be approved by ASIC. This should be the bare minimum in my view, and the NET Code should continue to require a lender with an Australian Credit Licence in absence of an approved code.

Dean, you might want to seek information about this if you meet with Brighte. It's likely they'll be involved.

Gerard

From: Dean Lombard <dean.lombard@renew.org.au>

Sent: Friday, 30 August 2019 3:59 PM

To: Mindy Lim <MLim@cleanenergycouncil.org.au>; ceo@smartenergy.org.au; michelle.taylor@energyq.com.au; Kurt Winter <kwinter@agl.com.au>; Miyuru Ediriweera <mediriweera@piac.asn.au>; jennifer.gannon@energyq.com.au; Steve Blume (NoCarbon <ceo@nocarbon.com.au>; Ben Barnes (Energy Council <ben.barnes@energycouncil.com.au>; Jacqueline Crawshaw <jacqueline.crawshaw@energyconsumersaustralia.com.au>; Gerard Brody

<gerard@consumeraction.org.au>; Anna Sexton <ASexton@cleanenergycouncil.org.au>

Subject: Re: ACCC pre hearing conference re. draft determination

Thanks Mindy

My initial thoughts on those three points are:

1. If there is another way of accrediting BNPL providers that ensures they have equivalent consumer protections to those provided by the credit code, great! The core issue is that the NETCC Council and Administrator don't have the capability to assess providers' policies on a case-by-case basis. That's why we have used Licensed Credit Provider/Approved Credit product (or whatever it is – what is the right terminology?) as a benchmark. (I am meeting with Brighte and Deloitte on Tuesday to discuss this. This will be my message to them unless anyone can suggest something different.)
2. I'm all for a stronger stance on unsolicited sales. Prohibit them? Or require a cooling on period? Worth noting too that the ban on unlicensed credit providers and unapproved credit products is in part a way of limiting the harm from unsolicited sales.
3. This is the core issue. The code is supposed to be principles-based with technical guidelines for specific products. I guess the provisions should be clear enough to give general guidance (e.g. advise the customer of site-specific issues that will affect the value they can derive from the product or service – it's really up to the vendor to identify what type of issues these would be) as well as to be amenable to more specific requirements in their technical guidelines for specific products (e.g. solar installers advise customers of the impacts of shading and orientation, and the possible existence of any export limits). I feel like the whole technical guidelines thing was not really understood by the code drafters nor many of the consulted stakeholders. I wonder if we need a different approach on this? I just can't see how it can have broad applicability with such technical specificity in the core code. perhaps one way is to incorporate the technical guidelines into the code itself. So to follow the example I have used, after the particular provision (“advise the customer of site-specific issues that will affect the value they can derive from the product or service” have some subordinate sections “for **Solar PV** this means the impacts of shading and orientation, the possible existence of any export limits, etc.” “For **Home batteries** this means maximum power output and throughput, degradation rates by age and number of cycles, etc.” “For **VPPs** this means minimum guaranteed number of payable events, penalties for non-participation, expected and maximum number of control events and their impact this will have on battery life and warranty, etc.” This would make the code more ungainly but perhaps bring more certainty. We could still use technical guidelines for new products and services that emerge between code review cycles.

Them's my thoughts. I can't make it to the hearing. I have included participation in the NETCC working group in a funding application I've just submitted so if all goes well I'll be able to be more involved again soon.

Regards

Dean

Dean Lombard
Senior Energy Analyst
Renew

Alternative Technology Association Inc. trading as Renew Australia
Publishers of Renew and Sanctuary magazines
ABN: 57533056318



I don't work Wednesdays

Give mum the gift of a Renew magazine or Sanctuary magazine subscription for Mother's Day, Sunday May 12.

Renew acknowledges and pays respect to the Australian Aboriginal and Torres Strait Islander people of this nation, to their ancestors and elders, past and present as the traditional custodians of the lands upon which we work and live. We recognise Aboriginal and Torres Strait Islander people's deep cultural and spiritual relationships to the land, water and sea and their rich contribution to society.

From: Mindy Lim <MLim@cleanenergycouncil.org.au>

Sent: Friday, August 30, 2019 2:05 pm

To: ceo@smartenergy.org.au; michelle.taylor@energyq.com.au; Kurt Winter; Miyuru Ediriweera; jennifer.gannon@energyq.com.au; Steve Blume (NoCarbon); Ben Barnes (Energy Council); Jacqueline Crawshaw; Gerard Brody; Anna Sexton; Dean Lombard

Subject: ACCC pre hearing conference re. draft determination

Dear Working Group members,

In preparation for the discussion on Monday morning, the ACCC has requested that the Working Group respond to points raised in 3.3(b) to (e) in the Draft Determination.

1. Is the exclusion around BNPL too blunt? Are there other ways to ensure providers of BNPL and other exempt products provide appropriate (or equivalent) consumer protections without requiring a strict exclusion?
2. Some submissions call for a ban on unsolicited sales. Can the NETCC strengthen the obligations on providers who utilise this channel?
3. Some submissions have also mentioned that the drafting in NETCC is too high level and does not provide sufficient certainty to potential signatories. Can the WG consider some sections where the wording could be tightened?

We should have a written statement from the Working Group prior to the hearing on 9 Sept.

Regards
Mindy



MINDY LIM, CODE OF CONDUCT MANAGER



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April 2019

SUNNY SIDE UP:

Strengthening the
**Consumer Protection
Regime for Solar Panels**
in Victoria

ABOUT

Consumer Action Law Centre (**Consumer Action**) is an independent, not-for-profit consumer organisation located in Melbourne, Australia. Our purpose is to make life easier for people experiencing vulnerability and disadvantage in Australia. We do this through financial counselling, legal advice, legal representation policy, research and campaigning - enabling us to lead change to policy, laws and industry practice across a range of consumer issues.

ACKNOWLEDGEMENTS

Consumer Action would like to thank the people who assisted us in the production of this report. Our sincerest thanks go to the members of the Sunny Side Up Reference Group for the contribution of their time, ideas and advice. Specifically, we thank: Rob Law of Central Victorian Greenhouse Alliance; Dean Lombard of Renew (formerly the Alternative Technology Association); Janine Rayner of Energy and Water Ombudsman of Victoria; James Clinch of the Essential Services Commission; Mindy Lim of the Clean Energy Council; Jonathan Leake of Solar Victoria; and Sabiene Heindl, previously of Energy Consumers Australia.

We would also like to acknowledge the contribution that our clients have made to this report. Specifically, we would like to thank the clients who shared their stories with us and through this report. Each person that did so expressed a desire to change the system and to prevent injustice and harm being done to other people.



Consumer Action is located on the land of the Kulin Nations. We acknowledge all Traditional Owners of Country throughout Australia and recognise the continuing connection to lands, waters and communities. We pay our respect to cultures; and to Elders past, present and emerging.

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01

EXECUTIVE SUMMARY

There is a growing recognition that the energy market is changing but the regulatory system is not keeping up. Rooftop solar systems and other new energy products and services are growing in popularity and are assuming a critical role in essential service delivery, and yet, little has been done in the way of regulatory reform to ensure that current regulatory frameworks stay relevant to the changing landscape.

The rapid growth of the solar industry, the number of players entering and exiting the industry, government financial incentives, the complexity of the technology being sold along with regulatory gaps are creating an environment in which consumer harm can thrive.

Through our casework, Consumer Action Law Centre (**Consumer Action**) has witnessed this harm impacting the people we help, usually people already experiencing significant vulnerability. But, we are not the only ones seeing it. Others are reporting on the same or very similar issues in the retail solar industry, contributing to a discussion about the need for change. Significantly, in 2017 the Independent Review into the Electricity & Gas Markets in Victoria Report was released recommending a number of changes in order to improve the retail energy market in recognition of the changing landscape in this sector.

Given these factors, now is an opportune time to add to the discussions already underway by doing a deep dive into the current consumer protection regime as it relates to new energy products, consider whether things could be done better and how they could be done better. This report will address these topics, focusing specifically on rooftop solar systems.

The report relies extensively on Consumer Action's casework.

Consumer Action is a consumer advocacy organisation based in Melbourne. The casework relied on in this report has been drawn from our lawyers, who provide consumer and credit law advice services to Victorians, or from our financial counsellors, who provide free financial counselling services to Victorians experiencing financial hardship. Both of these casework services are aimed at assisting people experiencing vulnerability or disadvantage.

From our casework experience, Consumer Action has observed a number of concerning trends in the retail solar industry. The most common and pressing issues we have identified are:

- **failings in solar installations or grid connection;**
- **inappropriate or unaffordable finance being offered to purchase solar systems;**
- **misleading and high-pressure sales tactics in the context of unsolicited sales;**
- **product faults and poor performance;**
- **a lack of affordable dispute resolution;**
- **business closures; and**
- **poorly structured and highly problematic Solar Power Purchase Agreements (Solar PPAs).**

The purpose of this report is to contribute to a discussion, already underway, about possible regulatory solutions to the problems we are seeing in the emerging energy market. By drawing on our casework, this report will identify the common issues faced by people in the new energy market and will also explore possible solutions to these problems. The report will specifically focus on solar panels as an example of a new energy product.

However, it is hoped that the principles drawn out in this report can be applied more broadly to other new energy products and services requiring two or more parties to achieve full and final delivery. The problems we are seeing with solar panels may repeat and manifest themselves in relation to other new and emerging energy technology in Australia unless we take the opportunity to prevent their spread.

This report explores a range of solutions to these problems but ultimately argues that a regulatory response is necessary. Our casework, external reports and corroborative data published by other organisations and the realities of the alternative non-regulatory solutions, together form a significant body of evidence justifying regulatory intervention.

A number of possible regulatory solutions and their likely impacts are explored in this report. However, we argue that the following reforms ought to be preferred:

- **Solar retailers should be responsible for ensuring that solar panels are properly connected to the grid, unless people elect to take responsibility themselves;**
- **The national consumer credit laws should be amended so that all buy now, pay later finance arrangements fall within their ambit;**
- **Unsolicited sales should be banned;**
- **A 10-year statutory warranty applying to the whole solar system should be provided by solar panel retailers;**
- **The jurisdiction of the Energy and Water Ombudsman Victoria (EWOV) should be extended to include the retail sale of new energy products and services;**
- **A solar default fund should be established to provide compensation to those entitled to compensation but unable to access it due to the insolvency of a solar retail business; and**
- **Solar panel purchase agreements should be included within the ambit of any new or extended regulatory regime covering new energy products and services, including the extension of EWOV's jurisdiction to cover all new energy products.**

02

INTRODUCTION

The Growth of Solar and New Energy Products

The growth of solar and new energy products in recent years has been significant, yet the regulatory system has failed to keep up with the pace of change.

The regulatory gaps created by this discrepancy is contributing to an environment where households and individuals are easily taken advantage of, without an adequate system of redress. The promise and potential benefits of greener energy products and government incentives are thereby undermined along with the trust that people have in the industry.

To put the issues in context it is useful to understand some basic features of the traditional energy market. The traditional energy market is characterised by large power plants used to generate electricity using coal, hydro or gas.¹ Electricity is then fed into a centralised grid from where it is distributed to households. The supply chain is made up of the energy generators,

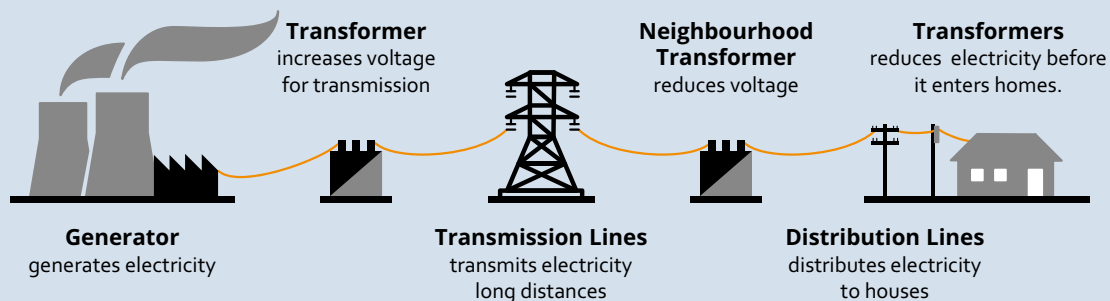
the distributors (who own the wires and poles through which the electricity travels) and the retailer who then sells the energy onto households and businesses. The electricity goes via a wholesale 'spot market' from which energy retailers buy the electricity.

There are five electricity distributors in Victoria, each responsible for a separate region. They are: CitiPower, Jemena, Powercor Australia, AusNet Services, and United Energy Distribution. There are currently over 30 electricity retailers in Victoria², including companies like AGL, Red Energy and Energy Australia. While there are several entities involved in the traditional electricity supply chain, an important feature is that electricity travels in a one-way direction from a generator to consumer. This supply chain is illustrated on the next page.

¹ Arena Wire, *What are distributed energy resources and how do they work?* (15 March 2018) Arena Wire <<https://arena.gov.au/blog/distributed-energy-resources/>>.

² This is figure is based on the number of listed EWOV electricity retail participants: Energy & Water Ombudsman, *Electricity companies*, *Energy & Water Ombudsman* <<https://www.ewov.com.au/companies/electricity-companies>>.

THE GRID: Traditional Energy Supply



This is increasingly not the case. Improvements in technology and a movement towards renewables has led to the development of new energy sources and a diversification of energy distribution. Energy is now being generated from a larger range of sources and being distributed in a two-way flow.

Households are now not only generating their own electricity through products such as rooftop solar panels but are contributing to the energy available in the grid. They do this by selling any excess electricity generated by their rooftop solar panels back to their retailer at a rate known as a 'feed-in tariff.'³ The feed-in tariff is offset against an individual's electricity bill. This is why rooftop solar panels and other new energy technologies together form a bundle of products and services known collectively as 'small generation units,' 'distributed energy resources' or DER products.

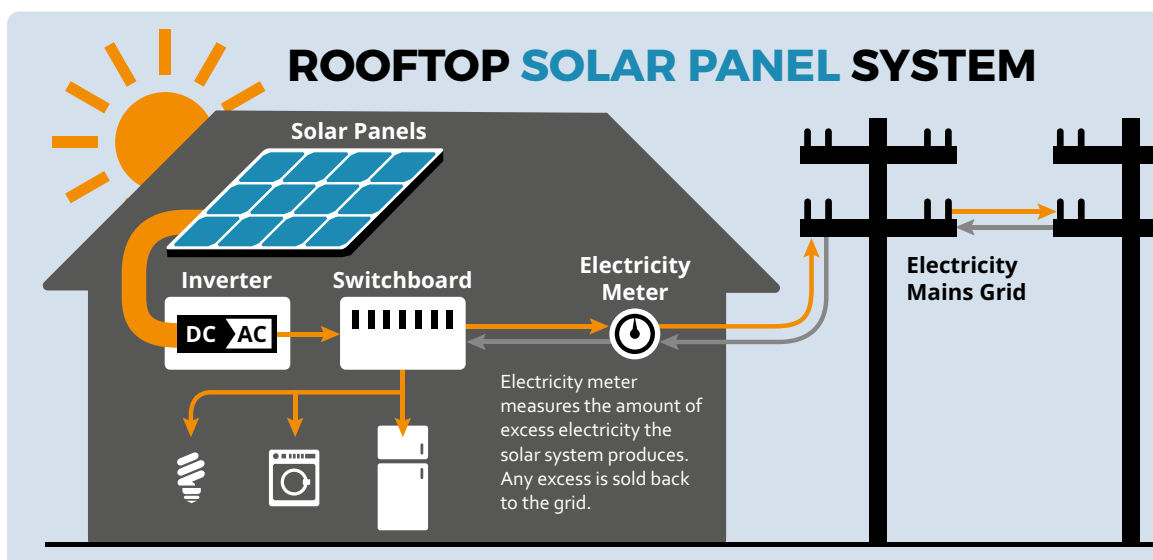
These products are also sometimes referred to as 'behind the meter' products. Although currently less common, they include batteries and energy storage; electric vehicles; and home energy management systems. The term 'behind the meter' or 'BTM' is used for these types of products because the distributors (who own the poles and wires that make up the distribution system or 'the grid') no longer have any control over the electricity once it hits a household's

meter. A household's meter also marks the spot where the traditional energy supply ends as well as where traditional energy regulation seems to end. This report will refer to this broad collection of products and services as 'new energy products.'

Grid connected solar power systems are made up of several component parts. The sun shines on the solar panels, usually attached to a person's roof, creating electricity. The electricity is fed into an inverter that converts the electricity into a form that can be used by the household. If set up properly and with the appropriate permissions, excess electricity is exported, to the grid via the household's electricity meter.

This report will use the words 'solar panels', 'solar system' and 'rooftop solar' to refer to the entire system unless otherwise specified. This report also uses the phrase 'solar panel retailer' or 'solar retailer' to refer to the entity or business that sells the entire solar system to a consumer. The solar panel retailer and the solar panel installer (the person or business that installs the system onto households) may be the same or may be different entities. However, where they are different entities, it is generally the case that the solar retailer sub-contracts the installation work to the installer and that the consumer does not have a separate and independent relationship with the installer.

³ The feed-in tariffs vary between states and between retailers. In some states, the government regulates a minimum rate. In Victoria, minimum feed-in tariff rates are set annually by the Essential Services Commission (ESC). The rates set by the ESC for the 2018-2019 year were either a single-rate minimum feed-in tariff of 9.9 cents per kilowatt hour (c/kWh) or a time-varying feed-in tariff. All electricity retailers with more than 5,000 customers must offer at least one of these tariffs to their customers: Department of Land, Water and Planning, Victoria State Government, *Victorian feed-in tariff* (30 July 2018) <<https://www.energy.vic.gov.au/renewable-energy/victorian-feed-in-tariff>>.



It's no secret that the rooftop solar industry is big business in Australia and it continues to grow.⁴ In fact, Australians are the most enthusiastic adopters of solar in the world, per capita.⁵ By the end of 2017, around 1.8 million Australian households had installed rooftop solar systems.⁶ This represented a significant increase from the 14,000 panels reported to have been installed in Australia around 10 years earlier.⁷ While this only accounted for 3.4% of Australia's power generation that year,⁸ it has been estimated that this might rise to as much as 45% within two decades.⁹ Therefore, it is likely that our energy market will continue to tilt away from traditional, centralised generation and towards decentralised energy distribution.

Probable driving factors behind the growing popularity of rooftop solar are the increasing concerns over energy prices, environmental considerations and the financial incentives created by governments. At

the federal level, the Commonwealth Government's Small-scale Renewable Energy Scheme aims to reduce emissions and support the achievement of the Government's Renewable Energy Target¹⁰ by creating financial incentives in the form of renewable energy certificates that are created by the installation of small solar systems and sold to corporations that need them to meet their targets. In effect, this creates a discount for purchasers of rooftop solar systems.

An additional scheme exists in Victoria. In August 2018, the Victorian Government announced a \$1.24 billion program to subsidise solar panel installations for up to 650,000 households over ten years through their 'Solar Homes Program'.¹¹ One month after the initiative was announced, the Government had received 11,000 applicants from Victorian homeowners.¹² By 18 January 2019, 7,000 Victorian households had installed solar panels under the package.¹³

⁴ Naaman Zhou, 'Australia's solar power boom could almost double capacity in a year, analysts say', *The Guardian* (online), 12 February 2018 <<https://www.theguardian.com/australia-news/2018/feb/11/australias-solar-power-boom-could-almost-double-capacity-in-a-year-analysts-say>>.

⁵ Ivor Frischknecht, Arena, *Editorial: The Distributed Energy Revolution* (31 July 2018) Arena Wire <<https://arena.gov.au/blog/ivor-frischknecht-the-distributed-energy-revolution/>>.

⁶ Australian Energy Council, *Solar Report: January 2018* (January 2018), 3 <<https://www.energycouncil.com.au/media/11188/australian-energy-council-solar-report-january-2018.pdf>>.

⁷ Ivor Frischknecht, Arena, *Editorial: The Distributed Energy Revolution* (31 July 2018) Arena Wire <<https://arena.gov.au/blog/ivor-frischknecht-the-distributed-energy-revolution/>>.

⁸ Clean Energy Council, *Solar* <<https://www.cleanenergycouncil.org.au/resources/technologies/solar-energy>>.

⁹ Ivor Frischknecht, Arena, *Editorial: The Distributed Energy Revolution* (31 July 2018) Arena Wire <<https://arena.gov.au/blog/ivor-frischknecht-the-distributed-energy-revolution/>>.

¹⁰ Clean Energy Regulator, Australian Government, *About the Renewable Energy Target* (31 May 2018) Renewable Energy Target <<http://www.cleanenergyregulator.gov.au/RET/About-the-Renewable-Energy-Target>>.

¹¹ Minister for Energy, Environment and Climate Change, *Cutting Power Bills with Solar Panels for 650,000 Homes* (19 August 2018) <<https://www.premier.vic.gov.au/cutting-power-bills-with-solar-panels-for-650000-homes/>>.

¹² Victorian Labor, *Media Release: The Hon Daniel Andrews MP (Premier): Time is up for energy retailers ripping off Victoria* (20 November 2018) <<https://static1.squarespace.com/static/5b46af5a55b02cea2a648e931/5bf31f844fa51a6734933264/1542659978528/181120+-+Time+Is+Up+For+Energy+Retailers+Ripping+Off+Victorians.pdf>>.

¹³ Premier of Victoria, *Thousands of Victorian Homes Save Millions on Solar, Delivering for all Australians* (18 January 2019) <<https://www.premier.vic.gov.au/thousands-of-victorian-homes-save-millions-on-solar/>>.

Despite their growing popularity, rooftop solar panels along with other behind the meter products fall outside of the energy regulatory system, which was designed to regulate the traditional centralised form of energy distribution.

The word 'regulation' (and derivatives of it) will be used in this report to denote legislation, statutory instruments and any other forms of government intervention. These regulatory instruments can be contrasted with industry codes of conduct.

The traditional energy market is regulated by an interconnected series of, energy specific, Victorian and federal legislative instruments. Victorian regulatory instruments related to electricity include:

- *Electricity Industry Act 2000* (Vic), which regulates the electricity supply industry by, for example, prohibiting the unlicensed generation, transmission, distribution, supply or sale of electricity, unless under exemption.¹⁴ All licences issued under this Act are subject to a condition that the licensee enter a customer dispute resolution scheme approved by the Essential Services Commission (ESC).¹⁵ The only ESC approved dispute resolution scheme is Energy and Water Ombudsman (EWOV).
- *Electricity Safety Act 1998* (Vic), aimed at ensuring the safe supply and use of electricity.
- *National Electricity (Victoria) Act 2005* (Vic), which regulates the national wholesale electricity market.
- *Essential Services Commission Act 2001* (Vic), which establishes and grants power to the ESC, an independent regulator of Victoria's

energy, water and transport sector. The ESC issues licences under the *Electricity Industry Act 2000* (Vic).

- The Energy Retail Code (Vic), which sets out rules that gas and electricity retailers must follow, in accordance with their retail licences, when selling gas or electricity to Victorians.¹⁶
- Energy Distribution Code (Vic), which regulates the distribution of electricity from distributors to their customers and the connection of customers or embedded electricity generating units (such as solar panels) to the grid.

Victorians can take most of their complaints about their energy retailer or distributor to EWOV, an independent dispute resolution service. While EWOV is not given direct legislative powers (and therefore could be considered as falling outside of the regulatory system), the *Electricity Industry Act 2000* (Vic) requires all electricity retailers to hold a licence¹⁷ and be a member of a dispute resolution service approved by the ESC.¹⁸ The ESC has approved EWOV.¹⁹

In addition, there are many national regulations. Only some of these apply to Victoria. The national instruments include:

- The National Energy Retail Law (NERL) and associated rules which regulate the supply and sale of gas and electricity to retail customers. Victoria has not applied NERL, however, the Victorian Energy Retail Code (listed above) provides similar consumer protections.²⁰

¹⁴ *Electricity Industry Act 2000* (Vic) ss 16 – 17.

¹⁵ *Electricity Industry Act 2000* (Vic) s 28.

¹⁶ Essential Services Commission, *Energy Retail Code: Overview*, <<https://www.esc.vic.gov.au/electricity-and-gaselectricity-and-gas-codes-guidelines-policies-and-manuals/energy-retail-code>>; Essential Services Commission, *Energy Retail Code: Version 12* (1 January 2019), cl 3B(2) <<https://www.esc.vic.gov.au/sites/default/files/documents/COD%20-%20RR%20-%20Amended%20Energy%20Retail%20Code%20-%20Version%2012%20Incorporating%20obligations%20for%20exempt%20sellers%20-%20-%2020180917.pdf>>.

¹⁷ *Electricity Industry Act 2000* (Vic) s 16.

¹⁸ *Electricity Industry Act 2000* (Vic) s 28.

¹⁹ Energy and Water Ombudsman Victoria, *Energy and Water Ombudsman (Victoria) Charter* (14 March 2018), cl 2.3 <https://www.ewov.com.au/files/ewov_charter_140318.pdf>.

²⁰ Department of the Environment and Energy, Australian Government, *Energy market legislation* <<https://www.energy.gov.au/government-priorities/energy-markets/energy-market-legislation>>

- The National Electricity Law (**NEL**) and associated rules regulate the national electricity market (**NEM**). Victoria is connected to the NEM and has adopted, through state legislation, the NEL and associated rules.
- The National Energy Customer Framework (**NECF**) is comprised of a suite of regulatory instruments that regulates the connection, supply and sale of energy to grid-connected customers.²¹
- an independent technician to certify that the Australian safety standards have been met;
- the regional distributor who needs to agree to the household using their infrastructure to sell the household's excess electricity back to the grid; and
- a person's retailer who purchases any excess electricity.

While Victoria has not adopted each element of NECF, an attempt to harmonise Victoria's energy regulation with NECF has been made through the Victorian Energy Retail Code.

This regulation can be seen as recognising energy as an essential service underpinning people's health and wellbeing. This regulation also assists to build confidence in the energy market.²²

Rooftop solar panels, along with other new energy products, do not fall within the traditional regulatory system. This is because most of the traditional forms of regulation apply only where there is a one-way sale of electricity from a trader to a customer.²³

The sale of rooftop solar panels is more complex. It usually involves:

- a solar panel retailer who sells the panels, inverter and other products that make up a solar system;
- the installer of solar panels who affixes the panels to a person's rooftop and connects the other parts of the system (and who may or may not be the same as the solar retailer);

Consumer Action also frequently sees finance providers involved in the sale of rooftop solar systems.

Because these transactions go beyond the simple sale of electrons from a retailer to a consumer, rooftop solar transactions usually fall outside of the existing energy-specific regulation.²⁴ Where the energy regulations do not apply, purchasers of solar panels must rely on the protections offered by the general consumer laws or voluntary industry codes.

Broadly speaking, there are three different general consumer law statutes that might apply to the sale of rooftop solar, depending on the circumstances of the case. The *Competition and Consumer Act 2010* (Cth) (**CCA**) and the *Australian Consumer Law* (**ACL**), apply to the sale of non-financial goods and services. The *National Consumer Credit Protection Act 2009* (Cth) (**NCCPA**) and the National Credit Code (**NCC**), apply to products and services related to credit but only to the types of credit that meet the complex series of legal definitions of 'credit' under these laws. The *Australian Securities and Investments Commission Act 2001* (Cth) (ASIC Act) applies to most financial products or services, whether they meet the NCCPA legal definition of credit or not. Consumer credit products and services that do not fall within the ambit of the NCCPA and NCC are sometimes called 'unregulated

²¹ Department of the Environment and Energy, Australian Government, *National Energy Customer Framework* <<https://www.energy.gov.au/government-priorities/energy-markets/national-energy-customer-framework>>.

²² Consumer Action Law Centre, *Power Transformed: Unlocking effective competition and trust in the transforming energy market* (July 2016), 24 and 28 <<https://consumeraction.org.au/power-transformed/>>.

²³ For example, the Energy Retail Code (which all licensed electricity retailers must comply with as a condition of their retail licence), applies to retailers when supplying electricity to their "small customers." It does not apply to reciprocal arrangements, that is, the sale of electricity from small consumers to retailers. In any case, solar panel retailers and installers are not selling electricity or gas per se but rather are selling the technology required for customers to generate their own electricity.

²⁴ Consumer Action Law Centre, *Power Transformed: Unlocking effective competition and trust in the transforming energy market* (July 2016), 28 <<https://consumeraction.org.au/power-transformed/>>.

credit', 'unregulated finance' or 'unlicensed credit.'²⁵ This report will use the term 'unregulated credit', while acknowledging that the ASIC Act provides some, more limited, protections around these 'unregulated' financial products and services.

These acts will apply to different elements of a rooftop solar panel transaction. The CCA and ACL will apply to all rooftop solar purchases as they all involve the sale of non-financial products and services. The ASIC Act will apply to any contracts used to finance the purchase of a solar system. The NCCPA and NCC will also apply to the finance of solar systems purchase if the contracts are structured in a certain way that meets the definition of 'credit' under those laws.

Each of these laws is discussed in more detail in the body of the report. In doing so, this report will explore how the application of the general consumer protection regime to the solar retail industry creates an unsatisfactory situation for Victorians. This is the case despite the efforts of the rooftop solar industry and renewables industry in driving the development of their own voluntary codes of conduct (which will also be discussed in more detail) to address some of the damage being done in and to their respective industries.

This unsatisfactory regulatory gap has been recognised, to some degree, but not yet acted upon by lawmakers. For example, around the time it announced their Solar Homes rebate scheme, the Victorian Government also promised to make a number of regulatory reforms related to the retail energy market. These included regulations relating to the price of traditional forms of energy and a number of other reforms that appear to be directed towards giving the Essential Services Commission greater enforcement and compliance power over the traditional energy market.²⁶

The Victorian Government has also indicated that it is supporting all 11 recommendations of the Independent Review of the Electricity and Gas Retail Markets in Victoria, which found that intervention was required for a fairer system and recommended a range of measures to help cut power prices.²⁷

In publishing this report, we will add to the discussions already underway about energy reform by presenting a consumer perspective, drawn from our casework, about what regulatory solutions are required to prevent further harm from occurring in the retail solar panel industry. This report will not be discussing any proposed reforms aimed at the traditional energy market but rather focusing on those necessary to address the issues manifesting in the new energy market.

Consumer Action brings a valuable perspective to the discussion. We are an independent, not-for-profit consumer organisation with deep expertise in consumer and credit laws and policy. Not only this, we also have direct knowledge of people's experience of modern markets which we have gained through the services we provide including free financial counselling services, free legal services, policy work and campaigns. This report builds on our earlier work, primarily reports jointly produced in 2016 and 2017, the *Power Transformed*²⁸ and *Knock it Off!*²⁹ reports.

The remainder of the report will:

- use Consumer Action's casework to identify the common issues experienced by people engaging in the rooftop solar industry;
- briefly examine the consumer protections enlivened by these issues; and
- analyse the issues, suggesting regulatory solutions to the problems identified.

²⁵ We acknowledge that the term 'unlicensed credit' has a particular legal meaning under the NCCPA, referring to situations where credit products meet the NCCPA's definition of credit but the supplier of the credit does not have a licence. By not being licensed when the law says they should be, the unlicensed credit provider will have breached the NCCPA which can lead to both criminal and civil penalties. When this report uses the term 'unlicensed credit' it is not applying this legal definition.

²⁶ Victorian Labor, *Fact Sheet: Cracking Down On Dodgy Energy Retailers – Labor's Energy Fairness Plan* <<https://static1.squarespace.com/static/5b46af5a55b02cea2a648e93/5bf326z4f21c67ce36dc6f142/1542661716026/CRACKING+DOWN+ON+DODGY+ENERGY+RETAILERS++LABOR'S+ENERGY+FAIRNESS+PLAN+%281%29.pdf>>.

²⁷ Victorian Labor, *Media Release: The Hon Daniel Andrews MP (Premier): Time is up for energy retailers ripping off Victoria* (20 November 2018) <<https://static1.squarespace.com/static/5b46af5a55b02cea2a648e93/5bf31f844fa51a6734933264/1542659978528/181120+-+Time+Is+Up+For+Energy+Retailers+Ripping+Off+Victorians.pdf>> .

²⁸ Consumer Action Law Centre, *Power Transformed* (July 2016) <<https://consumeraction.org.au/wp-content/uploads/2016/07/Power-Transformed-Consumer-Action-Law-Centre-July-2016.pdf>>.

²⁹ For example, in the 2018 July to September quarter, EWOV received 496 solar complaints, 15% more than for the same period in 2017: *Energy and Water Ombudsman Victoria, Res Online 25 - November 2018* (November 2018) <<https://www.ewov.com.au/reports/res-online/201811>>.

03

ISSUES OVERVIEW

This is not the first time Consumer Action has reported on the harm being caused through poor business practices of solar retailers. Issues relating to solar products were identified in our report, *Power Transformed*, published in July 2016, focusing on the changing energy market and again in 2017 with our *Knock it Off! Report*, which focused on unsolicited sales.

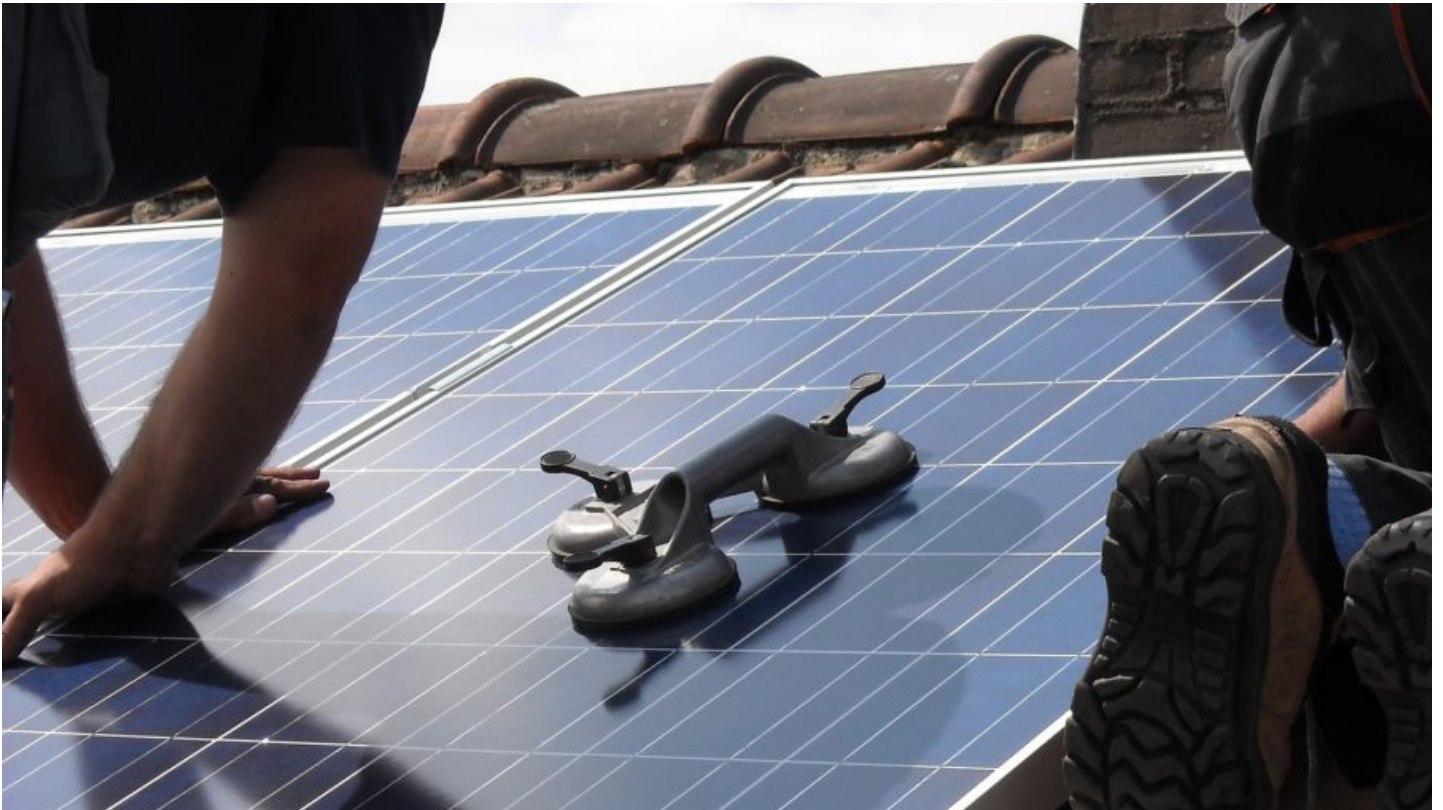
However, the issues we have previously reported are not going away. Consumer Action continues to receive enquiries related to rooftop solar systems through both of our legal and our financial counselling services. While Consumer Action received more solar related inquiries in 2017 than in 2018, data collected by EWOV indicates that the number of solar related complaints they receive is increasing.³⁰

Distinct from our earlier reports, this report deals exclusively with the issues surrounding the sale and installation of solar panels.

We have identified the following common themes that, in our view, highlight the failings of the current consumer protection regime:

- failings in solar system installations or grid connection;
- inappropriate or unaffordable finance being offered to purchase solar systems;
- misleading and high-pressure sales tactics in the context of the unsolicited sale of solar panels;
- product faults;
- a lack of affordable dispute resolution;
- business closures; and
- poorly structured and highly problematic Solar Power Purchase Agreements (PPAs).

³⁰ For example, in the 2018 July to September quarter, EWOV received 496 solar complaints, 15% more than for the same period in 2017: Energy and Water Ombudsman Victoria, *Res Online 25 - November 2018* (November 2018) <<https://www.ewov.com.au/reports/res-online/201811>>.



Each of these issues and their potential regulatory solutions will be explored in more detail below.

EWOV appears to be seeing similar issues. EWOV reported that for the July to September 2018 quarter, it received a similar set of complaints including: incorrect solar installation; solar power purchase agreements; misleading marketing; faulty inverters; solar installation delays; faulty solar PVs; inappropriate inverters; solar systems not working at full capacity; and failures due to paperwork not being sent to the electricity retailer or distributor.³¹

One difference between the types of solar issues being seen by Consumer Action and those being observed elsewhere³² are issues surrounding 'community run solar farms' and energy storage devices such as batteries. Consumer Action has not received a significant number of complaints relating to these issues. That is not to say that these issues do not exist or will not emerge in our casework, but rather, that they are not being reported to us by our client base. Therefore, these issues will not be addressed in this report. We recognise that these issues may represent a growing area of concern, however, and may require future consideration and research.

³¹ Energy and Water Ombudsman Victoria, *Res Online 25 - November 2018* (November 2018) <<https://www.ewov.com.au/reports/res-online/201811>>.

³² Energy and Water Ombudsman Victoria, *Res Online 25 - November 2018* (November 2018) <<https://www.ewov.com.au/reports/res-online/201811>>.

04

THE CURRENT CONSUMER PROTECTION LANDSCAPE

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4.1. Overview

In this section of the report, we briefly summarise the consumer protection laws and non-legal regimes currently available to households experiencing problems with solar panels.

Currently, the main consumer protections for people who purchase solar panels is the Australian Consumer Law (**ACL**)³³ and to a lesser extent the voluntary industry codes. The most relevant codes are those produced by the Clean Energy Council (**CEC**) and Smart Energy Council (**SEC**). Both the ACL and the codes contain quality assurance provisions and protection from or prohibition of certain unfair sales practices.

Where transactions include credit or other arrangements to finance the purchase of rooftop solar, the general consumer laws relating to credit and finance apply. They are the NCCPA, NCC and/or the ASIC Act. The ASIC Act largely mirrors the consumer protections contained in the ACL. The NCC and the NCCPA contain unique but very important protections around unaffordable credit contracts, financial hardship, and disclosure. Unfortunately, however, most finance arrangements we see associated with the purchase of rooftop solar systems are structured in a way to avoid NCC and NCCPA regulation. The CEC and SEC industry codes also try to address issues relating to finance but only go some way towards solving the problem.

³³ Contained within the *Competition and Consumer Act 2010* (Cth) as a schedule.

Legal Frameworks	GENERAL CONSUMER AND CREDIT LAWS (Applicable to Rooftop Solar Transaction)		
	Non-financial Products and Services	Financial Products and Services	
	ACL	ASIC	Credit Product NCCPA & NCC
	<ul style="list-style-type: none"> • quality assurance • protection from certain unfair sales practices • consumer guarantees 	<ul style="list-style-type: none"> • offers consumer protection similar to ACL but for financial products and services 	<ul style="list-style-type: none"> • mandatory licensing regime for 'credit activities' • protects people from irresponsible lending • mandatory membership of AFCA • disclosure requirements
	OTHER (Applicable to Rooftop Solar Transaction)		
	Contract Law	Corporations Law	
	<ul style="list-style-type: none"> • breach of terms of solar agreements • breach of voluntary warranties 	<ul style="list-style-type: none"> • relevant when solar panel retail businesses that have closed down or are in the process of closing down • regulates the opening and closing of business • sets out what a company's legal responsibilities and liabilities are when they close down 	
	LAWS REGULATING THE TRADITIONAL ENERGY MARKET (Limited Application to Rooftop Solar Transactions)		
	Victorian	Federal laws applicable to Victoria	Federal laws not adopted in Victoria
	<ul style="list-style-type: none"> • <i>Electricity Industry Act 2000</i> (Vic) • <i>Electricity Safety Act 1998</i> (Vic) • <i>National Electricity (Victoria) Act 2005</i> (Vic) • <i>Essential Services Commission Act 2001</i> (Vic) 	<ul style="list-style-type: none"> • National Electricity Law (NEL) 	<ul style="list-style-type: none"> • National Energy Retail Law (NERL)
Voluntary Frameworks	Voluntary Industry Codes		
	The CEC Code	The SEC Code	
	<ul style="list-style-type: none"> • created by the Clean Energy Council (CEC) • membership-based peak body representing the renewable energy industry in Australia • standard 5 year warranty <ul style="list-style-type: none"> × provides for warnings but doesn't disallow unregulated credit providers × allows unsolicited selling × limited role in dispute resolution 	<ul style="list-style-type: none"> • created by the Solar Energy Council (SEC) • membership-based peak body for the solar, storage and smart energy market in Australia <ul style="list-style-type: none"> × not authorised by ACCC × less effective consumer protection standards × wide 'defences' to breach allegations 	

4.2 Competition and Consumer Act 2010 (Cth) (CCA) and the Australian Consumer Law (ACL)

The ACL is contained within the CCA. The aims of the CCA are to enhance the welfare of Australians through the promotion of competition and fair trading and to provide for consumer protection.³⁴ These protections are generally available to all consumers in their disputes with traders about domestic or household goods and services but do not apply to financial products (such as loans or credit cards) and services (such as financial advice).³⁵

The ACL is divided into five sections. The first section contains an introduction. The second section deals with general consumer protections such as the prohibition against misleading or deceptive conduct. The third section contains specific consumer protections such as the consumer guarantees which, amongst other things, assure people of the quality and performance of goods and services they buy. The fourth section creates several criminal offences relating to safety and unfair practices.³⁶ The fifth section deals with enforcement and remedies such as who can be found legally responsible for breaches of the ACL and what entitlements people have when they suffer harm because of an ACL breach. The sections of the ACL that are most relevant to the issues under consideration in this report are identified in the remainder of this section.

Consumer guarantees

The ACL provides automatic guarantees when a person buys non-financial goods and services. These guarantees exist regardless of any other additional voluntary warranties provided by a supplier, retailer, manufacturer or installer.³⁷ The guarantees are divided into those that apply to services and those that apply to goods.

The guarantees provide that all *goods* must:

- be of acceptable quality;³⁸
- be fit for any purpose a person made known to the trader;³⁹
- correspond with the description, sample or demonstration model;⁴⁰
- have spare parts and facilities available for the repair of the goods for a reasonable amount of time after the goods were supplied;⁴¹ and
- where express voluntary warranties are given by the manufacturer or supplier of the goods, that those warranties will be honoured.⁴²

The ACL guarantees that *services* will:

- be performed with due care and skill;⁴³
- will be fit for any particular purpose or intended result made known by a person to the supplier;⁴⁴ and
- will be supplied within a reasonable time.⁴⁵

³⁴ *Competition and Consumer Act 2010* (Cth) s 2.

³⁵ *Competition and Consumer Act 2010* (Cth) s 131A.

³⁶ Consumers generally cannot start a court case for redress under these offence provisions and therefore they will not be discussed any further in this report.

³⁷ Although once warranties are voluntarily given, the ACL then creates an additional guarantee that warranties will be adhered to. This means that if the supplier or manufacturer gives additional warranties in relation to their products, consumers can take legal action both under the ACL and under contract law in cases of warranty breach.

³⁸ ACL s 54.

³⁹ ACL s55.

⁴⁰ ACL ss 56- 57.

⁴¹ ACL s 58.

⁴² ACL s 59. There are also a number of guarantees that provide assurances to consumers that the goods they purchase will be theirs to possess, sell or dispose of as they choose and that the goods are free from securities or other encumbrances: ACL ss 51 - 53.

⁴³ ACL s 60.

⁴⁴ ACL s 61.

⁴⁵ ACL s 62.

Generally speaking, these guarantees will apply to rooftop solar retailers, solar installers and some may apply to the manufacturer of the panels.

While the consumer guarantees will also apply to electricity retailers, such as AGL, they only apply in relation to the goods and services supplied by the electricity retailer, meaning the supply of electricity to their customers. Because electricity retailers and distributors are not involved in the retail supply of solar panels or their installation, they will not ordinarily be found to have breached the ACL guarantees.

If the consumer guarantees are breached, the ACL creates several remedies depending on the degree of the breach and the circumstances of the case. They include repair, replacement, refund and compensation.⁴⁶

Should a disagreement arise about a person's entitlement to one of these remedies, people can enforce their rights by taking the supplier of the goods or services to court or to the Victorian Civil and Administrative Tribunal (VCAT).⁴⁷ While Consumer Affairs Victoria (CAV) provides some conciliation services, there is no dedicated alternative dispute resolution body for breaches of the ACL.

Unsolicited consumer agreements

The ACL contains specific protections around unsolicited consumer agreements. As highlighted in several reports published by Consumer Action,⁴⁸ solar panels are regularly sold using this sales method.

Unsolicited consumer agreements are ones in which:⁴⁹

- the agreement is made by telephone or at a place other than the supplier's place of business;
- the person did not invite the salesperson to come to the place or make a telephone call; and
- the price of the goods and services were over \$100 or the price was not ascertainable when the agreement was made.⁵⁰

Put simply, unsolicited consumer agreements are made between individuals and uninvited door-to-door salespeople or through cold call telemarketing. They also include circumstances where a person is approached by a trader at an unusual location or public place, away from the trader's place of business. This could include a supermarket or a car park. However, as discussed in this report will also use the term 'unsolicited sales' or 'unsolicited selling' to refer to unsolicited consumer agreements of the kind defined by the ACL.

Assuming the type of sale meets the legal definition of an 'unsolicited consumer agreement,' the ACL places a number of obligations on the seller when negotiating the agreement. They include that an unsolicited seller:

- must not call on a person on a Sunday, a public holiday or before 9am or after 6pm on any other day;⁵¹
- as soon as possible and before starting to negotiate a sale, must clearly tell a person of their purpose and identify themselves;⁵²
- must leave a property immediately upon request;⁵³

⁴⁶ Australian Competition and Consumer Commission, *Consumer Guarantees: A Guide for Consumers* (2013), 13 <https://www.accc.gov.au/system/files/Consumer%20Guarantees%20A%20guide%20for%20consumers_0.pdf>.

⁴⁷ *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss 7-8, 184; ACL ss 259, 267, 271.

⁴⁸ Consumer Action Law Centre, Loddon Campaspe Community Legal Centre and Westjustice, *Knock it off!* (November 2017) <<https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/Knock-it-off-Consumer-Action-Law-Centre-November-2017.pdf>>; Consumer Action Law Centre, *Power Transformed* (July 2016) <<https://consumeraction.org.au/wp-content/uploads/2016/07/Power-Transformed-Consumer-Action-Law-Centre-July-2016.pdf>>.

⁴⁹ ACL s 69(1).

⁵⁰ The agreement must also: occur in trade or commerce; be an agreement for the supply of goods or services to a consumer; and be made as a result of negotiations between a dealer and a consumer: ACL s69(1).

⁵¹ ACL s 73.

⁵² ACL s 74.

⁵³ ACL s 75

- must tell people about their right to terminate the agreement;
- must tell people how they can terminate;⁵⁴ and
- written information must also be given about a person's termination rights in a form prescribed by the law.⁵⁵
- the agreement must contain a form that can be used by a person to terminate the agreement.⁶²

Once the agreement is made, the ACL provides people with a right to terminate the agreement within a certain time. This is often referred to as the cooling off period.

In relation to the contract document, the ACL also requires that:

- the seller must give the person a copy of the agreement immediately, or, if the agreement was negotiated over the phone, within 5 business days;⁵⁶
- the agreement document must clearly set out the seller's name and business details,⁵⁷ must be clear and transparent,⁵⁸ and must contain all of the terms including the total price to be paid to the consumer or how the total price is to be calculated;⁵⁹
- the front page of the agreement must have a clear, obvious and prominent notice informing the person of their right to terminate⁶⁰ and must be signed by the consumer,⁶¹ and

The termination period or the 'cooling off period' is generally 10 days from the date a person receives a copy of the agreement.⁶³ However, if the ACL provisions relating to unsolicited consumer agreements are breached by the seller, the termination period increases to 3 or 6 months, depending on the type of breach.⁶⁴

A person is permitted to terminate the agreement within the cooling off period⁶⁵ and any related contract or instrument is void.⁶⁶ This means the supplier must promptly return any money paid under the agreement and must notify any related credit provider.⁶⁷ That being said, the law around a person's termination rights against a third party finance provider are complex and hard to understand.⁶⁸

The objectives of these unsolicited consumer agreements provisions are to provide additional consumer protection in situations where people might experience additional vulnerability or disadvantage due to the nature of the sales process.⁶⁹

The additional protections recognise that the risk of high pressure sales are greatest in situations of unsolicited selling because people do not expect to be approached by a trader, they do not have the option of walking away or it may be unclear that they are entering into a contract (as can occur over the phone).⁷⁰ The psychological underpinnings contained

⁵⁴ ACL s 76.

⁵⁵ See: ACL s 77(b)-(d); *Competition and Consumer Regulations 2010* (Cth), reg 84.

⁵⁶ ACL s 78.

⁵⁷ ACL s 79(d).

⁵⁸ ACL s 79(e) and (f).

⁵⁹ ACL s 79(a).

⁶⁰ ACL s 79(b); *Competition and Consumer Regulations 2010* (Cth), reg 85.

⁶¹ ACL ss 79(b)(iii); *Competition and Consumer Regulations 2010*, reg 86.

⁶² ACL s 79(c)(i).

⁶³ ACL s 82(3).

⁶⁴ ACL ss 82(c)-(d).

⁶⁵ ACL s 82(1).

⁶⁶ ACL s 83(1).

⁶⁷ Australian Competition & Consumer Commission, *Telemarketing & door-to-door sales* <<https://www.accc.gov.au/consumers/sales-delivery/telemarketing-door-to-door-sales#your-consumer-rights>>.

⁶⁸ If the finance is credit regulated by the NCC and the provider is a 'linked credit provider' (as defined by the NCC), s 135 provides purchasers with an entitlement to terminate a tied loan or tied continuing credit contract. If the finance is not regulated credit, s 83 of the ACL states that any related contract is void. Whether finance is regulated by the NCC is a complex question based on a series of legal definitions related to the concept of 'credit'.

⁶⁹ Explanatory Memorandum, Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010 (Cth), 465-466 <https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4335_ems_8a3cd823-3c1b-4892-b9e7-081670404057/upload_pdf/340609.pdf;fileType=application%2Fpdf>.

⁷⁰ Ibid.

within the in home sale context and the emotional manipulations employed by some in-home sellers may also negatively impact upon a person's decision making abilities.⁷¹ These issues were explored in a joint research project conducted by Deakin University and Consumer Action in 2010.⁷² Unsolicited selling also occurs where information asymmetry in favour of the seller is more likely.⁷³

Unlike in other retail settings, people confronted with unsolicited selling are unlikely to have engaged in product comparisons, sampled the product⁷⁴ or have had the benefit of shopping around to place downward pressure on prices that the open market place can sometimes offer. It has also been found that the following factors are more likely to be present in cases of unsolicited sales than in other retail settings:⁷⁵

- retailers use moral pressure to try to create an obligation of reciprocity by, for example, providing free gifts;
- the goods are unique, making comparisons more difficult;
- the goods are complex or unfamiliar and so people find it difficult to rely on their own judgement;
- the relationship between the retailer and the people they target is not ongoing because the product is a one-off purchase;
- the consumer is in a situation in which they are vulnerable or disadvantaged.

These factors also increase the risk of unsuitable or high pressure sales and therefore the risk of harm.

In the explanatory memorandum to the ACL, it was also acknowledged that unsolicited selling practices can cause inconvenience and can be perceived as threatening.⁷⁶

Misleading and deceptive sales

The ACL provides both a general protection against misleading or deceptive conduct⁷⁷ and specific protections against unfair practices including misleading claims about goods or services.⁷⁸

The general protection prohibits misleading or deceptive representations by traders along with representations that are likely to mislead or deceive.⁷⁹ The specific protections in the ACL prohibit businesses from engaging in a range of misleading representations, distinctly articulated in the ACL, about goods or services. They include that a business must not:⁸⁰

- make false or misleading representations that goods or services are of a particular standard, quality, value or grade;⁸¹
- make false or misleading representations that goods or services have approval, performance characteristics, uses or benefits;⁸² and
- make false or misleading representations concerning the existence, exclusion or effect of any condition, warranty, guarantee, right or remedy.⁸³

71 Paul Harrison et al, 'Shutting the Gates: an analysis of the psychology of in-home sales of educational software' (Research Discussion Paper, Deakin University and Consumer Action Law Centre, March 2010) <<https://consumeraction.org.au/wp-content/uploads/2012/04/Shutting-the-Gates.pdf>>.

72 Ibid.

73 Explanatory Memorandum, Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010 (Cth), 465 <https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4335_ems_8a3cd823-3c1b-4892-b9e7-081670404057/upload_pdf/340609.pdf;fileType=application%2Fpdf>.

74 Ibid 466.

75 Consumer Affairs Victoria, *Cooling-off periods in Victoria: their use, nature, cost and implications* (15 January 2009) <<https://www.consumer.vic.gov.au/library/publications/resources-and-education/research/cooling-off-periods-in-victoria-their-use-nature-cost-and-implications-2009.pdf>>; Also see, Explanatory Memorandum, Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010 (Cth), 465 <https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4335_ems_8a3cd823-3c1b-4892-b9e7-081670404057/upload_pdf/340609.pdf;fileType=application%2Fpdf>.

76 Explanatory Memorandum, Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010 (Cth), 467 <https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4335_ems_8a3cd823-3c1b-4892-b9e7-081670404057/upload_pdf/340609.pdf;fileType=application%2Fpdf>.

77 ACL ss 18-19.

78 ACL pt 3.1 div 1.

79 ACL s 18; Also see, Australian Competition & Consumer Commission, *Tertiary education program: What is misleading or deceptive conduct?* <<https://www.accc.gov.au/about-us/tools-resources/cca-education-programs/tertiary-education-program/false-or-misleading-advertising-practices/what-is-misleading-or-deceptive-conduct>>

80 ACL s 29.

81 ACL ss 29(1)(a)-(b).

82 ACL s 29(1)(g).

83 ACL s 29(1)(m).

If the general protection provision is breached, a person can seek monetary⁸⁴ or non-monetary compensation orders⁸⁵ for any loss and damage caused by the breach. Should a dispute arise about a person's entitlement to one of these remedies, that person can enforce their ACL rights by taking the supplier of the goods or services to court or to VCAT.⁸⁶

Unconscionable conduct

The ACL prohibits unconscionable conduct in trade or commerce in relation to the supply or possible supply of goods and services.⁸⁷ The ACL does not define what is meant by the term unconscionable conduct but it is generally understood to mean conduct that is so harsh that it goes against good conscience.⁸⁸ It is also conduct that is more than simply unfair.⁸⁹

The ACL sets out a number of factors that may be considered by a court when deciding whether conduct is unconscionable or not. They include:

- the bargaining positions of the supplier and consumer;
- whether the customer was able to understand any contract documents;
- whether undue influence, pressure or unfair tactics were used;
- the amount, and circumstances under which, a person could have acquired similar goods or services;
- any industry code; and
- the terms of the contract.⁹⁰

People who have fallen victim to unconscionable conduct can seek monetary⁹¹ or non-monetary compensation⁹² for any loss and damage caused by the breach and, should the need arise, can enforce their rights at VCAT.⁹³

Unfair contract terms

The ACL protects consumers from unfair contract terms but only those that are not the main subject matter of the contract⁹⁴ and those that are contained in standard form contracts.⁹⁵ The ACL gives the word 'unfair' a particular legal definition. In relation to consumer contracts for the supply of goods or services, unfair terms are ones that:⁹⁶

- cause significant imbalance between the consumer and the supplier;
- are not reasonably necessary to protect the interests of the supplier; and
- cause a detriment to the consumer.

If there is a dispute about whether the supplier has breached the unfair contract provisions of the ACL, a consumer can apply to a court to have the term declared unfair⁹⁷ and can seek compensation orders for any loss and damage caused by the unfair term.⁹⁸ The consumer would generally be able to take their dispute to court or VCAT.

⁸⁴ ACL s 236. This report uses the term monetary compensation broadly but, note, the ACL refers to 'actions for damages' (s 236) and 'compensation orders etc. for injured persons' (s 237).

⁸⁵ ACL s 237. Non-monetary orders might include voiding a contract or voiding some but not all of a contract's terms.

⁸⁶ ACL ss 236–237, 2 (definition of 'court'); *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss 7–8, 184.

⁸⁷ ACL, s 20.

⁸⁸ Australian Competition & Consumer Commission, *Unconscionable conduct* <<https://www.accc.gov.au/business/anti-competitive-behaviour/unconscionable-conduct>>.

⁸⁹ Australian Competition & Consumer Commission, *Unconscionable conduct* <<https://www.accc.gov.au/business/anti-competitive-behaviour/unconscionable-conduct>>.

⁹⁰ ACL s 22(1).

⁹¹ ACL s 236.

⁹² ACL s 237. Non-monetary orders might include voiding a contract or some of its terms.

⁹³ ACL, ss 236–237, 2 (definition of 'court'); *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss 7–8, 184.

⁹⁴ ACL s 26.

⁹⁵ See, ACL s 23(1). Standard form contracts are contracts that are not negotiated and can include standard terms and conditions

⁹⁶ ACL s 24. Also see ACL s 23(3) (meaning of 'consumer contract').

⁹⁷ ACL s 250.

⁹⁸ ACL ss 237, 243.

Linked credit contracts

As indicated above, the ACL generally does not apply to financial goods and services. There is one exception to this. The ACL makes some credit providers equally responsible for certain breaches of the ACL by a supplier but only where they are a 'linked credit provider.' These provisions are technical, confusing and difficult to navigate. In brief, however, the ACL considers a credit provider and a supplier of goods or services to be 'linked' where they have a business arrangement related to the supply of goods or services⁹⁹ or where the supplier regularly refers their customers for obtaining finance.¹⁰⁰ The ACL says a linked credit contract includes when a person enters into a credit contract for the purpose of buying goods or services from a linked supplier.¹⁰¹

These provisions will cover situations where, for example, a solar panel retailer has an arrangement with a finance provider under which the retailer regularly arranges finance to enable their customers to buy their solar panels. If this situation exists and the supplier breaches one of a specific list of laws, the linked finance provider will be equally responsible for the supplier's breach.

While the effect of these provisions, as described here, may be easy enough to digest, the laws themselves are difficult for the average person to navigate.

A person trying to navigate their way around these laws will face further difficulty in knowing where to take a dispute with a linked credit provider should the need arise. This is because ordinarily VCAT will not hear disputes about financial products, services or credit.¹⁰²

It could be argued, however, that VCAT should hear cases against linked credit providers. The argument would go that because linked credit provisions exist under the ACL and jurisdiction has been conferred on VCAT by Victorian legislation¹⁰³ to hear ACL disputes, then VCAT should be able to hear claims against linked credit providers.

However, this is a fairly nuanced legal argument and one that may very well be lost on the VCAT staff administering complaints.

If VCAT is not available to people with disputes against credit providers, the only dispute resolution option available to them may be the courts.¹⁰⁴

4.3 The Australian Securities and Investments Commission Act 2001 (Cth)

For the most part, the *Australian Securities and Investments Commission Act 2001 (Cth) (ASIC Act)* provides very similar consumer protections as the ACL. However, unlike the ACL, the consumer protections under the ASIC Act apply to financial products and services.¹⁰⁵ The ASIC Act will therefore only become relevant to the sale of rooftop solar panels when people enter into arrangements to finance the purchase of the panels.

Except for a few deviations, the protections under the ASIC Act largely mirror those of the ACL. In fact, the language relating to unfair contract terms,¹⁰⁶ unconscionable conduct,¹⁰⁷ misleading or deceptive conduct¹⁰⁸ and the specific protections against certain

⁹⁹ ACL s 2(a)(iii).

¹⁰⁰ ACL s 2(b). Note, this is not an exhaustive list of circumstances or contracts which the law considers to be linked credit contracts.

¹⁰¹ ACL s 278(2).

¹⁰² Section 187 of the National Consumer Credit Protection Act 2009 (Cth) omits VCAT from its exhaustive list of courts that can hear a civil dispute under that Act. In contrast, the ASIC Act does contain a provision providing a list of courts or tribunals provision that can hear a claim under the ASIC Act. However, it is nevertheless generally accepted that VCAT does not have jurisdiction to hear claims under the ASIC Act because jurisdiction has not been expressly conferred on VCAT to do so by a Victorian Act of Parliament. Also see: *Victorian Civil and Administrative Tribunal Act 1998* (Vic) ss 40-43, 3 (definition of "enabling enactment" and "enactment"); *Acts Interpretation Act 1984* (Vic) s 38; *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss 184(1), 8; ACL s 2 (definitions of "consumer", "goods" and "services"); CCA ss 131, 131A.

¹⁰³ *Australian Consumer Law and Fair Trading Act 2012* (Vic), ss 8, 182. Also, the ACL does not define the word 'credit' either by reference to the NCCPA or at all. So, the distinction between regulated and unregulated credit does not appear to have any implications in this situation.

¹⁰⁴ A person may be able to take their complaint to the Australian Financial Complaints Authority (AFCA). This depends on whether the credit provider is regulated or is a member of AFCA. Consumer Action has observed that many credit providers involved in the finance of rooftop solar panels are not regulated.

¹⁰⁵ See wording of ASIC Act ss 12BF, 12CA, 12CB, 12DA, 12DB. Also see: ASIC Act ss 12BAB (definition of "financial service."), 12BAB(1)(a)-(c), 12BAB(1AA), 12BAA (definition of "financial product").

¹⁰⁶ ASIC Act ss 12BF-12BM.

¹⁰⁷ ASIC Act ss 12CA-12CC.

¹⁰⁸ ASIC Act ss 12DA.

false or misleading claims¹⁰⁹ is almost identical under both laws. The ASIC Act warranty provisions are also fairly similar, in effect, to the ACL guarantee provisions.¹¹⁰

From a consumer's perspective, the major difference between the ASIC Act and ACL consumer protection regimes relates to the forums available for dispute resolution. It is generally accepted that VCAT does not have jurisdiction to hear disputes about financial services or products.¹¹¹ If the financial product or service is not regulated by the NCC or NCCPA, the only avenue for redress are the courts. Running a case through court is an expensive, risky, technically challenging and stressful process.

The ASIC Act also does not have comparable unsolicited consumer agreement provisions. However, businesses that solicit 'credit' (as defined in the national credit laws) in door-to-door sale situations are required to hold a licence and comply with the national credit laws.¹¹² These laws are discussed immediately below. This may have the effect that people selling non-financial goods or services, such as solar panels, are unlikely to offer regulated credit because, if they did, it would mean that they (the solar panel retailer) would be legally required to hold a credit licence.

4.4 The National Consumer Credit Protection Act 2009 (Cth) (NCCPA) and the National Credit Code (NCC)

The NCCPA creates a mandatory licensing regime for businesses engaging in 'credit activities'¹¹³ and imposes obligations on these licensees. It also contains the NCC. Both the NCCPA and the NCC provide important provisions to protect people from harmful lending practices. The NCCPA and NCC will not be relevant to all cases involving rooftop solar panels. It will only be triggered in some cases involving the use of particular kinds of finance arrangements to purchase the panels.

Importantly, the NCCPA requires that all licensed credit providers lend responsibly, and ensure that credit contracts are 'not unsuitable' before entered into with the consumer.¹¹⁴ Generally, the responsible lending obligations placed on licensees require that licensees, in determining suitability, make inquiries about and take steps to verify:

- a person's requirements and objectives in obtaining the credit; and
- whether the person can afford the credit without suffering financial hardship.¹¹⁵

The NCCPA states that licensed credit providers must be a member of the Australian Financial Complaints Authority (AFCA).¹¹⁶ AFCA is the external dispute resolution service that recently replaced the Financial Ombudsman Service and the Credit and Investments Ombudsman. AFCA is not a government agency or a regulator. AFCA's dispute resolution service is free for consumers and aims to operate in a way that is accessible, independent, fair, accountable and

¹⁰⁹ ASIC Act s 12DB.

¹¹⁰ Rather than provide a guarantee in relation to the provision of financial services, the ASIC Act's warranty provisions have the effect of creating implied contract terms in contracts for financial services that the services will be rendered with due care and skill and any materials supplied in connection with the services will be reasonably fit for the purpose for which they are supplied: ASIC Act s 12ED.

¹¹¹ Due to the combined interpretation of the following legislative provisions (or omissions): *Victorian Civil and Administrative Tribunal Act 1998* (Vic) ss 40-43, 3 (definition of "enabling enactment" and "enactment"); *Acts Interpretation Act 1984* (Vic) s 38; jurisdiction has not been expressly conferred by an Act of the Victorian Parliament for VCAT to hear a claim under Part 2 of the ASIC Act; *Australian Consumer Law and Fair Trading Act 2012* (Vic) ss 184(1), 8; ACL, s 2 (definitions of "consumer", "goods" and "services"); CCA, ss 131, 131A (financial services excluded from the majority of the ACL).

¹¹² NCCPA s 29; *National Consumer Credit Protection Regulations 2010* (Cth), r 23(4).

¹¹³ See generally, NCCPA ch 2.

¹¹⁴ See generally, NCCPA ch 3.

¹¹⁵ See generally, NCCPA ch 3.

¹¹⁶ NCCPA s 47(i).

efficient. This is an extremely important aspect of the NCCPA from a consumer perspective because a person can utilise AFCA's dispute resolution to enforce their NCC or NCCPA rights instead of going to court.

The NCCPA contains the NCC. The NCC also provides a number of important consumer protections including:

- the required form of a credit contract;¹¹⁷
- disclosure obligations;¹¹⁸
- restrictions on fees, charges and interest for certain credit contracts; and¹¹⁹
- the regulation of financial hardship arrangements.¹²⁰

However, the NCCPA and the NCC do not apply to all credit arrangements. Through a series of interconnected and extremely wordy legislative definitions, the consumer protections afforded by both the NCCPA and NCC are triggered only where the following four elements are met:¹²¹

- a. *the debtor is a natural person or a strata corporation; and*
- b. *the credit is provided or intended to be provided wholly or predominantly:*
 - (i) *for personal, domestic or household purposes; or*
 - (ii) *to purchase, renovate or improve residential property for investment purposes; or*
 - (iii) *to refinance credit that has been provided wholly or predominantly to purchase, renovate or improve residential property for investment purposes; and*
- c. *a charge is or may be made for providing the credit; and*

- d. *the credit provider provides the credit in the course of a business of providing credit ... or incidentally to any other business of the credit provider ...*

Even if the above elements are met, the NCC contains a number of exemptions, excluding some kinds of credit from the operation of the NCCPA and NCC. One such exemption is for 'continuing credit contracts' under which the only charge made under the contract is fixed and not interest based.¹²²

Several businesses that we have seen working with rooftop solar retailers have argued that they do not engage in the type of credit activity or provide the type of credit regulated by the NCCPA and NCC. Usually there are two purported bases for this argument.¹²³ The first is that they say they do not make a charge for providing credit and therefore do not meet element (c) listed above. The second is that they fall within the continuing credit exemption in that the only fee they charge is one that is fixed and does not fluctuate based on the amount of credit under a contract. That is, 'interest free' loans. However, under these loans fixed fees can be applied such as establishment, administration, monthly and late fees.

Where finance arrangements do not meet this nuanced legal definition of credit, individuals miss out on basic yet important protections that the NCC and the NCCPA offer. Because it's a finance arrangement, the ACL does not apply (except where the linked credit provisions are met) and so individuals are only left with the ASIC Act for protection. This means that the ACL and VCAT are not available for dispute resolution. The only option available for consumers wishing to enforce the limited legal rights that they do have, is to go to court. Court is a risky, stressful and costly option.

¹¹⁷ See generally, NCC pt 2 divs 1, 5.

¹¹⁸ See generally, NCC pt 2 divs 1, 5.

¹¹⁹ See generally, NCC pt 2 divs 3, 4.

¹²⁰ See generally, NCC pt 4 div 3, pt 5 div 2.

¹²¹ NCC s 5(1).

¹²² NCC s 6(5).

¹²³ ASIC, Report 600: Review of buy now pay later arrangements (November 2018), 7 <<https://download.asic.gov.au/media/4957540/rep600-published-07-dec-2018.pdf>>.

4.5 Other – Contract law, voluntary warranties and corporations law

People buying solar panels may also have rights against solar panel retailers under the contract law if the terms of the contract are breached. Contract law may prove particularly useful where a solar retailer offers a warranty assuring the quality and durability of a solar product, in addition to the guarantees offered in the ACL.¹²⁴

The remedies available for a breach of contract may be one of the following depending on the nature of the breach: damages; specific performance (an order from a court compelling the other party to perform the contract); or termination.¹²⁵ Individuals wishing to enforce their contract law rights against solar panel retailers can make a claim in VCAT or a court.¹²⁶

Certain parts of the corporations law have become relevant to Consumer Action's rooftop solar casework, for example, when our clients have disputes against solar panel retail businesses that have closed down or are in the process of closing down.

The corporation law generally affects our clients in these circumstances in two ways. Firstly, a company is a separate legal entity distinct from the people that run it.¹²⁷ This means when people have disputes against companies, their claim is against the company and generally the persons behind the company are immune from legal claims. When the company is gone, there is no existing legal entity which a person can sue.

Secondly, there are strict rules relating to priority of claims against companies that are winding up or in liquidation. The terms 'winding up' and 'liquidation' are used interchangeably to describe the process of collecting the assets of a company, discharging its debts and distributing any remaining assets.¹²⁸ This is a complex area of law but the most salient

aspect of the law from a consumer's perspective is that any remaining assets of an insolvent company are distributed according to a legally defined list of priorities upon which consumers' legal claims would fall towards the bottom. If the company's liabilities outweigh its assets, a consumer is unlikely to get their claim paid out.

Consumer Action is concerned that some solar retail companies and businesses might also be 'phoenixing.' Phoenixing refers to the fraudulent use of the corporations law through the deliberate liquidation of one company in order to start a new company with virtually the same name.¹²⁹ The assets of the old company are then transferred to this new company, thereby avoiding the payment of liabilities,¹³⁰ such as the payment of legal claims or debts. It is difficult to prove illegal phoenixing conduct because ordinarily there is nothing legally improper about a director of a failed company immediately starting up a new company so long as they have acted in accordance with their director's duties to the first company.

Lastly, the *Do Not Call Register Act 2006* (Cth) regulates telemarketing but not the formation of sales contracts by telephone. The Do Not Call Register is a database where individuals can list their phone numbers to avoid receiving unsolicited telemarketing calls. The Australian Communications and Media Authority (ACMA) is responsible for the register under the Act.

¹²⁴ ACCC, *Warranties* <<https://www.accc.gov.au/consumers/consumer-rights-guarantees/warranties>>

¹²⁵ Evelyn Tadros, Fitzroy Legal Service Inc., *Breach of Contract* (30 June 2017) The Law Handbook <https://www.lawhandbook.org.au/2018_07_01_05_breach_of_contract>.

¹²⁶ *Australian Consumer Law and Fair Trading Act 2012* (Vic) s 184.

¹²⁷ Thomson Reuters, *The laws of Australia* (at 25 November 2013) 4 Business Organisations, '1 Introduction' [4.1.240].

¹²⁸ Thomson Reuters, *The laws of Australia* (at 25 November 2013) 4 Business Organisations, '7 Company Winding Up' [4.7.10].

¹²⁹ LexisNexis Australia, *Encyclopaedic Australian Legal Dictionary* (accessed 15 February 2018) 'phoenix trading'.

¹³⁰ LexisNexis Australia, *Encyclopaedic Australian Legal Dictionary* (accessed 15 February 2018) 'phoenix trading'.

4.6 Self-Regulation: The Clean Energy Council (CEC), the Smart Energy Council (SEC) and their codes of conduct

The Clean Energy Council (CEC)

The CEC is a peak body representing the renewable energy industry in Australia.¹³¹ They are a member-based organisation that works with renewable energy, storage and installer businesses.¹³²

The CEC runs a number of activities to support improvements to the renewable energy industry. The CEC:

- **maintains a voluntary Solar Retailer Code of Conduct;**
- **administers an accreditation scheme for installers and designers of stand-alone or grid connected solar PV systems; and**
- **maintains a publicly available list of accredited installers¹³³ and products that meet Australian Standards for design and implementation of solar panels.¹³⁴**

The CEC's accreditation scheme focuses on developing technical competence in design and installation of solar systems. It requires participants to complete specific training courses and comply with several codes, guidelines, standards and regulations related to the technical side of installation and design. CEC accreditation is required to access the financial incentives under the Victorian Government

rebate program, 'Solar Homes Package',¹³⁵ and the Commonwealth Government's Small-Scale Renewable Energy Scheme.¹³⁶

The CEC Solar Retailer Code of Conduct (**the CEC Code**) is a voluntary code for retail businesses selling solar systems which has been authorised by the ACCC. It aims to promote best practice in retail sales and marketing activities¹³⁷ by setting standards for pre-sale activities, post-sale activities, documentation and general business (including complaint handling). While there are some government incentives that require recipients of the incentive to be signatories to the CEC code,¹³⁸ at the date of writing, the Victorian Solar Homes Package and the federal Commonwealth Government's Small-Scale Technology Certificate scheme do not have such a requirement. This is due to change in the case of the Victorian Solar Homes Package. On 22 March 2019, the Victorian Government announced that, from 1 July 2019, the major solar retailers participating in the Solar Homes program will have to sign up to the CEC Code of Conduct.¹³⁹ All other retailers will have to be signed up by 1 November 2019.¹⁴⁰

The CEC Code focuses on the retail side of solar and therefore occupies a space distinct from CEC accreditation. The CEC Code reiterates the legal obligations of its signatories but also requires that its signatories comply with certain standards that are not otherwise legally articulated. In reiterating the existing legal requirements, the CEC Code provides an inclusive list of regulation with which signatories must comply and re-states some of the key ACL protections including those relating to misleading and deceptive conduct¹⁴¹ and unsolicited consumer agreements.¹⁴²

¹³¹ For transparency, we note that Consumer Action CEO, Gerard Brody, is the chair of the Clean Energy Council's PV retail code of conduct review panel.

¹³² Clean Energy Council, *About* <<https://www.cleanenergycouncil.org.au/about>>.

¹³³ Clean Energy Council, *About* <<https://www.cleanenergycouncil.org.au/about>>.

¹³⁴ Clean Energy Council, *Products* <<https://www.solaraccreditation.com.au/products.html>>.

¹³⁵ Solar Victoria, Victoria State Government, *Solar Panel (PV) Rebate* <<https://www.solar.vic.gov.au/Solar-rebates/Solar-Panel-Rebate>>.

¹³⁶ Clean Energy Council, *Solar Retailer Code of Conduct* (October 2015), 4 <<http://www.solaraccreditation.com.au/dam/solar-accred/retailers/code-of-conduct/Solar-PV-Retailer-Code-of-Conduct/Solar-Retailer-Code-of-Conduct-Sept-2015.pdf>>.

¹³⁷ *Ibid.*

¹³⁸ See: Clean Energy Council, *Tender opportunities for Approved Solar Retailers* <<http://www.solaraccreditation.com.au/retailers/tenders.html>>.

¹³⁹ Minister for Solar Homes, Victoria State Government, *Cutting Power Bills with Solar Panels for 650,000 Homes* (22 March 2019) <<https://www.premier.vic.gov.au/solar-retailer-code-of-conduct-to-lift-standards/>>.

¹⁴⁰ *Ibid.*

¹⁴¹ Clean Energy Council, *Solar Retailer Code of Conduct* (October 2015), cl 2.1.1 <<http://www.solaraccreditation.com.au/dam/solar-accred/retailers/code-of-conduct/Solar-PV-Retailer-Code-of-Conduct/Solar-Retailer-Code-of-Conduct-Sept-2015.pdf>>.

¹⁴² *Ibid* cls 2.1.1, 2.1.2(b).

Many parts of the CEC Code are otherwise not expressly articulated in the law. For example, it requires signatories to provide a standard minimum warranty period of five years, separate and in addition to the ACL consumer guarantees.¹⁴³ The minimum warranty covers the operation and performance of the whole solar system including its workmanship and products.¹⁴⁴ If the warranty or ACL consumer guarantees are breached, the Code states that the consumer is entitled to a remedy in the form of a repair or replacement, provided within a reasonable time.¹⁴⁵

While the CEC Code provides welcome consumer protections, it has limitations. Common to many voluntary industry codes, the CEC Code does not provide consumers with robust remedies or enforcement mechanisms. The Code Administrator does not offer a dispute resolution service¹⁴⁶ and does not provide support for a comprehensive system of proactive compliance monitoring. That being said, the Code Administrator will investigate reports of code violations by consumers, can apply sanctions¹⁴⁷ and will undertake some proactive monitoring such as audits and signatory visits.

In cases of breach, the most severe sanction available to the Code Administrator is to remove the retailer as a signatory to the Code¹⁴⁸ and publicising their removal on their website.¹⁴⁹ Being removed as a signatory removes the benefits of being a CEC approved retailer. The benefits include being eligible for certain government tenders¹⁵⁰ and the promotion of the retailer on the CEC website as an approved, and therefore implicitly reliable, retailer. However, removal of a retailer as signatory to the Code will only occur upon serious, wilful, systemic or repetitive breaches of the Code.¹⁵¹ Sanctions for less severe

or isolated breaches of the CEC Code include the temporary suspension of Signatories, listing breaches on the CEC website and the provision of a written strategy detailing how the signatory proposes to rectify the breach to the Code Administrator.¹⁵² Breaching the CEC Code does not appear to affect accreditation and therefore, at the date of writing at least, it will not impact the signatory's eligibility to pass on government rebates and financial incentives to its customers. This may change once the proposed changes to the Victorian rebate scheme rolls out from 1 July 2019. However, for existing Code signatories to be denied the benefit of the rebate scheme, they will need to be removed as signatories of the CEC Code by the Code administrator.

Compounding these enforcement issues is the CEC Code's relatively low take up levels across the industry. Although it is gathering momentum, as of 7 January 2019, there were 185 CEC Code Signatories (i.e. Approved Retailers) in Australia, 61 of which operate in Victoria.¹⁵³ To put this in perspective, by the end of 2017 there were nearly 5000 accredited rooftop panel installers around Australia.¹⁵⁴ Information provided to Consumer Action by Clean Energy Council is that while this is only a small proportion of the number of retailers, CEC calculates that, CEC Approved Retailers have installed 28% of rooftop solar by kW volume. So, although the number of signatories is comparatively low, the proportion of the market covered by the CEC Code is significant and growing.

It must be noted that a broader code that will apply to all new energy technologies is currently being developed in response to a request from the Council of Australian Governments (COAG) Energy Council.¹⁵⁵ At the date of writing, this code, the 'New Energy

¹⁴³ Ibid cl 2.2.10.

¹⁴⁴ Ibid cl 2.2.10 (although, arguably, the ACL guarantee as to acceptable quality would operate to require the solar system last at least 5 years).

¹⁴⁵ Ibid cl 2.2.10(b).

¹⁴⁶ Ibid cl 3.1.3.

¹⁴⁷ Ibid cl 3.3.4.

¹⁴⁸ Ibid cls 3.6.4 - 3.6.6.

¹⁴⁹ Ibid cl 3.6.6.

¹⁵⁰ Clean Energy Council, *Why sign the Solar Retailer Code of Conduct?* <<https://www.solaraccreditation.com.au/retailers/why-sign-the-code-of-conduct.html>>.

¹⁵¹ Clean Energy Council, *Solar Retailer Code of Conduct* (October 2015), cl 3.6.4 <<http://www.solaraccreditation.com.au/dam/solar-accred/retailers/code-of-conduct/Solar-PV-Retailer-Code-of-Conduct/Solar-Retailer-Code-of-Conduct-Sept-2015.pdf>>.

¹⁵² Ibid cl 3.6.1.

¹⁵³ Clean Energy Council, *Approved Solar Retailers* (accessed on 07 January 2019) <<http://www.solaraccreditation.com.au/retailers/approved-solar-retailers.html>>.

¹⁵⁴ Cole Latimer, 'Unavoidable: Rooftop solar panel installer True Value Solar to close', *The Sydney Morning Herald* (online), 23 November 2018 <<https://www.smh.com.au/business/consumer-affairs/unavoidable-rooftop-solar-panel-installer-true-value-solar-to-close-20181123-p50hvh.html>>.

¹⁵⁵ The COAG Energy Council is a Ministerial forum for the Commonwealth, states and territories and New Zealand, to work together in the pursuit of national energy reforms.

Tech: Consumer Code' (**NET Code**) (previously known as the Behind the Meter Code) was in draft and at the end of the stakeholder consultation phase. We do not expect the CEC Code's current provisions to be wound back by the NET code. If anything, the review process should create scope for more robust protections. Where any proposed changes become relevant to the issues discussed in this report, they will be identified. Otherwise, this report will discuss the CEC Code in its current form.

Smart Energy Council Solar Energy Storage & Related Services Providers Code of Conduct

The Smart Energy Council is an industry-membership based, peak body for the solar, storage and smart energy market in Australia.¹⁵⁶ They have created a voluntary industry code, the Solar Energy Storage & Related Services Providers Code of Conduct (**the SEC Code**), for self-regulation of solar PV, energy storage and related services to Australian households.¹⁵⁷ The Code is not authorised by the ACCC. While the Code provides some useful guidance about best practice and how the ACL may apply to the retail solar industry, it does not deal with some of the areas of consumer concern, such as unlicensed finance, unsuitable finance and unsolicited consumer agreements. Like the CEC Code, the most severe sanction that can be issued for breach of the SEC Code is the to revoke approval under the Code.¹⁵⁸ Furthermore, there are also wide 'defences' to breach allegations,¹⁵⁹ which may render it even less effective for individuals.

¹⁵⁶ Smart Energy Council, *Our Story* <<https://www.smartenergy.org.au/our-story>>.

¹⁵⁷ Smart Energy Council, *Solar Energy Storage & Related Services Providers Code of Conduct DRAFT* <<https://www.smartenergy.org.au/resources/solar-energy-storage-related-services-providers-code-conduct-draft>>.

¹⁵⁸ Smart Energy Council, *Solar Energy Storage & Related Services Providers Code of Conduct*, 9 <https://www.smartenergy.org.au/sites/default/files/uploaded-content/field_f_content_file/sesrs_consultation_draft.pdf>.

¹⁵⁹ Smart Energy Council, *Solar Energy Storage & Related Services Providers Code of Conduct*, 9-10 <https://www.smartenergy.org.au/sites/default/files/uploaded-content/field_f_content_file/sesrs_consultation_draft.pdf>.



05

ISSUES DISCUSSED

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5.1 Overview

In the section that follows, we discuss the issues we have identified through Consumer Action's legal and financial counselling casework. In relation to each issue, we provide at least one de-identified case study. All case studies have been drawn from our casework, except for case study 2. Case study 2 has been reported to us by the person affected, however, the person affected is not a client of Consumer Action. These case studies represent a very small, indicative sample of the issues identified in this report. Our case studies provide a strong indicator of the experiences of people in the Victorian community, particularly those people experiencing vulnerability. It is also safe to assume that there is a high degree of harm being caused to people in the community that do not have the assistance of a community legal centre (CLC) such as

Consumer Action. Unfortunately, the most vulnerable people in the community are often the least likely to seek assistance.

It is clear from the case studies in this report that there are a number of issues related to the sale, installation and operation of rooftop solar panels causing significant harm to individuals and households. We will analyse the causes behind these issues and propose possible solutions to address them.

5.2 Failure to Install and/or Connect to the Grid Properly

Consumer Action has seen many cases where the solar installation process has been mismanaged, resulting in poor consumer outcomes. Case Study 1 on the next page provides one example.

CASE STUDY 1: "SUSAN"

- **Illustrative of the following issues:**
- **Failure to connect to the grid properly**
- **Unlicensed and unaffordable finance**
- **Poor business practices in the negotiation of unsolicited consumer agreements**

Susan is a disabled elderly pensioner in her early 70's living alone in regional Victoria. Susan struggles financially and has very little in the way of savings. Susan has a number of health issues.

In June 2018, Susan received an unsolicited visit from a door knocker selling solar panels on behalf of a solar retailer. Susan is generally wary of unsolicited salespeople, but on this occasion allowed the salesperson into her home where he successfully sold her a solar panel package.

Susan pressed a number of times for confirmation of the total cost, but the salesperson was evasive, simply stating that 'you won't regret it'. In the end, Susan signed the contract still not knowing what the total cost would be, how the solar system would work or how she was going to pay for it. While the total cost of the solar system was hand written on the contract, Susan was unable to read the carbon copy of the contract she signed. This is because the cost and other details were hand written in faint ink on pink paper and Susan's eyesight is poor.

The salesperson did not tell Susan of her cooling off rights. While the cooling off rights were stated in writing on the contract, they were not in a prominent position and were in small print.

Susan did not appreciate that the forms the salesperson asked her to sign also included an agreement with a Finance Provider.

The Finance Provider was not licensed under the NCC and NCCPA and is one of the finance providers that have claimed and continue to claim that they are not required to have a licence because they do not provide regulated credit.

Neither the Finance Provider nor the solar panel retailer properly assessed whether Susan could afford the finance contract.

Susan also did not understand that in order to obtain the benefits of the solar panels, a "Solar Feed in Tariff Application Form" needed to be sent to the energy retailer, a different company from the solar panel retailer. The solar panel retailer expected Susan to complete and send this form to the energy retailer. However, Susan did not understand the transaction, the difference between the energy retailer and the solar retailer or that she was expected to complete and send the documents required for the panels to operate as promised.

Shortly after Susan received a letter from the Finance Provider advising that she was required to make payments of \$69.95 per fortnight (and a monthly account keeping

fee) commencing in 2 weeks' time. The letter did not state the total cost of the panels but did state the total number of direct debit payments required to pay off the solar panels. It was not until after Susan made the first payment that she received a statement from the Finance Provider advising that the total balance owing was in excess of \$7,000.

Susan cannot afford the payments. Susan's bank account went into default when the first direct debit was made, causing her to incur an overdrawn account fee. After the second payment was debited from her account, Susan was left with little funds for everyday living expenses. Susan immediately contacted her bank to cancel any future direct debits to the Finance Provider.

Soon afterwards, Susan received a letter from the Finance Provider stating that they had sent her account to their collections department.

Susan then received numerous calls from the Finance Provider's collections department, demanding payments. This caused Susan great distress.

Consumer Action is currently representing Susan in her matter.

CASE STUDY 2: "TUI"

Illustrative of the following issues:

- **Failure to connect to the grid properly**
- **Business closures**
- **Lack of affordable dispute resolution**

Tui* works full time and is currently saving for her retirement.

In 2015, Tui purchased a solar system through a scheme involving her local city council. Because it was a not-for-profit scheme run in connection with her local council and because the scheme had gone through a procurement process, Tui believed the solar retailer and solar installer would be reputable and reliable. The solar retailer also happened to be a member of the CEC Solar Retailer Code of Conduct.

Recently, one of Tui's relatives noticed that her electricity bills were not being offset by a feed-in-tariff and subsequently found out that she had never been receiving a feed-in-tariff.

Tui tried to call her council to find out how to fix the problem but no one ever got back to her. Tui's relative helped her follow up and the council's scheme eventually replied with information that Tui needed to progress her enquiries.

Tui called her energy retailer who told Tui that they had not received the necessary paperwork when her solar system was installed more than three years ago. To fix this problem, the energy retailer told Tui that she needed to arrange an electrician to attend to inspect the solar system for the electrician to issue:

- an electrical works request form;
- an embedded generation form; and
- a safety certificate.

Tui tried to call the solar retailer but she could not get through to them.

Tui then called the council scheme who told Tui that her solar retailer was in the process of exiting the Australian market. She was told to keep trying to contact the solar retailer, who was operating on a skeleton staff.

When Tui finally got onto someone from the solar retailer, they advised her that they (the solar retailer) had sent all the necessary paperwork to her energy retailer back in 2015 and that it was the energy retailer's fault for not paying her the feed-in-tariff.

Tui does not know where the responsibility truly lies and her enquiries are still ongoing, with no resolution at this stage.

If the solar retailer had submitted all the necessary paperwork, then Tui might be able to make a complaint to EWOV against her electricity retailer. At EWOV, Tui could try to get compensated for the money she should have been getting for the feed-in-tariff.

However, if, in fact, the solar retailer never submitted the paperwork then Tui will not be able to go to EWOV. This is because under the retail electricity laws, electricity retailers must be licensed and must be members of EWOV but solar retailers are not so required.

Even if the solar retailer is to blame for failing to submit all the paperwork, it is unlikely that Tui will get compensated for the lost feed-in-tariff in any case. There are several reasons for this. Firstly, the solar retailer is exiting the market and their legal liabilities may come to an end. Secondly, even if they were not going out of business, the solar retailer could argue that they are not responsible for submitting the paperwork and therefore cannot be held accountable for the lost income. This argument is open to solar retailers because the law and the CEC Code are not as clear as they should be in relation to who is responsible for submitting the forms.

If the solar retailer were to argue against responsibility, the only cheap dispute resolution available to Tui would be VCAT.

*Tui is not a client of Consumer Action or the National Debt Helpline.

Consumer Action has seen many cases like Susan and Tui where rooftop solar panels are installed but not connected to the grid properly. Whenever systems fail, not only are household finances affected but the environmental objectives of the households, governments and community groups are also undermined.

In cases of installation and grid connection failures, the diffusion of responsibility to the consumer through multiple parties, is a recurring and troubling theme. Many solar retailers include the savings from selling energy back to the grid in their sales pitch to consumers. However, to effectively export excess energy back to the grid, there needs to be effective communication between solar retailers, solar installers, energy retailers and energy distributors. Many people that Consumer Action speak to do not understand what is required for grid connection and are not well placed to articulate why their rooftop solar systems are not operating as promised.

A failure to submit the necessary paperwork is often to blame when individuals fail to receive a feed-in-tariff. Breakdowns usually arise at either the pre-installation or post installation stages when the relevant paperwork is not properly submitted or actioned properly.

Prior to installation, people wishing to install solar panels are usually required to obtain pre-approval from the relevant energy distributor. However, confusingly the requirement for pre-approval can vary depending on where a person lives (and therefore who the relevant distributor is) and the capacity of their proposed solar system.¹⁶⁰ This process may be streamlined with the introduction of new technical guidelines under Energy Networks Australia's National Grid Connection Guidelines¹⁶¹ for energy distributors but this remains to be seen.

After the solar panels have been installed, there is a problematically large number of documents required to be completed, received and actioned by disparate parties. They include:

- the Clean Energy Regulator requires various forms to process the financial incentives associated with Commonwealth Government's Small-Scale Technology Certificates;
- Solar Victoria requires a Solar Provider Statement, proof of eligibility and a number of other documents, including the certificate of electrical safety, to process the Victorian Government's Solar Home rebate;¹⁶²
- electricity retailers require Electrical Work Request Forms, a Certificate of Electrical Safety (Energy Safe Victoria also requires a copy of this certificate)¹⁶³ and a Feed-in Tariff application form;¹⁶⁴ and
- the relevant distributor must receive solar connection forms, a copy of the Electrical Work Request Form, a Certificate of Electrical Safety and a service order request from the relevant retailer.¹⁶⁵

Most of these forms require more than one person involved in the process to complete different sections of a single form. An issue related to the completion of these documents is that retailers and installers appear to be giving inconsistent advice and information about what stage of the process a solar system can be turned on. Some systems are switched on at installation, while others wait until the independent safety inspector signs off on it. Others, still, are not switched on until after the meter has been reconfigured, a process that can take up to two months after the independent

¹⁶⁰ Department of Land, Water and Planning, Victoria State Government, *Solar connection form* (9 June 2017) <<https://www.energy.vic.gov.au/renewable-energy/victorian-feed-in-tariff/whats-involved-in-going-solar/paperwork-required-for-solar/solar-connection-form>>

¹⁶¹ Available: <https://www.energynetworks.com.au/national-grid-connection-guidelines>

¹⁶² Solar Victoria, Victoria State Government, *Apply for a rebate* <<https://www.solar.vic.gov.au/Apply-for-a-rebate>>

¹⁶³ Department of Land, Water and Planning, *Electrical work request* (9 June 2017) <<https://www.energy.vic.gov.au/renewable-energy/victorian-feed-in-tariff/whats-involved-in-going-solar/paperwork-required-for-solar/electrical-work-request>>; Department of Land, Water and Planning, *Certificate of electrical safety* (9 June 2017) <<https://www.energy.vic.gov.au/renewable-energy/victorian-feed-in-tariff/whats-involved-in-going-solar/paperwork-required-for-solar/certificate-of-electrical-safety>>

¹⁶⁴ Department of Land, Water and Planning, *Feed-in Tariff application form* (9 June 2017) <<https://www.energy.vic.gov.au/renewable-energy/victorian-feed-in-tariff/whats-involved-in-going-solar/paperwork-required-for-solar/feed-in-tariff-application-form>>

¹⁶⁵ Department of Land, Water and Planning, *Feed-in Tariff application form* (9 June 2017) <<https://www.energy.vic.gov.au/renewable-energy/victorian-feed-in-tariff/whats-involved-in-going-solar/paperwork-required-for-solar/feed-in-tariff-application-form>>

safety inspection has been completed. This is a source of angst for some households who want to be receiving the benefit of their system as soon as possible. Ideally, this situation ought to be clarified.

If any of the steps of the process are not successfully completed, consumers can be left without fully functioning panels and without a clear avenue to remedy. As Consumer Action's 2016 report *Power Transformed* states:

“When disputes arise in new products and services which may require a network of relationships to deliver, the potential for buck-passing and blame shifting between parties is high.”¹⁶⁶

The first problem experienced by people not receiving a feed in tariff is not knowing whether or not the paperwork was completed and where it ended up. People are often bamboozled by the process. Like Susan and Tui, many do not even realise how many parties need to work together in order to get fully functioning panels. The requirements for grid connection usually become clear if and when people start enquiring about the problem, as each commercial

party involved will inevitably deny responsibility for completing the forms and refer the individual to one of the other commercial parties.

The second related issue is a lack of regulation and a lack of clear guidance around whose responsibility it is to ensure the paperwork is successfully completed and actioned.¹⁶⁷ For example, even if a person knew that it was the Solar Connection Form that was not properly completed, would they have a clear case for saying that the solar retailer is responsible and should compensate them for lost income?

It is far from clear whose responsibility it is to complete and submit the necessary paperwork. Information on the Department of Environment, Land, Water and Planning (**DWELP**) website, indicates that while the Solar Connection Form, should 'ideally' be sent to the electricity distributor by a person's solar retailer or installer, they also advise people to ensure that this has happened themselves.¹⁶⁸ Many of Consumer Action's clients do not fully understand the difference between the entities involved in solar installation let alone the documentary requirements to ensure grid connectivity. They are therefore not well placed to ensure connectivity. Furthermore, while the intent is that the state rebate process will be installer led from July 2019 onwards, this will only remove the administrative burden from customers in so far as the Victorian rebate is concerned and will not address the wider issue of grid connectivity.

The CEC Code goes some way to prevent these issues at both pre and post installation stages but, arguably, it does not go far enough. The Code says that before a solar installation contract is signed, a signatory must inform their customer if pre-approval is required from a distributor and what paperwork is required to obtain pre-approval.¹⁶⁹ The Code then goes on to say that if the signatory is authorised to obtain the approval on their customer's behalf, the signatory must not commence installation until approval has been obtained and

¹⁶⁶ Consumer Action Law Centre, *Power Transformed: Unlocking effective competition and trust in the transforming energy market* (July 2016), 7 <<https://consumeraction.org.au/power-transformed/>>.

¹⁶⁷ See, for example: the discussion below regarding the CEC Code; Department of Land, Water and Planning, Victoria State Government, *Paperwork required for solar* (9 June 2017) <<https://www.energy.vic.gov.au/renewable-energy/victorian-feed-in-tariff/whats-involved-in-going-solar/paperwork-required-for-solar/solar-connection-form>>

¹⁶⁸ Department of Land, Water and Planning, Victoria State Government, *Solar connection form* (9 June 2017) <<https://www.energy.vic.gov.au/renewable-energy/victorian-feed-in-tariff/whats-involved-in-going-solar/paperwork-required-for-solar/solar-connection-form>>

¹⁶⁹ Clean Energy Council, *Solar Retailer Code of Conduct* (October 2015), cl 2.1.16 <<http://www.solaraccreditation.com.au/dam/solar-accred/retailers/code-of-conduct/Solar-PV-Retailer-Code-of-Conduct/Solar-Retailer-Code-of-Conduct-Sept-2015.pdf>>.

must give the customer a full refund if approval is not given.¹⁷⁰ If a customer has taken responsibility for obtaining approval, the customer will be entitled to a refund (minus any of the signatory's reasonable expenses prior to termination) if approval is not given.¹⁷¹ However, the Code does not explicitly say that the onus is on the solar retailer to raise the issue nor does it say the solar retailer must seek authority to arrange pre-approval. The proposed inclusions in the draft NET Code are written in almost identical terms.¹⁷² Therefore, there is still room for confusion. If neither the signatory nor the customer (who is unlikely to be aware of the issue) raises the issue of pre-approval and pre-approval is not obtained, who then is responsible in so far as the Code is concerned?

After installation, the CEC Code places clear obligations on signatories to explain to their customers what further steps are required to ensure grid connection. But again, the CEC Code does not unambiguously place responsibility on the solar retailer to ensure connection. Under the Code, whether the retailer is responsible for taking the steps for grid connection depends on whether their customers have given them authority to arrange grid connection at the pre-installation phase, discussed above. If customer authority has been given at the pre installation phase, the signatory must prepare and submit the required documents within a reasonable time.¹⁷³ They also must inform their customers of the process and when they have completed each step in the process.¹⁷⁴ If the customer has taken responsibility for grid connection themselves, the signatory must still ensure that their customers receive a complete set of documents (listed in the Code)¹⁷⁵ and must clearly explain the process required for grid connection but is not responsible for it.¹⁷⁶ For the reasons stated above, there is room for confusion at the pre installation phase if the Code signatory is not expressly obliged to ask their customers

to elect who will be responsible for submitting all of the necessary paperwork. Furthermore, it is not hard to imagine how messy arguments about who said what, when might arise.

The lack of certainty around who has responsibility for grid connectivity can have a flow on effect to the operation of the ACL. Solar retailers can try to deny liability under the ACL consumer guarantees and any voluntary warranties given on the basis that a third party is at fault.¹⁷⁷ While we support the flexibility to allow consumers to organise connection to the grid themselves, a stronger, more explicit default stance should be adopted to protect against the risk that the ACL guarantees can be avoided. A better approach than the one in the CEC Code would be to create a default position under which the solar retailer is responsible for completing and submitting the documents necessary for grid connection, unless their customers ask them not to.

From a consumer perspective, having a default position in which the solar retailer is responsible for the ultimate delivery of a properly operating solar system seems the most logical way to deal with the buck passing we often see when systems have not been connected to the grid. Solar retailers would be responsible for arranging pre-approval from the distributor prior to installation and for ensuring the completion and delivery of the documentation required following installation. This makes sense because the solar retailer is the consumer's point of contact, they have an intimate knowledge of the installation and commissioning process, and they have made representations on which the people have relied when deciding to purchase the system.

While it would be useful for the NET Code to be drafted in a way that clearly places responsibility for

¹⁷⁰ Ibid cls 2.1.18 – 2.1.19.

¹⁷¹ Ibid 2.1.17.

¹⁷² Clean Energy Council, *Consultation Draft: Behind the Meter Distributed Energy Resources Provider Code* (November 2018), cl B.2.6 <<https://assets.cleanenergycouncil.org.au/documents/advocacy-initiatives/btm-code/behind-the-meter-draft-industry-code.pdf>>.

¹⁷³ Clean Energy Council, *Solar Retailer Code of Conduct* (October 2015), cl 2.2.7(a) <<http://www.solaraccreditation.com.au/dam/solar-accred/retailers/code-of-conduct/Solar-PV-Retailer-Code-of-Conduct/Solar-Retailer-Code-of-Conduct-Sept-2015.pdf>>.

¹⁷⁴ Ibid cl 2.2.8.

¹⁷⁵ Ibid cl 2.3.

¹⁷⁶ Ibid cl 2.2.7(b).

¹⁷⁷ One of the defences available under the ACL to suppliers of services is where a failure to meet a guarantee occurred because of an act, default or omission of, or a representation made by, any person other than the supplier, or an agent or employee of the supplier: ACL s 267(1)(c).

grid connection on the solar retailer, we see the need for regulatory intervention as the CEC Code does not and the NET Code will not cover the field of solar retailers. It is a voluntary code that does not offer much to consumers in terms of dispute resolution, enforcement and remedies.

An additional safeguard that could be put in place is to have payment for the panels conditional upon successful grid connection. Solar retailers may justifiably object to this on the basis of the time lag that would be created while they wait for retailers or distributors to action the forms. One way of partly ameliorating the time-lag issue would be a part payment formulation under which a majority of the purchase price of the solar system is paid before the system is fully delivered, and the remainder only when it is operating in accordance with representations made during the sales process. This option is worth further consideration. Consumer Action has been advised that current practice amongst retailers is to require full payment for the rooftop solar installation three days prior to installation, leaving individuals in a weaker bargaining position should something go wrong before during or after installation. A part payment arrangement would go some way in addressing this imbalance.

A second issue that solar retailers may raise in objection to bearing the responsibility for grid connection is the potential for them to be held accountable for circumstances outside of their control. It would be useful to hear from the solar retailers detailing why this is unfairly burdensome for them and any special cases where unfair detriment has or may be caused. Ultimately, this requires consideration about whether the individual consumer or the retailer is best placed to bear the risk of non-connection. We consider that solar retailers are best placed to bear this risk, and should be responsible for completing and submitting the paperwork necessary for grid connection is consistent with their responsibility to ensure the products and services they sell are fit for purpose and live up to any promises made. Furthermore, this may promote better practices by solar retailers. They could, for example, keep copies of the completed documents and records of when the forms were sent to other parties such as

the energy retailers and distributors, and pursue their own commercial legal claims to recover any losses. If this evidence were provided to their customers, they may then be able to make a complaint in EWOV against their electricity supplier or retailer.

Placing clear responsibility of grid connectivity on the solar retailer would give people like Susan and Tui a clear avenue for redress. Even without a payment arrangement conditional upon successful grid connection, people would be certain in their position and could, for example, take the solar retailer to VCAT for failing to provide the services with due care and skill and failing to make the solar panels fit for purpose.

RECOMMENDATION 1:

Regulatory reform to make it clear that solar retailers are responsible for ensuring that all the paperwork necessary for grid connection is completed and submitted to the relevant recipient, unless the consumer elects otherwise.

5.3 Unregulated Finance Arrangements

Through our casework, Consumer Action has developed substantial concern at the prevalence of unregulated credit providers funding solar panel purchases. The case study on the next page illustrates the harm that can be caused by unaffordable finance arrangements.

In this case, along with case study 1 on page 30, the finance providers were not licensed under the NCCPA. These finance providers claim that their products do not meet the definition of 'credit' under the NCCPA and therefore they do not require regulation. This meant that John and Susan did not receive the beneficial protections under the NCC and NCCPA such as:

- an assessment of the suitability of the finance including whether they could afford the repayments without financial hardship;
- the finance provider was not a compulsory member of AFCA so John and Susan could not take their case to a free and informal dispute resolution body alleging inappropriate finance;
- the finance providers were not bound by a regulated hardship process; and
- the finance providers and their agent (in this case the salesperson) were not bound to make pre-contractual disclosure obligations.

In relation to the pre-contractual disclosures, the finance providers were not obliged to:

- provide John and Susan with a statement of statutory rights;
- disclose the total amount of credit to be provided under the contract; and
- disclose the entities to whom the credit was to be paid.¹⁷⁸

Pre contractual information statements given before the supply of regulated credit will provide an itemised list of how the credit will be divided; how much will go to the retailer in the purchase price of the goods and/or services and how much will go to other parties such as commissions. Shockingly, neither the financial service providers nor their agents in the case studies were obliged to give this simple and transparent breakdown of the finance arrangements.

Furthermore, ASIC has limited power to regulate unregulated credit activity and address the lending risks of these activities on individuals.¹⁷⁹

The ASIC Act does provide an alternative source of rights for people with unregulated finance products. However, these are more limited and less targeted at the issue of inappropriate or unaffordable finance. Unlike the NCCPA Act, the ASIC Act does not have specific protections against irresponsible lending, does not contain hardship provisions and does not provide for a free alternative dispute resolution scheme. If John or Susan wanted to take legal action against the finance provider about being sold unaffordable finance, the only option that they would have is to make a claim that the finance provider breached the ASIC Act warranty provisions arguing that the financial services and products supplied were not fit for purpose. This would not be an easy legal argument to run and they would have to run it to a court, which is an expensive, stressful and inherently risky option.

It should be noted here that one of the solar finance providers that Consumer Action has acted against on behalf of our clients, Certegy Ezi-Pay (**Certegy**), has recently voluntarily joined AFCA, the external dispute resolution body that regulated credit providers are legally obliged to join. AFCA has both voluntary and mandatory membership. However, while people would now be able to make a complaint against Certegy in AFCA, they could not make a claim against them for breaching the NCC or NCCPA if, as Certegy argues, the NCC and NCCPA does not apply to the type of finance they offer. This means that people like Susan and John could still not make a claim against finance

¹⁷⁸ NCC ss 16, 17(c).

¹⁷⁹ ASIC, *Report 600: Review of buy now pay later arrangements* (November 2018), 4 <<https://download.asic.gov.au/media/4957540/rep600-published-07-dec-2018.pdf>>.

CASE STUDY 3: “JOHN”

Illustrative of the following issues:

- **Unlicensed and unaffordable finance**
- **Poor business practices in the negotiation of unsolicited consumer agreements**

John is a 72-year-old aged pensioner who lives alone in an old weather-board miner’s cottage in a small rural town about four hours from Melbourne. He has no income, and no savings. John often sits out on the front verandah of his small cottage and refers to it as his “loungeroom.”

One day, a salesperson for a Solar Panel Company came up John’s front drive and started talking to him about solar panels. John said that he was not interested but the salesperson was insistent and let himself into John’s home.

John followed the sales representative into the house. They then sat at John’s kitchen table for at least an hour as the salesperson talked John through various features of the panels, and how they could reduce his energy costs. The salesperson was insistent that John could make big savings.

John continued to advise that he did not want solar panels but became increasingly intimidated by the salesperson. John describes himself as “shaking and shivering” and did not know how to handle the situation. John asked the salesperson to leave but the salesperson would not. He continued to refuse to take no for an answer and continued to talk John through the paperwork relating to the sales.

John did not understand the technical details of what was being offered to him. The salesperson continued

with his pitch and offered John a finance contract to pay for the solar panels. John said he could only afford \$25 per week.

The salesperson arranged the paperwork and then rang the Finance Company on John’s behalf. John never spoke to the Finance Company himself. The Finance Company did not have a licence under the NCCPA and was therefore unregulated under that act.

John eventually signed up for a 3kWh solar panel system, including 12 panels, at a cost of \$8,695.00. John said that he signed up to get rid of the salesperson and that he felt stupid, but it sounded like a good deal.

Shortly afterwards, John received a letter saying that he must make 87 fortnightly payments of \$103.87 per fortnight (with the first monthly payment adding a \$3.50 account fee) to the Finance Company, adding up to \$9,040.

John found the repayments to the Finance Company difficult to repay, as he could not afford it. He would often have no money left for food at the end of the fortnight. John didn’t try to cancel the arrangement because he did not know there was a cooling off period. Despite the salesperson’s claims, John was not saving much on his energy usage at all, and certainly not the amount that the salesperson said he would.

After a period of time, John’s relative, who lives next door to him, contacted Consumer Action on John’s behalf. With assistance, John was able to terminate the agreement, arguing that there had been breaches of the ACL. John obtained a refund for the amount of money he had paid up to the date he terminated the agreement (being around \$3,000) and invited the solar retailer to collect the panels from his roof.

The solar retailer did not attend to remove the panels.

The ACL says where an unsolicited consumer agreement is terminated, the goods received under the agreement become the property of the consumer if: the consumer has notified the retailer of where they can collect the goods; and the retailer fails to collect the goods within 30 days of termination.

Over a year after John terminated the solar agreement, the solar retailer tried to recover the solar system from John alleging that they still owned the solar system. With Consumer Action’s help, John was able to get the solar retailer to finally confirm that they will stop contacting him and that they will stop trying to recover the solar panels. John argued, amongst other things, that what the solar retailer was doing amounted to misleading or deceptive conduct and prohibited debt collection activity.

providers like Certegy for irresponsible lending, a type of legal claim that only exists in the NCCPA, or for breaching any of the other protections that only the NCCPA or NCC provide. However, they could make arguments about best practice in the industry or general arguments related to fairness, in accordance with AFCA's terms of reference.

While the industry-driven CEC Code attempts to address some of the issues related to unregulated credit, it does not quite plug this regulation gap and has limitations in any case. Currently, the CEC Code does not prohibit the use of unlicensed credit providers to finance solar transactions but does require people be notified that the finance is unregulated. The contract must contain a clause warning a person that the agreement is not regulated by the NCCPA and that, as a result, the person may not have access to an external dispute resolution service and financial hardship arrangements.¹⁸⁰

The proposed NET Code has sought to more comprehensively address the issue of unlicensed finance.¹⁸¹ The current consultation draft of the NET Code includes the following:

We may offer you New Energy Tech with a deferred payment arrangement as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph 1.m), we will ensure that:

- a. *this payment arrangement is offered through a credit provider (whether ourselves or a third party) licenced under the National Consumer Credit Protection Act (2009) (Cth ("NCCCPA");*
- b. *the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC");*

- c. *the term of the deferred payment contract or lease is no longer than the expected life of the product or system; and*
- d. *ensure that you receive the following clear and accurate information...*

Consumer Action strongly supports a provision in the proposed NET Code, however, we again note the limitations of the Code. It is voluntary code and therefore does not completely cover the solar retail field. It also lacks meaningful enforcement mechanisms. A regulatory solution is therefore necessary.

Consumer Action believes there are two viable regulatory solutions available. The first is industry specific regulation prohibiting solar retailers from doing business with unlicensed credit providers and prohibiting retailers from offering unregulated credit products to their customers.

Industry specific consumer protections are not uncommon. For example, the motor car industry is regulated by the *Motor Car Trader's Act 1986* (Vic) and specific provisions in the *Australian Consumer Law and Fair Trading Act 2012* (Vic).¹⁸² A second and more relevant example is the traditional energy industry. This industry is regulated by a number of specific laws including the *Electricity Industry Act 2000* (Vic) which, for the reasons set out above, do not apply to rooftop solar and other new energy products.

The second regulatory solution is to broaden the operation of the NCCPA and NCC so that consumer credit providers seeking to exploit loopholes in the current laws are regulated. In Consumer Action's view, this second solution is the superior option. There are two reasons for this: the first and most important reason is that it is the more principled approach and the second reason relates to the current landscape in which discussions about financial law reform are already underway. Before noting the developments

¹⁸⁰ The Code says that the warning must contain the following wording: "This arrangement is not regulated by the National Consumer Credit Protection Act 2009 (Cth) ("the NCCP Act"). As a result: (a) If you have a complaint about the arrangement, you may not have access to the services of an external dispute resolution scheme that has been approved by ASIC. This means that you may have to go to court to resolve a dispute with the provider. *If you have a complaint about the arrangement, you may not have access to the services of an external dispute resolution scheme that has been approved by ASIC. This means that you may have to go to court to resolve a dispute with the provider.* (b) If you have trouble paying the periodic payments required under the arrangement: (i) you may not have the right to ask the provider for a hardship variation to help you get through your financial difficulty; (ii) The provider may take action against you for non-payment without giving you an opportunity to remedy the default.

¹⁸¹ In the interest of transparency, we note that Consumer Action was on the NET Code working group and provided submissions and input into same.

¹⁸² *Australian Consumer Law and Fair Trading Act 2012* (Vic), s 63.

and discussions about the sufficiency of the NCC and NCCPA it is worth providing an example of how businesses avoid the NCC and NCCPA.

While there are others with similar business models, the most common company we have seen offer inappropriate financing to purchase solar panels is Certegy. Certegy does not hold an Australian Credit Licence under the NCCPA.¹⁸³ It claims that it does not need to hold a licence because they offer 'no interest ever'¹⁸⁴ finance to people who buy goods through specific Certegy-partnered retailers. Certegy's 'no interest' finance contracts appear as continuing credit contracts,¹⁸⁵ with periodic or fixed charges that do not exceed the modest caps set under the NCC. Continuing credit contracts are exempt from the definition of credit under s 6(5) of the NCC. In other words, Certegy's finance products purport to be 'unregulated' in that they do not trigger the operation of the NCCP and NCC and the protection afforded under those laws. We are concerned that businesses like Certegy may not disclose the true cost of their finance to consumers in order to avoid the NCC and NCCPA. Hidden costs could include, for example, financial arrangements and incentives they have with partnered retailers concealed by increases in the cost of the solar system components above market value. Indeed, ASIC's recent report on 'buy now, pay later' arrangements found that some merchants inflate the costs of goods underlying some of these arrangements, obscuring the actual cost of the agreements.¹⁸⁶ If true in the case of rooftop solar, this would mean that not only are people paying more than they realise for their rooftop solar system but are being unfairly denied rights under the NCCPA and NCC.

There are two recent developments that could offer the momentum needed to change the law to address NCCPA and NCC avoidance. In November 2018, ASIC released a report reviewing the buy now, pay later

arrangements. Arrangements offered by Certegy fell within the ambit of this review.¹⁸⁷ While ASIC did not go as far as recommending to the Government that the buy now pay later providers be required to comply with the NCC,¹⁸⁸ they flagged that they may do so in the future and that, in the meantime, ASIC's product intervention power ought to be extended to address some of the detriment found to be occurring in the report.¹⁸⁹

On 22 February 2019, the Senate Economics References Committee (**the Committee**) released its report of the Senate inquiry into credit and financial services targeted at Australians at risk of financial hardship. During the inquiry process, Consumer Action made submissions arguing that it is imperative that 'no interest finance' providers become subject to the NCC and NCCPA. This would require them to undertake responsible lending checks like other credit providers, including assessment of an individual's capacity to repay. It would also ensure that financial hardship arrangements and proper dispute resolution processes were available to consumers. Equally, we submitted, these obligations should apply to the other types of finance products currently structured to avoid the NCCPA and NCC, including, all buy now pay later, short term credit contracts and deferred bill paying services.

On the issue of buy now pay later arrangements, the Committee recommended that the government give further consideration to the regulation of these arrangements in consultation with industry and consumers.¹⁹⁰ The Committee did not go so far as to recommend, as Consumer Action submitted ought to occur, that responsible lending provisions under the NCC and NCCPA be extended to cover these types of unregulated credit arrangements. While Consumer Action welcomes many of the recommendations made by the Committee as an important step in the

¹⁸³ Although, note, Certegy's parent company does hold a licence: ASIC, *Report 600: Review of buy now pay later arrangements* (November 2018), 7 <<https://download.asic.gov.au/media/4957540/rep600-published-07-dec-2018.pdf>>.

¹⁸⁴ Certegy Ezi-Pay, *About Certegy Ezi-Pay* <<https://www.certegyezipay.com.au/>>.

¹⁸⁵ ASIC, *Report 600: Review of buy now pay later arrangements* (November 2018), 8 <<https://download.asic.gov.au/media/4957540/rep600-published-07-dec-2018.pdf>>.

¹⁸⁶ *Ibid* 10-11.

¹⁸⁷ *Ibid*.

¹⁸⁸ *Ibid* [71].

¹⁸⁹ *Ibid* [70]. For the kinds of detriments ASIC found to exist, see summary of findings on pages 9 - 15.

¹⁹⁰ Senate Economics References Committee, Parliament of Australia, *Credit and hardship: report of the Senate inquiry into credit and financial products targeted at Australians at risk of financial hardship* (February 2019) 11. The report is available online from: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Creditfinancialservices/Report/c05.



right direction, we maintain that the NCC and NCCPA needs to have broader application in order to prevent the kinds of harm evidenced in our submissions and those made by other community organisations.

If these protections were in place for John and Susan in the above case studies, it is likely that they would not have been provided with finance that they could not afford. Or, if they had been provided with the unaffordable finance, they would have had access to a regulated process for seeking a financial hardship arrangement or could have made a claim against the finance providers for breaching the responsible lending provisions of the NCCPA and the pre-contractual disclosure requirements of the NCC.

Extending the NCCPA is the more principled regulatory solution to the issues presented in this report for three reasons. Firstly, there is no principled reason why these providers should be exempt from these basic consumer protections that apply to other consumer credit products. Currently, there is a gap between what the average person considers to be credit and the nuanced version of credit invented by the NCC. The gap creates regulatory loopholes in the NCCPA and NCC that Consumer Action feels are exploited by fringe lenders for no good reason. Secondly, extending the NCCPA laws to all of these finance products will future proof the regulation against other gaps and loopholes that may be exploited by new energy product retailers. Some providers will always look for

canny ways to avoid regulatory oversight and so we should keep the opportunities to do so to a minimum. Lastly, this approach could be complemented by a broad anti-avoidance provision that allows the regulator to crack down on avoidance models. Examples of anti-avoidance models can be found in the National Consumer Credit Protection Amendment (Small Amount Credit Contract and Consumer Lease Reforms) Bill 2018 (Cth) and the Corporations Act 2001 (Cth). The anti-avoidance provisions under Corporations Act 2001 (Cth), target schemes that appear to have no commercial purpose other than to avoid the application of parts of that Act.¹⁹¹ Persons under such schemes may be liable for a civil penalty if they have breached the anti-avoidance provisions. Similar anti-avoidance provisions would be necessary to ensure the policy intent behind broadening the application of the NCC and NCCPA is achieved.

RECOMMENDATION 2:

The NCCPA and NCC be amended to broaden their application to all credit products and that this be complimented with broad anti-avoidance provisions.

¹⁹¹ ASIC, *Regulatory Guide 246: Conflicted and other banned remuneration* (December 2017), 68 <<https://download.asic.gov.au/media/4566844/rg246-published-7-december-2017.pdf>>.

5.4 Misleading and High-Pressure Unsolicited Sales

Consumer Action has observed a number of concerning sales practices used by some solar retailers. The kind of concerning practices are exemplified by case studies 1 and 3, extracted above. In these case studies, the inappropriate sales practices occurred in the context of an unsolicited door-to-door sale. Consumer Action understands that concerning sales practices are also occurring outside of unsolicited sales. For example, Consumer Action understands that some solar companies have been falsely portraying themselves as community, not-for-profit, bulk buy organisations. While these are concerning reports, they are not reports coming through our casework and will therefore not be dealt with in detail in this report. Rather the focus of this section will be on misleading and high-pressure sales tactics occurring in the context of unsolicited sales.

In case study 1, the salesperson's tactics can be described as evasive and lacking in transparency. The salesperson failed to comply with the ACL unsolicited sales provisions by not telling Susan of her cooling off rights and did not comply with the requirements relating to providing written notice of the cooling off rights. The salesperson also failed to inform Susan of the process required to receive a feed-in-tariff and grid connection and therefore the solar panels failed to operate as promised. The salesperson in this case was not subject to the CEC Code (as they had not voluntarily signed up) and even if they had, Susan would not have been able to receive compensation or legal redress by making a complaint to the CEC.

In case study 3, the behaviour of the salesperson was pushy and invasive. The salesperson persisted to hold lengthy negotiations with John who clearly stated that he was not interested and failed to leave when asked

by John to do so. This is a clear breach of the ACL. The salesperson's behaviour was of such a poor standard as to leave John feeling intimidated and shaky.

In all case studies, the individuals harmed were pensioners with little income. From these cases and others like it, it appears that these sales techniques disproportionately impact people experiencing vulnerability. There is other evidence to support these propositions.

Several evidence-based reports have drawn links between door to door sales and the targeting of people in situations of disadvantage. A 2002 National Competition Policy review of the *Door-to-Door Sales Act 1967* (NSW) found that some of the most vulnerable groups in the community were encountering undesirable direct selling practices, including elderly groups, people with linguistically diverse backgrounds and the disadvantaged.¹⁹² Many direct selling businesses were also found to be targeting particular suburbs, including those with a high percentage of public housing.¹⁹³ In a joint paper released in 2007, Consumer Action and Financial & Consumer Rights Council (FCRC) confirmed anecdotal evidence that direct marketing misconduct was wide spread in the energy retail market, with marketers regularly taking advantage of people experiencing vulnerability, particularly people with disadvantaged and linguistically diverse backgrounds.¹⁹⁴ In 2012, ACCC released a research report on the door to door sales industry. The report showed that businesses frequently engage third party sales agents to conduct door to door sales on their behalf and some of these businesses reported preying on 'easy targets,' being people experiencing vulnerability.¹⁹⁵ The report also highlighted how door-to-door commission-based remuneration schemes promote aggressive sales behaviour and create incentives for non-compliance with the laws.¹⁹⁶

¹⁹² Explanatory Memorandum, Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010 (Cth), 469 <https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4335_ems_8a3cd823-3c1b-4892-b9e7-081670404057/upload_pdf/340609.pdf;fileType=application%2Fpdf>.

¹⁹³ Ibid.

¹⁹⁴ Consumer Action Law Centre and Financial & Consumer Rights Council, *Coercion and harassment at the door: Consumer experiences with energy direct marketers* (November 2007) <<https://energyconsumersaustralia.worldsecuresystems.com/grants/270/AP-270-CALC-report-on-direct-marketers.pdf>>.

¹⁹⁵ ACCC, *ACCC cracks down on door to door sales practices* (17 August 2012) <<https://www.accc.gov.au/media-release/accc-cracks-down-on-door-to-door-sales-practices>>.

¹⁹⁶ ACCC, *ACCC cracks down on door to door sales practices* (17 August 2012) <<https://www.accc.gov.au/media-release/accc-cracks-down-on-door-to-door-sales-practices>>.

There is also evidence to suggest that people experiencing disadvantage are likely to be disproportionately affected by aggressive and improper sales techniques. A study undertaken in 2009 by the FCRC, found that door-to-door marketing techniques caused the greatest detriment to people experiencing factors correlated with vulnerability such as poverty, impairment, mental health concerns, recent immigration and where people do not have the literacy capacity required to understand certain offers.¹⁹⁷ This is not surprising in light of the research into the impact of scarcity on human decision making. Studies on the cognitive impacts of poverty, for example, had found that 'the human cognitive system has limited capacity. Preoccupations with pressing budgetary concerns leave fewer cognitive resources available to guide choice and action.'¹⁹⁸

Compounding these issues is the likelihood that only a small portion of Australians would have the numeracy levels to be able to fully understand the financial benefits of the installation of rooftop solar systems. Being in a position to understand the financial benefits of solar involve complex calculations involving multiple factors including:

- how much electricity the household uses and when;
- the generating capacity of the solar panels;
- the conversion efficiency of the solar inverter and its ability to deliver power under a range of conditions;

- how much excess electricity a person can expect to sell back to the grid;
- the feed-in-tariff that they can expect to receive for every unit of electricity generated by them; and relative benefits of solar compared with accessing a better tariff or electricity retail offer.

As well, a person would need to understand the impact of certain variables on their calculations including weather conditions, export limitations placed on electricity generated by rooftop solar by electricity distributors and the fact that the performance, in terms of electricity generating ability, of solar system degenerates over time.

Data presented by the Australian Bureau of Statistics (ABS) in the 2011–12 Programme for the International Assessment of Adult Competencies (PIAAC) suggests that the majority of Australians would not have the numeracy skills to make these calculations. Arguably, these calculations require people to be operating, at the very least, at what PIAAC defined as numeracy skill level 3,¹⁹⁹ According to the data only 43.4% of Australians in 2012 had numeracy skills at this level or higher.²⁰⁰

Consumer Action has been expressing concern with unsolicited sales for many years. We first identified problematic unsolicited selling of solar panels in a joint paper with the FCRC in 2007, *Coercion and harassment at the door: Consumer experiences with energy direct marketers* and several other years since then.²⁰¹ While these reports were in relation to industries other than

¹⁹⁷ Above n 191, 467.

¹⁹⁸ Mani, A., et al. Poverty Impedes Cognitive Function (2013) 341 *Science* 976.

¹⁹⁹ The descriptions provided for the relevant numeracy skill levels are these:

- *Below Level 1 (lower than 176):* Tasks at this level require the respondents to carry out simple processes such as counting, sorting, performing basic arithmetic operations with whole numbers or money, or recognising common spatial representations in concrete, familiar contexts where the mathematical content is explicit with little or no text or distractors.
- *Level 1 (176 to 225):* Tasks at this level require the respondent to carry out basic mathematical processes in common, concrete contexts where the mathematical content is explicit with little text and minimal distractors. Tasks usually require one-step or simple processes involving counting, sorting, performing basic arithmetic operations, understanding simple per cents such as 50%, and locating and identifying elements of simple or common graphical or spatial representations.
- *Level 2 (226 to 275):* Tasks at this level require the respondent to identify and act on mathematical information and ideas embedded in a range of common contexts where the mathematical content is fairly explicit or visual with relatively few distractors. Tasks tend to require the application of two or more steps or processes involving calculation with whole numbers and common decimals, per cents and fractions; simple measurement and spatial representation; estimation; and interpretation of relatively simple data and statistics in texts, tables and graphs.
- *Level 3 (276 to 325):* Tasks at this level require the respondent to understand mathematical information that may be less explicit, embedded in contexts that are not always familiar and represented in more complex ways. Tasks require several steps and may involve the choice of problem-solving strategies and relevant processes. Tasks tend to require the application of number sense and spatial sense; recognising and working with mathematical relationships, patterns, and proportions expressed in verbal or numerical form; and interpretation and basic analysis of data and statistics in texts, tables and graphs.

²⁰⁰ ABS, 4228.0 - Programme for the International Assessment of Adult Competencies, Australia, 2011-12 (9 October 2013) <<http://www.abs.gov.au/ausstats/abs@.nsf/Latestproducts/4228.0Main%20Features202011-12?opendocument&tabname=Summary&prodno=4228.0&issue=2011-12&num=&view=>>>

²⁰¹ See, for example, the *Knock It Off!* (2018) and *Power Transformed* (2016) reports.

the retail solar industry, they provide a telling story about the strong links between unsolicited sales and misleading, deceptive and/or high pressure sale tactics.

Most recently, Consumer Action has been reporting on harm caused by unsolicited sales and related improper sales practices in the solar panel industry. However, we are not the only ones seeing these issues in the solar panel industry. For example:

- In August 2010, the ACCC ScamWatch warned against unsolicited telephone calls offering rebates on energy efficient initiatives including solar panels.²⁰²
- In September 2011, ACCC ScamWatch again issued warnings advising Australians to continue to be wary of scammers offering bogus government rebates for the installation of solar panels.²⁰³
- In August 2012, the ACCC launched a research report on the 'problematic' door-to-door sales approach which indicated, amongst other things, that solar panels were one of the four biggest industries using door to door sales.²⁰⁴
- In January 2018, Australian Communications and Media Authority (ACMA)²⁰⁵ reported on a \$10,800 infringement notice issued to Instyle Solar Pty Ltd for failing to obtain consent to call numbers on the Do Not Call Register.²⁰⁶ ACMA has also listed solar industry telemarketing as priority area for

2018-2019²⁰⁷ and has warned that 'ACMA is putting the solar power industry's telemarketing practices under the microscope as a result of a high number of complaints from consumers.'²⁰⁸

- On 8 October 2018, Solar Victoria issued a warning to solar panel retailers against high-pressure tactics and inaccurate marketing as the state government solar rebate program is rolled out. It also announced a joint taskforce to combat rebate scams.
- Recently, Solar Victoria and Consumer Affairs Victoria (CAV) separately posted warnings about solar rebate scams from callers claiming to be from the Victorian Government or Solar Victoria.²⁰⁹
- CAV currently list as their regulatory priorities, protecting consumers from false and misleading claims about solar, batteries and energy products.²¹⁰
- The ACCC and the ACMA have identified compliance failures in lead generation activities in the solar industry.²¹¹
- In 2018, in response to a review by Consumer Affairs Australia and New Zealand (CAANZ), the relevant Ministers for Consumer Affairs agreed to make amendments to the ACL unsolicited consumer agreements provisions to capture situations where retailers obtain consent or details from lead generators.

²⁰² ACCC ScamWatch, *Beware of 'green scheme' scammers!* (23 August 2010) <<https://www.scamwatch.gov.au/news/beware-of-%E2%80%98green-scheme%E2%80%99-scammers>>.

²⁰³ ACCC ScamWatch, *Continue to beware of scam solar offers* (23 August 2010) <<https://www.scamwatch.gov.au/news/beware-of-%E2%80%98green-scheme%E2%80%99-scammers>>.

²⁰⁴ ACCC, *ACCC cracks down on door to door sales practices* (17 August 2012) <<https://www.accc.gov.au/media-release/accc-cracks-down-on-door-to-door-sales-practices>>.

²⁰⁵ ACMA is responsible for compliance and enforcement of the *Do Not Call Register Act 2006* (Cth), the *Spam Act 2003* (Cth), the *Telecommunications (Telemarketing and Research Calls) Industry Standard 2017* and the *Fax Marketing Industry Standard 2011*. These laws and standards seek to minimise the impact on Australians of unsolicited marketing and electronic messaging.

²⁰⁶ ACMA, Australian Government, *Instyle Solar penalised for calling numbers on the Do Not Call Register* (22 January 2018) Do Not Call Register <<https://www.donotcall.gov.au/media-releases/instyle-solar-penalised-for-calling-numbers-on-the-do-not-call-register/>>.

²⁰⁷ ACMA, Australian Government, *Unsolicited communications priorities 2018-19* (15 January 2019) <<https://acma.gov.au/theACMA/unsolicited-communications-priorities>>.

²⁰⁸ ACMA, Australian Government, *Instyle Solar penalised for calling numbers on the Do Not Call Register* (22 January 2018) Do Not Call Register <<https://www.donotcall.gov.au/media-releases/instyle-solar-penalised-for-calling-numbers-on-the-do-not-call-register/>>.

²⁰⁹ Solar Victoria, Victoria State Government <<https://www.solar.vic.gov.au/en>>; CAV, Victoria State Government, *Solar energy* (15 February 2019) <<https://www.consumer.vic.gov.au/products-and-services/energy-products-and-services/solar-energy>>; CAV, Victoria State Government, *Rebate scam* (22 January 2019) <<https://www.consumer.vic.gov.au/resources-and-tools/scams/consumer-scams/rebate-scam>>.

²¹⁰ CAV, Victoria State Government. *About us* (31 January 2019) <<https://www.consumer.vic.gov.au/about-us>>.

²¹¹ Lead generation is the process of identifying people who are potential sales targets or "leads." Inappropriate lead generation occurs where the lead generating business obtains a consumer's contact details or permission to be contacted by a retailer, in order to avoid the unsolicited consumer agreements provisions in the ACL. The harm caused by these activities and the regulatory reforms necessary to prevent harm from lead generation were discussed in Consumer Action's 2018 report, *Dirty Leads*.

This list confirms the widespread nature of problematic unsolicited selling of solar products and reveals that this is not just occurring at people's doorsteps, as Consumer Action's casework suggests, but it is also occurring through telephone marketing. While a number of actions taken by the ACCC suggests that improper marketing of solar panels is occurring outside of the unsolicited selling practice,²¹² there is clearly a long-standing problem with unsolicited sales in the solar industry and those problems are not going away.

Consumer Action feels that there are three acceptable solutions to these persistent issues:

- ban all unsolicited selling;
- ban unsolicited sales in the solar industry; or
- amend the ACL to replace the cooling off rights with an 'opt-in model' for all unsolicited consumer agreements, regardless of the industry.

Consumer Action feels that the more principled solution is to ban all unsolicited consumer selling, followed by the 'opt-in model.' Both options would be economy-wide solutions, not limited to the solar panel industry.

The opt-in model was one option initially presented (but not adopted) in CAANZ's interim report (2016) on their review of the ACL.²¹³ The opt-in model can be contrasted with the current cooling off provisions in the ACL which represent an 'opt-out' model. Under the current model, individuals have 10 days to opt out of an unsolicited consumer agreement by actively

terminating the agreement. Under an opt in model, no agreement would be made until a person actively opted in after a cooling off period. The person would opt in by actively contacting the retailer.

Historically, cooling off periods have been adopted on the basis that they 'protect consumers from the so-called 'hard sell.'²¹⁴ They can also be justified on competitive terms as a cooling off period provides breathing space for people to do some research about the goods or services being sold, to access information about the price and quality of similar products and to try to understand the contract terms.

However, cooling off periods may not be providing the degree of protection that is intended. As explored in greater detail in the Knock it off! Report, opt out cooling off models are grounded in traditional economic theories of the rational person and how a person is supposed to behave. Research²¹⁵ and behavioural economics, both of which study how people actually behave, reveal that cooling off periods are not actually effective in protecting people from the hard sell.

Based on a behavioural economics analysis, the *Knock it off!* report supported the opt-in model as a relatively meritorious option amongst those presented in CAANZ's interim report. It was argued that the opt-in model would avoid the negative impacts of the 'endowment effect,' 'status quo bias' and 'consistency theory', concepts used by behaviour economists to explain common ways of behaving. In short, the impacts of these concepts would be avoided because people will not be making decisions at the time of the sale.²¹⁶ An opt in model would do a better job at placing

²¹² See, for example, the following ACCC media releases: *Solar panel retailers amend claims on discounts and electricity savings* (2 August 2010) <<https://www.accc.gov.au/media-release/solar-panel-retailers-amend-claims-on-discounts-and-electricity-savings>>; *Solar claims must be accurate: joint warning* (4 May 2011) <<https://www.accc.gov.au/media-release/solar-claims-must-be-accurate-joint-warning>>; *ACCC accepts informal undertaking for alleged misleading carbon price claims* (5 July 2012) <<https://www.accc.gov.au/media-release/accc-accepts-informal-undertaking-for-alleged-misleading-carbon-price-claims>>; *WA solar retailer Austech pays infringement notice* (2 September 2011) <<https://www.accc.gov.au/media-release/wa-solar-retailer-austech-pays-infringement-notice>>; *True Value Solar pays infringement notices for misleading advertising* (4 November 2011) <<https://www.accc.gov.au/media-release/true-value-solar-pays-infringement-notices-for-misleading-advertising>>; *Gotta Getta Group pays infringement notices for alleged misleading solar offer* (10 June 2014) <<https://www.accc.gov.au/media-release/gotta-getta-group-pays-infringement-notices-for-alleged-misleading-solar-offer>>; *ACCC takes action against Euro Solar and Australian Solar Panel for misleading claims* (8 May 2013) <<https://www.accc.gov.au/media-release/accc-takes-action-against-euro-solar-and-australian-solar-panel-for-misleading-claims>>.

²¹³ Consumer Affairs Australia and New Zealand (CAANZ), *Australian Consumer Law Review: Interim Report* (October 2016), 17 <<https://cdn.tspace.gov.au/uploads/sites/86/2016/12/ACL-Review-Interim-Report.pdf>>.

²¹⁴ Jeff Sovern, 'Written Notice of Cooling-Off Periods: A Forty-Year Natural Experiment in Illusory Consumer Protection and the Relative Effectiveness of Oral and Written Disclosures' (2014) Spring 2014 *University of Pittsburgh Law Review* 337.

²¹⁵ Jeff Sovern, 'Written Notice of Cooling-Off Periods: A Forty-Year Natural Experiment in Illusory Consumer Protection and the Relative Effectiveness of Oral and Written Disclosures' (2014) Spring 2014 *University of Pittsburgh Law Review* 355.

²¹⁶ Consumer Action Law Centre, Loddon Campaspe Legal Centre and Westjustice, *Knock it off!* (November 2017), 28 – 29 <<https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/Knock-it-off-Consumer-Action-Law-Centre-November-2017.pdf>>.

people in analogous position of having walked into a store and being able to walk away without loosing face.²¹⁷

The *Knock it off!* report proposed a trial opt-in model for the solar industry, one reason being because the landscape at the time provided a unique opportunity to do so. While the pilot program was recommended as a way of testing the practical effectiveness of an opt-in model, it was also suggested in light of the then recently announced development of an industry code of conduct for all new energy products. Furthermore, CAANZ had concluded, as part of their ACL review, that an economy-wide study was necessary before giving further consideration to amending the ACL's unsolicited consumer agreements provisions.²¹⁸

However, the landscape has since changed and there is now a better opportunity for a superior solution. The Andrews Labor government has committed to banning door-to-door energy sales.²¹⁹ It is not clear whether this pre-election promise applies to new energy products, however, Consumer Action's view is that it should. The significant and wide-spread incidence of marketplace detriment identified in this report quite clearly warrants the inclusion of new energy products and services, such as rooftop solar panels, in the Victorian Government's ban of door-to-door sales. Unsolicited sales in this sector are undesirable, given the complex nature of the product, and the number of relatively small and new firms in this sector.

While Consumer Action would welcome the banning of unsolicited solar panel sales for these reasons, the most comprehensive and principled approach would be to ban the making of unsolicited consumer agreements all together. Three significant reasons for this are that: the problems do not seem to be going away; the problems exist across many different

industries; and the problems disproportionately impact people experiencing poverty or other factors of vulnerability and this is simply unfair.

The issues associated with unsolicited consumer agreements are not new and have persisted in the face of significant regulation and significant regulatory oversight. Since Consumer Action and the FCRC released their joint report in 2007 describing the problematic nature of direct sales channels,²²⁰ significant regulatory reform has occurred. This includes the introduction of the national CCA and ACL. As described above, the ACL contains a number of provisions that are intended to strike a fairer balance between unsolicited retailers and households.

Furthermore, to ensure these protections are effective, every consumer protection agency in Australia allocates significant resources for the development of information and materials for consumers, advising them of these rights in relation to unsolicited sales.

Further still, and despite the significant regulation and resources allocated to the task, certain sectors and communities have found it necessary to take additional, non-legislative steps to counter harm caused by unsolicited sales.²²¹ In the solar market, this has been the CEC and SEC Codes. In the traditional energy market, major participants AGL, Origin and EnergyAustralia, have all opted out of the unsolicited sales practice all together.

While there are some problems unique to the solar industry (discussed elsewhere in this report), problems associated with unsolicited consumer agreements is not one of them. Experience has shown that consumer harm from unsolicited sales comes in waves and often migrates from product to product. While solar panels are the product of the moment, in the past we have

²¹⁷ Consumer Action Law Centre, Loddon Campaspe Legal Centre and WEStjustice, *Knock it off!* (November 2017), 29 <<https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/Knock-it-off-Consumer-Action-Law-Centre-November-2017.pdf>>.

²¹⁸ In 2016, CAANZ released an interim report for their ACL review, suggesting an opt in model but ultimately chose to maintain the status quo. In doing so, however, CAANZ recognised that harm was being done by unsolicited selling in some sectors but that there were gaps in the available data. To plug this gap, CAANZ proposed an economy wide study of unsolicited selling to further inform policy decisions, flagging that additional interventions may be required. The economy wide study was scheduled for commencement in 2017 and 2018, however, the progress is unclear: Commonwealth of Australia, *Meeting of Ministers for Consumer Affairs Thursday 31 August 2017 Melbourne, Australian Consumer Law* <<http://consumerlaw.gov.au/communiqués/meeting-9-2/>>.

²¹⁹ Victorian Labor, *Fact Sheet: Cracking Down On Dodgy Energy Retailers – Labor's Energy Fairness Plan* <https://www.yammer.com/consumeraction.org.au/topics/35127022#/uploaded_files/159914456?threadId=1195139474>

²²⁰ Consumer Action Law Centre and Financial & Consumer Rights Council, *Coercion and harassment at the door: Consumer experiences with energy direct marketers* (November 2007) <<https://energyconsumersaustralia.worldsecurerights.com/grants/270/AP-270-CALC-report-on-direct-marketers.pdf>>.

²²¹ Consumer Action Law Centre, Loddon Campaspe Community Legal Centre and WEStjustice, *Knock it off!* (November 2017) <<https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2017/11/Knock-it-off-Consumer-Action-Law-Centre-November-2017.pdf>>.



seen unsolicited sales cause harm through the selling of a range of products and services including:²²² home security systems; encyclopaedia; vacuum cleaners; educational software; and traditional energy products and services. The next “problem product” may well be home battery storage systems. Applying a ban simply to the solar industry would not prevent the harm caused by unsolicited sales, it would only prevent harm from the unsolicited sale of solar products. It would therefore be a less principled approach.

Finally, any harm resulting from unsolicited sales disproportionately impacts people experiencing vulnerability. Consumer Action implores legislators to give more weight to this factor than they have in the past. In the explanatory memorandum to the ACL, the legislators acknowledged this harm caused by unsolicited sales but weighed it against

the ‘convenience’ some people may experience from unsolicited sales and also weighed it up against the interests of businesses.²²³ The argument of convenience does not hold water in today’s diverse and easily accessible market place, if ever. Furthermore, to quote Energy Australia CEO, Catherine Tanna, when explaining Energy Australia’s decision to stop door knocking in 2013, ‘there’s no good reason for the practice and we’d like to see all retailers do the right thing and stop door-to-door sales.’²²⁴

RECOMMENDATION 3:

Ban all unsolicited consumer agreements.

²²² Some of these trends have been reported by Consumer Action in the past. See, for example: Paul Harrison et al, ‘Shutting the Gates: an analysis of the psychology of in-home sales of educational software’ (Research Discussion Paper, Deakin University and Consumer Action Law Centre, March 2010) <<https://consumeraction.org.au/wp-content/uploads/2012/04/Shutting-the-Gates.pdf>>; Consumer Action Law Centre and Financial & Consumer Rights Council, *Coercion and harassment at the door: Consumer experiences with energy direct marketers* (November 2007) <<https://energyconsumersaustralia.worldsecuresystems.com/grants/270/AP-270-CALC-report-on-direct-marketers.pdf>>.

²²³ Explanatory Memorandum, Trade Practices Amendment (Australian Consumer Law) Bill (No.2) 2010 (Cth), 465-466 <https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4335_ems_8a3cd823-3c1b-4892-b9e7-081670404057/upload_pdf/340609.pdf;fileType=application%2Fpdf>.

²²⁴ Brian Robbins, ‘Call to halt door knocking energy sales rebuffed’, *Sydney Morning Herald* (online), 29 August 2016 <<https://www.smh.com.au/business/call-to-halt-door-knocking-energy-sales-rebuffed-20160826-gr1vxk.html>>.

5.5 Product Faults and Poor Performance

A significant number of enquiries from Consumer Action's advice line services relate to product faults. Examples of the types of complaints we receive are provided in the case studies below.

CASE STUDY 4: "MARTHA" & "GREG"

Illustrative of the following issues:

- **Faulty product**
- **Inadequate dispute resolution**

Martha and her husband Greg live in rural Victoria. Both rely on Centrelink income. They bought their house in early 2018 with a \$20,000 solar system already installed.

A few months later Greg was cleaning the panels when he noticed some lines in the panels, commonly known in the solar panel industry as 'snail trails.' Snail trails can indicate a loss of solar panel productivity.

Martha and Greg contacted the ex-owners of the house to find out where they had bought the solar panels. The former owners obliged, confirming the Solar Retailer they dealt with and forwarding the original invoice for purchase of the

panels. They also discovered that the panels came with a 25-year warranty.

However, when Martha and Greg contacted the Solar Retailer, the Solar Retailer disputed their liability under the warranty.

Martha and Greg attempted to press the issue, but the Solar Retailer became evasive - repeatedly claiming that the person handling the matter was away sick.

Martha and Greg then went to Consumer Affairs Victoria, who advised that if the Solar Retailer did not comply with the warranty by the

end of the week then Martha and Greg should lodge a claim against them in VCAT.

Martha and Greg sought Consumer Action's assistance to enforce their rights under the consumer guarantee provisions of the Australian Consumer Law, but on learning they would need to pay for an electrician's report to accompany a VCAT claim they chose to discontinue the matter.

Martha and Greg were not in a financial position to pursue the action. Unfortunately, they did not have access to a free Ombudsman service to hear their dispute.

CASE STUDY 5: "HENRY"

Illustrative of the following issues:

- **Faulty product**
- **Inadequate dispute resolution**

Henry is a self-employed computer technician in his late 50s. He earns a modest income while he and his wife support two children in suburban Melbourne. Family finances are tight.

Following a bequest from his late father in 2013, Henry purchased an \$18,000 solar and battery system from a Solar Retailer. Soon afterwards, Henry found that the system had a faulty inverter.

He pursued the matter with the Solar Retailer who replaced it twice, but the faults persisted. From 2017 the Solar Retailer refused to service the system and Henry had to send the latest inverter interstate to have it assessed, where it was confirmed to be faulty.

Henry eventually paid a further \$8030 to install a new, functioning inverter through another company.

In late 2016 Henry lodged a compensation claim in VCAT against the Solar Retailer. After an arduous and stressful process involving five hearings, Henry was successful with his claim.

VCAT ordered the Solar Retailer to compensate Henry almost \$7000.

Unfortunately, the Solar Retailer did not make the compensation payment, so Henry was then forced to apply to the Magistrates' Court for an enforcement order.

When the owner of the Solar Retailer was called to give oral evidence at the Magistrates' Court hearing, he gave evidence that the Solar Retailer had ceased trading in 2016 and had less than \$30 in its trading bank account.

The Magistrates Court awarded Henry \$187.50 for out of pocket expenses.

Other organisations have reported on the issue related to product faults in rooftop solar systems. In December 2018, the Auditor General's office released an independent performance audit of the Clean Energy Regulator who administers the Small-scale Renewable Energy scheme Target under the Renewable Energy Target scheme. For installations to be eligible for the financial incentives under the scheme, they must meet the Australian and New Zealand standard and comply with the state and federal safety regulations.²²⁵ As part of the administration of this scheme, the Clean Energy Regulator must arrange inspections of a statistically significant selection of small generation units installations (primarily solar systems²²⁶) for compliance with the safety and quality related eligibility criteria.²²⁷

²²⁵ Clean Energy Regulator, Australian Government, Small-scale systems eligible for certificates (20 February 2019) Renewable Energy Target <<http://www.cleanenergyregulator.gov.au/RET/Scheme-participants-and-industry/Agents-and-installers/Small-scale-systems-eligible-for-certificates>>.

²²⁶ Australian National Audit Office, Commonwealth Government of Australia, *Auditor-General Report No. 18 2018-19 Administration of the Renewable Energy Target*, 4 <https://www.anao.gov.au/sites/default/files/Auditor-General_Report_2018-2019_18.pdf>.

²²⁷ Ibid 48.

The audit report found that between 21.7% and 25.7% per cent of small generation unit installations inspected were rated as 'unsafe' or 'sub-standard' each year, with the exception of the years 2012 and 2013.²²⁸ A sub-standard rating was given where work was required to rectify the non-compliance or where the non-compliance created a high risk.²²⁹ Examples of non-compliance and risks in this category include: the risk of inverter falling; freestanding panels were not secure; or incorrect wiring at the inverter. An unsafe rating was given where there was a perceived high risk caused by the non-compliance, for example, exposed live wiring or where the rooftop panels were not secure.²³⁰

The audit report notes that the Clean Energy Regulator can suspend installers from the scheme where they have been subject to at least three adverse inspection findings but also reports that the Clean Energy Regulator is yet to impose this type of sanction.²³¹ The audit concluded that the regulator's inspection activities would be more valuable if they continuously monitored inspection results for multiple adverse findings and if they suspend installers where appropriate.²³²

Responses to the audit report were varied. The report promoted the Energy Minister, Angus Taylor, to write to his state counterparts warning that lives could be at risk if action was not taken to address poor solar panel installations.²³³ From a news article published in *The Australian*, an electrician with 8 years' experience in the solar industry seemed less surprised, commenting that:

"I get a lot of calls. A lot of them are solar orphans. The sharks have come in, they've whacked it in. No design, no care, poor workmanship... There are thousands that have closed. They change their name, they have a different director. Half of my customers are solar orphans. The companies may be there, but they don't answer."²³⁴

²²⁸ Ibid 49.

²²⁹ Ibid 49.

²³⁰ Ibid 49.

²³¹ Ibid 51.

²³² Ibid 51.

²³³ Simon Benson, 'Warning of deaths over solar panel installations', *The Australian* (online), 20 December 2018 <<https://www.theaustralian.com.au/national-affairs/climate/warning-of-deaths-over-solar-panel-installations/news-story/dccd1f4a8169c9adb5941b6d99591ee7a>>.

²³⁴ Sam Buckingham-Jones, 'Fly-by-night operators installing faulty solar panels', *The Australian* (online), 20 December 2018 <<https://www.theaustralian.com.au/business/mining-energy/flyby-night-operators-installing-faulty-solar-panels/news-story/d7479168aa51b13073ebacfa7080aed>>.

The results of a 2018 consumer survey also made significant findings relating to quality and performance of rooftop solar systems. Consumer advocacy group, CHOICE, surveyed more than 1000 CHOICE members across Australia about their experience buying and owning a solar system. The survey found that one third of respondents have experienced a problem with their system and around one third have had problems with their installer.²³⁵

The top five problems reported were:²³⁶

- significant installation delays;
- incorrect or faulty wiring;
- roof damage;
- missing or inadequate documentation and paperwork; and
- a failure to honour or facilitate the warranty process.

However, the survey also found that customer satisfaction levels were high and the quality of installations seem to be improving.²³⁷ That being said, on a previous occasion in April 2018, CHOICE reported that CHOICE member complaints about the solar industry had doubled in the preceding year.²³⁸ Consumer Affairs Victoria have also listed misleading and false claims about solar and energy products an enforcement priority,²³⁹ suggesting that they too have received a number of complaints about these issues.

Information provided to Consumer Action through our policy and campaigns work, suggests that an emerging issue, particularly in regional Victoria, relates to the negative impacts that voltage and export limiting can have on solar systems performing as promised. Export limiting occurs when electricity network operators limit the export of electricity from households to the grid in order to reduce the negative impacts of too

much solar electricity entering the grid. Anecdotal evidence provided to Consumer Action is that export limiting is common for some regional area and occurs on an arbitrary basis, impacting the finances of some households but not others. Further, we have been told that these areas are also being affected by high voltages which can cause damage to solar inverters. However, because high voltages are the responsibility of network operators and distributors and not solar retailers, damage caused in this way can negatively impact a person's ability to access their ACL guarantees and any rights they have under additional warranties. Consumer Action understands that households are only becoming aware of these risks once households have already entered into solar agreements.

The current avenues for redress for people with underperforming or faulty rooftop solar systems is to go to VCAT claiming a breach of the ACL consumer guarantee provisions and, if applicable, a breach of a warranty.

Based on Consumer Action's casework, it appears that people trying to resolve disputes about solar product faults are likely to face hurdles in two areas. The first is knowing what is causing the underperformance and who is responsible for the fault. The average person is unlikely to have the technical expertise to diagnose what is causing underperformance or faults. Solar systems are complex, involving multiple parts and requiring multiple parties to ensure proper installation and grid connection. This creates fertile ground for blame shifting between the entities involved. In theory, this shouldn't occur because the ACL guarantees apply to the supplier of the goods, in this case the solar retailer, who can then seek compensation from the manufacturer.²⁴⁰ The retailer would also be responsible for the work of any subcontractors acting as their agents and so would be responsible for the installation work if the solar retailer had arranged this to be done

²³⁵ Alison Potter, Choice, *Survey results: Are you happy with your solar panels?* (14 December 2018) <<https://www.choice.com.au/home-improvement/energy-saving/solar/articles/solar-power-survey-results>>.

²³⁶ Alison Potter, Choice, *Survey results: Are you happy with your solar panels?* (14 December 2018) <<https://www.choice.com.au/home-improvement/energy-saving/solar/articles/solar-power-survey-results>>.

²³⁷ Alison Potter, Choice, *Survey results: Are you happy with your solar panels?* (14 December 2018) <<https://www.choice.com.au/home-improvement/energy-saving/solar/articles/solar-power-survey-results>>.

²³⁸ Alison Potter, Choice, *Dodge the shonks* (10 April 2018) <<https://www.choice.com.au/home-improvement/energy-saving/solar/articles/how-to-find-a-good-solar-installer>>.

²³⁹ Consumer Affairs Victoria, *About us* (31 January 2019) <<https://www.consumer.vic.gov.au/about-us>>.

²⁴⁰ ACL s 274.

through a subcontractor. However, along with having poor technical knowledge, an individual is also unlikely to be armed with a strong understanding of their consumer rights when dealing directly with their solar retailer. In these circumstances, it is easy for people to be given the run around.

The second hurdle faced by many people with disputes relating to product faults is being able to prove their case at VCAT. For example, if a person were to make a claim that a solar retailer breach the consumer guarantee as to acceptable quality, they would have to be able to prove, with evidence and on the balance of probabilities, that the goods were not of acceptable quality. The ACL says that:²⁴¹

(2) Goods are of acceptable quality if they are as:

- a. *fit for all the purposes for which goods of that kind are commonly supplied; and*
- b. *acceptable in appearance and finish; and*
- c. *free from defects; and*
- d. *safe; and*
- e. *durable;*

as a reasonable consumer fully acquainted with the state and condition of the goods (including any hidden defects of the goods), would regard as acceptable...

The available remedy for a breach of a consumer guarantee depends on whether the failure to meet the guarantee is a 'major failure' or not. There is a legal test saying what amounts to a major failure. This test would also have to be met, on the balance of probabilities, if a person wanted VCAT to order the relevant remedy for a major failure. This is a major evidentiary hurdle.

If the person wanted to prove there was a breach of a voluntary warranty, the person would again need to prove, with evidence, the nature and extent of the product fault and address any other terms and condition of the voluntary warranty. For example,

sometimes voluntary warranties will exclude certain faults and the retailer will claim they do not have to pay to fix those faults.

A person is also likely to struggle to prove a case of false or misleading information about the capabilities of the solar system and the savings it could deliver if the system is underperforming. To prove a case at VCAT it would be necessary to articulate exactly how far the system falls short of the representations made and exactly how much money has been lost as a result. This would be extremely difficult to calculate and articulate given the performance of solar panels depends on conditions like the weather. This is even more difficult to calculate when the loss is ongoing. This was one of the difficulties that Henry from case study 5 experienced.

It is extremely difficult, if not impossible, for people to prove these kinds of ACL breaches without evidence from an independent expert about the nature and extent of the product fault or the degree and cause of the underperformance. Breaches of this kind will often involve highly technical questions about the state of the solar panels and what is needed for their repair. Neither VCAT tribunal members nor the average person typically have this technical expertise. As we saw in the case studies of Henry, Martha and Greg, an inability to obtain an expert report proved fatal to each case. Martha and Greg could not afford the cost of an expert report and so did not go ahead with their case, while Henry went to VCAT without an expert report and failed to provide enough technical evidence to prove a number of his claims to the satisfaction of the VCAT member. The VCAT member therefore only ordered that the solar retailer pay a portion of Henry's claim.

Steps have been taken outside of the legal framework to reduce some of the harm caused by product faults. The CECCode provides for a standard minimum 5-year warranty covering the operation and performance of the whole solar system, including workmanship and products,²⁴² Under the warranty, the retailer is responsible for addressing any problems relating

²⁴¹ ACL s 54.

²⁴² Clean Energy Council, *Solar Retailer Code of Conduct* (October 2015), 6 and 17 <<http://www.solaraccreditation.com.au/dam/solar-accred/retailers/code-of-conduct/Solar-PV-Retailer-Code-of-Conduct/Solar-Retailer-Code-of-Conduct-Sept-2015.pdf>>.

to workmanship or product that arise during this period.²⁴³ In the current draft of the NET Code, the warranty period is not specified but says it will be set by the Code administrator for each particular energy product.

The Clean Energy Regulator (who administers the commonwealth Small-scale Renewable Energy Scheme) is also in the process of rolling out its Solar Panel Validation Initiative. This initiative seeks to address the issue of sub-standard and counterfeit solar panels in the Australian market²⁴⁴ following the identification of non-genuine Canadian Solar branded rooftop solar panels that had been installed across New South Wales and Queensland in 2016.²⁴⁵ The initiative enables solar installers to scan a barcode on the panels to check them against a database of approved solar panel manufacturers. Both the Solar Panel Validation Initiative and the CEC Code suffer from the same limitation. They are both voluntary schemes that do not have 100% sign up across the solar industry.

One viable solution to the issue of faulty and underperforming solar panels would be to introduce a statutory warranty that would apply to all solar retailers. A statutory warranty is a mandatory warranty written into the law that must be given by the entity specified by that law. As in the CEC Code, the statutory warranty ought to cover the operation and performance of the whole solar system, including workmanship and products. Under the warranty, the solar retailer would be solely responsible for addressing any problems relating to the workmanship or physical components of the system that arises during the statutory warranty period.

In relation to an appropriate warranty period, a minimum of a 10-year whole system warranty is proposed. Technical information provided to

Consumer Action indicated that an appropriate period for a performance warranty (up to 80%) should be 25 years and for a product warranty, 10 years. Consumer advocacy group, CHOICE, reports that most solar PV systems should last at least 25 years.²⁴⁶ However, it is important to note that a statutory warranty would not prevent retailers offering longer warranties on particular parts or longer performance warranties of their choosing nor would it replace the ACL but would rather provide an additional protection.

Statutory warranties for particular industries are not unusual. Under the *Motor Car Traders Act 1986* (Vic), a used car purchased from a motor car trader automatically comes with a statutory warranty in the sale contract if the car is less than 10 years old and has been driven less than 160,000km.²⁴⁷ The warranty period is 3 months or however long it takes to drive 5,000km, whichever is shorter.²⁴⁸ If a defect appears during this period, the motor car trader must fix it or arranged for it to fixed.²⁴⁹ The *Domestic Building Contracts Act 1995* (Vic) also contains a number of automatic implied warranties that builders and tradespeople must honour. These implied warranties transfer to a new owner for up to 10 years from completion of the work.²⁵⁰ Both of these industry specific statutory warranties apply in addition to the ACL consumer guarantees.

A statutory warranty is warranted in the solar industry for a number of reasons. The first reason related to the nature of the product and its significance to households. The products and related services that solar retailers offer is much more complex than the products offered by typical retailers, who mostly sell single stand-alone items. Rooftop solar systems are relatively expensive to purchase, they are affixed

²⁴³ Ibid 6.

²⁴⁴ Clean Energy Regulator, Australian Government, *The Solar Panel Validation Initiative Information for manufacturers* <<http://www.cleanenergyregulator.gov.au/DocumentAssets/Documents/Solar%20Panel%20Validation%20Initiative%20-%20Manufacturers%20prospectus%20factsheet.pdf>>.

²⁴⁵ Clean Energy Regulator, Australian Government, *Replacement of non-genuine solar panels* (30 November 2016) Renewable Energy Target <<http://www.cleanenergyregulator.gov.au/RET/greenbank>>.

²⁴⁶ Chris Barnes, Choice, *How to Buy the best solar panels for your home* <<https://www.choice.com.au/home-improvement/energy-saving/solar/buying-guides/solar-panels#standards>>.

²⁴⁷ *Motor Car Traders Act 1986* (Vic) s 54(1).

²⁴⁸ *Motor Car Traders Act 1986* (Vic) s 54(2B).

²⁴⁹ *Motor Car Traders Act 1986* (Vic) s 54(2A).

²⁵⁰ Consumer Affairs Victoria, *Implied warranties and domestic building insurance – checklist* (23 February 2019) <<https://www.consumer.vic.gov.au/housing/building-and-renovating/checklists/impliied-warranties-and-domestic-building-insurance>>.

to people's homes, contribute to the creation of an essential service (electricity) and directly impact the finances of a household.

Secondly, a properly articulated statutory warranty for solar panels would create more certainty. How long should a solar retailer be responsible for repairing any defects or causes of underperformance? How long must a product be of acceptable quality? The ACL does not answer these questions with any degree of certainty. A statutory warranty would create this level of certainty.

Thirdly, a whole system statutory warranty would reduce the complexities currently existing for people trying to claim on a warranty or their ACL rights. Solar systems are made up of separate products but are sold as a single integrated and complex system. Often, each component on a solar system comes with a different warranty. For example, in case study 5, the solar retailer tried to argue that the solar panels Henry purchased had a five year warranty but the inverter had a one year warranty (this argument was not accepted by the tribunal member). As was the case with Henry, having separate warranties can be misleading and create further complexities for people trying to navigate their contractual rights and trying to have a technical fault remedied. Having a whole system statutory warranty against retailers would also reduce the amount of blame shifting that Consumer Action currently sees when people try to resolve their complaints directly with their solar retailer. An analogy can be made to suppliers of cars who are required

to take responsibility for the whole vehicle and are not allowed to shift responsibility to the suppliers of component parts. Retailers of solar systems should be no different.

Lastly, a statutory warranty of this kind may reduce the number of people forced to take legal action when product faults arise. This is because it would clarify how long a person can expect their system to perform and at what level. It would also make it clear that the solar retailer is responsible for the performance of a solar system and reduce the amount of room available for a dispute. Of course, disputes will still arise over the performance of the rooftop solar systems. In case studies 4 and 5, Henry, Martha and Greg all had performance warranties on their systems but still needed to go to VCAT to enforce their rights. Both cases fell down due to a lack of expert evidence diagnosing the problems with the systems. This problem may be ameliorated to some degree if people had the opportunity to take their case to a specialised external dispute resolution body. Dispute resolution is discussed in the next section of this report.

RECOMMENDATION 4:

Introduce a 10-year whole system product statutory warranty.



5.6 Lack of Affordable Dispute Resolution

There is a growing need for an affordable dispute resolution body to hear solar related disputes. Case studies 4 and 5 illustrate some of the difficulties with the current avenues available for solar dispute resolution. Individuals can go through the solar retailers' internal dispute resolution but many of Consumer Action's clients have had negative experiences with some retailers who engage in buck-passing.

To enforce their ACL rights, consumers are then forced to go to VCAT, which, as Henry from case study 5 reflected is much more 'court like' and formal than an ombudsman. As Henry also found out, to be successful in cases involving technical faults a person usually needs to have an independent expert report to help prove their case. These reports are expensive and, like Martha and Greg from case study 4, many of Consumer Action's clients simply cannot afford the cost.

Unfortunately, the experiences of Martha, Greg and Henry are not unique. While VCAT was established to create an accessible, efficient, cost efficient and independent judicially governed tribunal,²⁵¹ VCAT can be a cumbersome and intimidating forum for many consumers. It can also be prohibitively expensive when expert reports are required. Consumer Action has presented similar stories but in the context of motor car disputes²⁵² while campaigning for a motor car dispute resolution service which would provide a free technical vehicle assessment.

The Victorian Government has also recognised the accessibility issues with VCAT. Following its 2016 Access to Justice Review (**The Review**), the Review report stated that:²⁵³

“The resolution of small civil claims at VCAT has become too complex, and disadvantaged Victorians and Victorians residing in regional areas continue to experience barriers to accessing justice.”

The Review recommended a number of targeted reforms in order to improve access to justice. One such reform related to the facilitation of the early and cheap resolution of motor car disputes. The recommendation involved two elements: a compulsory conciliation service by Consumer Affairs Victoria and government funding for a technical assessment to assist dispute resolution.²⁵⁴

In many ways, the issues seen in car disputes are analogous to those involving rooftop solar. Like car disputes, disputes about faulty solar systems will often involve highly technical questions regarding the state of the products or parts, the quality of the services, whether faults can be repaired and, if so, the cost of the repairs. A similar solution involving a dedicated dispute resolution conciliation service may therefore be appropriate.

²⁵¹ Government of Victoria, *Access to Justice Review Volume 1 Report And Recommendations* (August 2016), 244 < https://s3.ap-southeast-2.amazonaws.com/hdp.au.prod.app.vic-engage.files/3314/8601/7221/Access_to_Justice_Review_-_Report_and_recommendations_Volume_1.PDF>.

²⁵² See, for example, Consumer Action's 2018 Lemon-aid report and information about our ongoing *Fix my Car!* campaign. Available at: https://policy.consumeraction.org.au/wp-content/uploads/sites/13/2018/06/LemonLaws_ConsumerActionLawCentreJune2018.pdf

²⁵³ Above n 250, 244.

²⁵⁴ Above n 250, 287.

One attractive solution is for the Energy and Water Ombudsman Victoria (EWOV) to be given expanded jurisdiction to hear complaints regarding solar panels. Indeed, the Review report noted that:

“Industry and government ombudsmen schemes appear to embody some of the best elements of alternative dispute resolution: accessibility, speed, low cost, flexibility, efficiency, support, capacity to identify systemic issues, and ability to redress power imbalances.”²⁵⁵

The Review then went on to explain five factors identified by the Productivity Commission that indicate the suitability of an ombudsman scheme for a particular industry. Four out of those five factors apply to the retail solar industry. They are: essential services are involved; there is significant asymmetry

of information, such that consumers would have difficulty asserting their rights; and there is a large number of disputes.²⁵⁶

Currently, however, EWOV cannot hear the majority of disputes about solar purchases and installations. EWOV can only resolve complaints made by “customers” about “participants” to the EWOV scheme.²⁵⁷ According to its Constitution and Charter, participants are businesses which:

- are legally required to have a licence; or
- legally required to become a member of EWOV;²⁵⁸ or
- participate in the energy industry and have entered into an agreement with EWOV to be bound by the scheme.²⁵⁹

Electricity retailers are required by law to have a licence²⁶⁰ and consequently they are required to be a participant of EWOV. Solar panel retailers and installers, however, are not required by law to have a licence or else have been legally exempted from the licence requirement and therefore are not required to be part of an alternative dispute resolution scheme. While it may be theoretically possible for solar panel retailers and installers to voluntarily enter into an agreement to be bound by EWOV, it appears they have not done so.

In any case, it is generally accepted that EWOV’s jurisdiction in relation to the new energy market, including the solar panel industry, is limited.²⁶¹ EWOV’s website publicises that while it can help with solar related issues connected to the retailer or distributor such as tariff concerns or meter configuration, it cannot help with problems with a private solar installer.²⁶² Despite this, EWOV still receives complaints related to solar but is unable to hear about one in five of those complaints received.²⁶³

²⁵⁵ Above n 250, 233.

²⁵⁶ Above n 250, 215.

²⁵⁷ EWOV, *Energy and Water Ombudsman (Victoria) Charter* (14 March 2018), cl 2.3 <https://www.ewov.com.au/files/ewov_charter_140318.pdf>.

²⁵⁸ EWOV, *Constitution of Energy and Water Ombudsman (Victoria) Limited* (17 May 2010), cl 8.1 <<https://www.ewov.com.au/files/ewov-constitution.pdf>>.

²⁵⁹ *Ibid* cls 2.1 (definition of ‘participant’ and ‘contracting participant’) and 7.2.

²⁶⁰ Electricity Industry Act 2000 (Vic) s 16.

²⁶¹ John Thwaites, Patricia Faulkne and Terry Moulder, *Independent Review into the Electricity & Gas Retail Markets in Victoria* (August 2017), 45 <<http://apo.org.au/sites/default/files/resource-files/2017/08/apo-nid102181-1208661.pdf>>. Also see, the number of reported solar complaints received by EWOV falling out of their jurisdiction: EWOV, *Res Online 25* (November 2018) <<https://www.ewov.com.au/reports/res-online/201811>>.

²⁶² EWOV, *Solar* <<https://www.ewov.com.au/resources/videos/solar>>.

²⁶³ EWOV, *Res Online 26* (February 2019) <<https://www.ewov.com.au/reports/res-online/201902>>.

The gaps in EWOV's jurisdiction have been recognised in the 2017 Independent Review into the Electricity & Gas Retail Markets in Victoria (the Independent Review). Recommendation 10 of the Review proposed that EWOV's powers be expanded to cover emerging businesses, products and services.²⁶⁴

In their final response to the Independent Review, the Victorian Government stated that it supported recommendation 10A, elaborating that:²⁶⁵

“The Government will make sure the Ombudsman has the appropriate powers to assist with complaints about new and emerging energy businesses, products and services. The Government has started this work by expanding the powers of the Ombudsman to cover customers in embedded electricity networks...”

However, it also placed a caveat on this support by stating that the Victorian Government would work with COAG Energy Council to ensure the proposed Behind the Meter code provides strong protections for consumers and that:²⁶⁶

“If it deems these protections to be inadequate, the Government will extend the Ombudsman’s jurisdictions to cover these products and services.”

This is far from unconditional support for an expanded EWOV jurisdiction.

The current consultation draft of the NET Code does not create an industry dispute resolution scheme and Consumer Action understands that there is no intention for the NET Code to do so. It is submitted, therefore, that the protections will not be adequate to deal with the injustices experienced by people who have no other option than to go to VCAT. Furthermore, any other protections provided in the Code will lack regulatory strength and all inclusive application due to the inherent nature of the Code as a voluntary industry code.

One way of increasing membership and incentivising greater compliance with the CEC Code and its eventual successor is to link it to both federal and state financial incentives schemes. That is, a person will only be entitled to receive a financial benefit from the scheme if they purchase a rooftop solar system through a

²⁶⁴ Above n 261, 45.

²⁶⁵ Department of Land, Water and Planning, Victoria State Government, *Victorian Government Final Response to the Independent Review of the Electricity & Gas Markets in Victoria* (2018), 16 <https://www.energy.vic.gov.au/_data/assets/pdf_file/0034/396583/Independent-and-Bipartisan-Review-of-the-Electricity-and-Gas-Retail-Markets-in-Victoria.pdf>.

²⁶⁶ *Ibid* 16.

retailer that is approved under the code. In the case of the Victorian scheme, the government announced on 22 March 2019, that they would be making CEC code membership an eligibility criteria under the scheme.²⁶⁷ This change is to start rolling out from 1 July 2019, with some retailers not required to sign up until 1 November 2019.

Consumer Action welcomes this change as we believe it will create a strong incentive for retailers to sign up to the Code, however, is unlikely to result in universal membership as not all retailers rely on rebates. It is also likely to result in higher levels of compliance with the Code among its members as a failure to comply may result in being removed as an approved retailer and therefore removed as a retailer through which people can access government initiatives.

However, it is unlikely to result in universal membership as many solar systems have already been installed under the scheme, not all retailers rely on rebates and the federal government's incentive program is not linked to the Code. To be effective, this change would need to be supported by stronger oversight and enforcement activities by the CEC. While the CEC currently undertakes some compliance activities, these would need to become more regular, systematic and supported by a strong enforcement culture. The CEC's guidelines relating to when they will suspend or remove a signatory as an approved retailer would also need to be strengthened.

For these reasons, linking the CEC Code to financial incentives currently available through government policy, should not be considered the silver bullet option and taken in the place of increasing the jurisdiction of EVOV. Furthermore, this could amount to a short term and unstable solution. Energy and environmental policies are highly prone to change according to the government of the day. Should government incentives be phased out, as they appear to have done in England,²⁶⁸ so too will any membership and compliance incentive.

In contrast, extending the jurisdiction of EWOV is a more long-term and more stable solution. This would probably need to be done through an industry funded registration and licencing scheme. However, it is noted that the Access to Justice Review recommended that the motor vehicle dispute conciliation service and technical assessment be administered by Consumer Affairs Victoria and assumedly, therefore, funded by the government.

One question that arises in the face of the potential extended EWOV jurisdiction is whether EWOV's jurisdiction will be extended to the extent to allow them to hear complaints against businesses that finance the purchase of rooftop solar. Currently, there is no clear pathway for people to access free and informal dispute resolution services for claims against finance providers. The pathway is muddled by question of:

- whether a finance arrangement would fall under the NCC and NCCPA's definition of 'credit' and therefore whether AFCA is available to resolve disputes in relation to the finance arrangement;
- whether VCAT can hear disputes in relation to financial services that are not regulated by the NCC or NCCPA (because they do not meet the legal definition of 'credit' under these laws); and
- whether VCAT can hear claims against financial service providers if they are 'linked credit providers' under the ACL.

Generally speaking, however, finance providers involved in the purchase of solar panels usually claim they are exempt from the NCC and NCCPA and therefore AFCA is generally not available. VCAT is also generally unavailable to hear disputes in relation to financial goods or services. If both positions are true, individuals are left with courts as their only dispute resolution option.

These issues would be resolved if, as recommended in this report, solar retailers and solar purchasers

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²⁶⁸ See, Adam Vaughan, 'UK home solar power faces cloudy outlook as subsidies are axed', *The Guardian* (online) 28 June 2018 <<https://www.theguardian.com/environment/2018/jun/27/uk-home-solar-power-subsidies-costs-battery-technology>>.

were unable to use unregulated finance providers to finance the purchase of solar panels. As only licensed and regulated credit would be available, people would then be able to take any claims against credit providers to AFCA.

While having both EWOV and AFCA available to people with complaints about solar transactions involving finance would add a layer of confusion for consumers, it is probably a preferable option compared with extending EWOV's jurisdiction to hear credit law cases in order to create a one stop dispute resolution shop. The national credit and financial law schemes are complex and highly specialised and EWOV may not be in the best position to hear disputes related to these laws. While EWOV deals with complaints related to debt collection, credit default listing and financial hardship arrangements,²⁶⁹ they do not appear to hear more complex credit law claims such as irresponsible lending or unconscionable conduct. These laws therefore may best be dealt with by AFCA. Any confusion people experienced in knowing which service to go to lodge a complaint with could be addressed by clear regulation and strong referral process.

RECOMMENDATION 5:

Extend EWOV's jurisdiction to hear complaints about all new energy products and services.

5.7 Business Closures

Consumer Action has encountered a number of cases where individuals have been frustrated in obtaining a remedy because a solar retailer has gone out of business. We are concerned that some of these cases involve deliberate phoenixing behaviour, where businesses intentionally shut shop to avoid their liabilities. Case study 2 involving Tui demonstrates the difficulties that people face when their retailer goes out of business or where their business is wound down.

A further illustration is set out below in case study 6. In this case, Consumer Action's client, 'William', was put in a compromised position under the threat that the solar retailer was going out of business. This case study also demonstrates the kinds of blame shifting that Consumer Action sees between solar retailers and solar installers.



²⁶⁹ EWOV, *Res Online 25* (November 2018) <<https://www.ewov.com.au/reports/res-online/201811>>.

CASE STUDY 6: “WILLIAM”

Illustrative of the following issues:

- **Faulty services**
- **Blame shifting**
- **Solar retailer going out of business**

William is in his early 60’s and survives on workers compensation payments following a work place injury. William’s injury left him wheelchair bound and suffering depression and anxiety. William lives alone in rural Victoria and cannot drive.

In late 2011, William purchased a solar panel system from a solar retailer for around \$9,000. The solar retailer reassured William that his iron Klip Lok roof would not be drilled into when the panels were being installed and that special clamps would be used instead.

The solar retailer contracted with a third person to install the panels. Unfortunately, the installer did in fact drill holes into William’s iron roof.

In early 2012, shortly after the panels were installed, William’s roof began to leak. William immediately contacted the solar retailer who arranged for the installer to attempt to fix the roof.

However, a few months later, the roof began leaking again. When William contacted the solar retailer, they advised him that there was no one available to assist to repair the leak. William decided to contact a plumber instead, who patched up the most obvious holes.

Throughout 2013 and 2014, the roof continued to leak. William again

contacted the solar retailer. Their response was that his 12-month warranty had now expired. William engaged another plumber, who again attempted to fix the roof without success.

Despite repeated attempts to contact the solar retailer throughout late 2015 to early 2017, William was unable to obtain a substantive response. Finally, in mid-2017 the solar retailer replied to William stating that they were not responsible for the roof damage and that if he wished, William could contact the installer.

In the meantime, William had contacted his own home insurer who, following a building report, denied his claim.

In late 2017, Consumer Action took William’s case on. Despite early indications from the solar retailer that they wanted to reach an out-of-court settlement of the case, the retailer then stopped responding to communication and the matter remained unresolved.

Consumer Action has found it difficult to negotiate with the solar retailer. The solar retailer did not provide information (such as their insurer’s reports about the damage), did not provide timely responses to communications and communicated with Consumer Action in a vague manner that lacked transparency. For example, after

Consumer Action had discussions with some representatives of the solar retailer, they were later told that those representatives did not have authority to hold discussions and make decisions on behalf of the solar retailer. The solar retailer’s position in relation to whether they are responsible for the damage to William’s roof or whether the installer is responsible has also changed throughout Consumer Action’s dealings with them.

Consumer Action filed a claim in VCAT on William’s behalf to progress the matter. All the while, William’s roof continued to leak.

Recently, and after filing the claim in VCAT, the solar retailer advised Consumer Action that they were winding up their company. This was concerning for William because, if the business shut down, it would make it much harder, if not impossible, for William to obtain compensation for the damage done to his roof. Fortunately, with Consumer Action’s help William was able to reach an out-of-court compromise with the solar retailer and the solar retailer has paid William a substantial portion of his claim which he expects will be sufficient to cover the essential repair work required on the home. William will finally be able to fix his roof after over 7 years of fighting with the solar retailer.

Again, we are not the only ones who have noticed this problematic trend. LG Solar, who sell both residential and commercial solar, have recently published on their website a list of over 690 solar installation companies who have had a change in trading conditions, gone into liquidation or stopped trading between 1 March 2011 and 31 January 2019.²⁷⁰ LG says the list was compiled from ASIC records. LG calculates that if each company operated for 4 years and completed 250 installations a year then there are 650,000 solar 'orphans' in Australia. While Consumer Action is unable to validate these calculations, it is concerning that so many companies in the solar retail industry are going out of business, undoubtedly leaving many people with worthless warranties and an inability to enforce their ACL rights. Consumer advocacy group, CHOICE, has also recently reported on the issue of solar companies going out of business noting that of all the member enquiries its consumer advisory service receives, at least 10% of these involve companies that have liquidated, 'leaving the member with a faulty system and little recourse.'²⁷¹ The trend has led CHOICE to, like LG, also hypothesise that there may be hundreds of thousands of solar panel 'orphans' across Australia.²⁷²

This story is not new, however. Other organisations have been reporting on the liquidation trend for several years, including news outlets²⁷³ and other businesses in the industry.²⁷⁴ Ironically, one of the solar retailers that warned potential customers against buying solar products auctioned off when solar companies fail due to 'mismanagement, competition' or 'selling poor quality equipment'²⁷⁵ is now in the process of going out of business itself.

The impact of uncompensated loss was the subject of research commissioned by ASIC's Consumer Advisory Panel and reported in Susan Bell Research, Compensation for retail investors: the social impact of monetary loss, ASIC Report 240, May 2011. Some of the research's key findings included that:

- 17% of the group were living below the poverty line and had either lost their home or were perilously close to losing it;
- a further 27% were experiencing a significant decline in living standards to the point where they were now 'living frugally'.
- many suffered from long-term depression;
- affected consumers draw more on community resources than would otherwise be the case; and
- damage to consumer trust and confidence in the relevant industry.

In 2016, in an independent review of the CEC Code (the **CEC Code Review**), consultancy firm Cameron Ralph recommended the following in response to the 'trail of retailer insolvencies':²⁷⁶

Recommendation 1

In consultation with Code signatories, the Code Administrator should explore Code obligations that would assist a consumer with a claim, including a warranty claim, against a Code signatory that has become insolvent. Possibilities might include a national warranty

²⁷⁰ LG, *LG Solar FAQs: Show me solar installation companies that have left the industry in Australia*, LG Solar FAQs <<https://www.lgenergy.com.au/faq/buying-a-solar-system/show-me-solar-installation-companies-that-have-left-the-industry-in-australia>>.

²⁷¹ Alison Potter, Choice, *What to do if your solar company goes out of business*:

Thousands of solar systems in Australia have been left stranded by solar companies that have been wound up (11 October 2018) <<https://www.choice.com.au/home-improvement/energy-saving/solar/articles/what-to-do-if-your-solar-company-goes-out-of-business>>.

²⁷² Choice, *Sundown for your solar supplier?* (Choice monthly magazine, February 2019), 40.

²⁷³ See, for example: Tom Arup, 'Lights out for solar firm', *The Sydney Morning Herald* (online), 7 June 2011 <<https://www.smh.com.au/business/small-business/lights-out-for-solar-firm-20110607-1fq14.html>>; Daniel Palmer, 'Solar's deathly spiral and the \$650 million Suntech fraud', *The Australian* (online), 31 July 2012 <<https://www.theaustralian.com.au/business/business-spectator/solars-deathly-spiral-and-the-650-million-suntech-fraud/news-story/1f8e7f3e5c434f341c41a7841778ddd3>>; *Renew Economy, Another big Australian solar installer in liquidation* (20 June 2016) <<https://reneweconomy.com.au/another-big-australian-solar-installer-in-liquidation-19816/>>; Cole Latimer, 'Unavoidable: Rooftop solar panel installer True Value Solar to close', *The Sydney Morning Herald* (online), 13 November 2018 <<https://www.smh.com.au/business/consumer-affairs/unavoidable-rooftop-solar-panel-installer-true-value-solar-to-close-20181123-p50hvh.html>>.

²⁷⁴ See, for example: Energy Matters, *Be Wary of Solar Company Liquidation Auctions* (23 August 2012) <<https://www.energymatters.com.au/renewable-news/em3352/>>; Solar Grain, *Solar Companies Gone into Liquidation* <<https://www.solargain.com.au/solar-companies-gone-liquidation>>; Total Solar Solutions Australia, *Why do so many solar companies file for bankruptcy?*

²⁷⁵ Energy Matters, *Be Wary of Solar Company Liquidation Auctions* (23 August 2012) <<https://www.energymatters.com.au/renewable-news/em3352/>>; Solar Grain, *Solar Companies Gone into Liquidation* <<https://www.solargain.com.au/solar-companies-gone-liquidation>>; ChoiceEnergy, *Top 4 reasons solar companies keep going under* (8 December 2018) <<https://www.choiceenergy.com.au/solar-companies-liquidation/>>.

²⁷⁶ Cameron Ralph Navigator, *Independent Review Solar Retailer Code of Conduct* (December 2016), Clean Energy Council Solar Accreditation Reports and Statistics, 10 <<https://www.solaraccreditation.com.au/retailers/statistics.html>>.

*manager arrangement or a capped default fund arrangement. Measures of this kind would need to be carefully assessed to determine when they should be introduced...*²⁷⁷

Consumer Action supports the further investigation and consideration of a default fund. However, if one of the eligibility criteria for access to the default fund was that the retailer had to be a CEC Code signatory, as the CEC Code Review seems to be suggesting, the impact on households would be limited. Especially because, as noted by the CEC Code Review, in its first three years of the CEC Code's operation, only two Code signatories had become insolvent.²⁷⁸ While the situation is likely to have changed since the review, it remains true that voluntary take up of the CEC Code is relatively low and therefore the fund would only be available for a limited number of households. A more appropriately structured default fund would need to be supported by a licensing scheme for solar retailers under which they were required to contribute financially to the fund.

It is useful to look to similar schemes introduced or proposed in other industries. The Motor Car Trader's Fund and the proposed last resort compensation scheme for the financial industries provide good examples.

The retail car industry is regulated in Victoria by the Motor Car Traders Act 1986 (Vic) (**MCTA**). Under the MCTA, motor car traders must be licensed.²⁷⁹ A licensee must pay an annual licence fee to the Business Licensing Authority.²⁸⁰ All of the fees and any penalties issued under the MCTA goes towards the establishment of the 'motor car trader fund',²⁸¹ essentially a statutory trust fund. A person can make a claim against the fund to be compensated for any loss suffered because:²⁸²

- the motor car trader has failed to comply with certain parts of the MCTA such as odometer tampering, a breach of the cooling off provisions and a breach of the statutory warranty contained within the MCTA;
- the motor car trader has failed to do certain things associated with the transfer of ownership of a used car; or
- loss has been incurred because of a failure of a motor car trader to comply with a court or tribunal order.

A motor car licence is automatically suspended 30 days after a successful claim is made against the fund.²⁸³ Sole traders, partnerships, partners, companies and company directors will become ineligible for a licence under the MCTA if they have been a partner, director or a person involved in managing a partnership or body corporate that has had a claim admitted against the Motor Car Traders Guarantee Fund.²⁸⁴ A similar provision attached to the licensing and administration of a default fund for the solar industry would therefore also help to address the concerns Consumer Action has with possible phoenixing behaviour.

For several years, Consumer Action Law Centre has been advocating for a last resort compensation scheme for victims of misconduct by insolvent financial service firms. In the wake of the Banking Royal Commission final report, the government has finally committed to an industry funded last resort compensation scheme, which banks would be compelled to contribute to under their licence.²⁸⁵

The elements of the type of scheme that Consumer Action has previously proposed in the past are:

²⁷⁷ Cameron Ralph Navigator, *Independent Review Solar Retailer Code of Conduct* (December 2016), Clean Energy Council Solar Accreditation Reports and Statistics, 16 <<https://www.solaraccreditation.com.au/retailers/statistics.html>>.

²⁷⁸ Cameron Ralph Navigator, *Independent Review Solar Retailer Code of Conduct* (December 2016), Clean Energy Council Solar Accreditation Reports and Statistics, 10 <<https://www.solaraccreditation.com.au/retailers/statistics.html>>.

²⁷⁹ MCTA s 7(1).

²⁸⁰ MCTA ss 23, 3 (definition of 'authority').

²⁸¹ MCTA s 74(2)(b).

²⁸² MCTA s 7(1).

²⁸³ MCTA s 29(1).

²⁸⁴ Consumer Affairs Victoria, *Apply for a motor car trader's licence* (16 February 2019) <<https://www.consumer.vic.gov.au/licensing-and-registration/motor-car-traders/licensing/apply-for-a-licence>>.

²⁸⁵ Christopher Knaus, 'Banks may face criminal charges after final royal commission report', *The Guardian* (online), 4 February 2019 <<https://www.theguardian.com/australia-news/2019/feb/04/banks-may-face-criminal-charges-after-final-royal-commission-report>>.

- available only to retail claims;
- apply to unpaid compensation awards from external dispute resolution schemes, court and tribunal orders;
- apply to future claims and claims dating back 10 years, including legacy unpaid determinations or orders;
- for future claims, be funded by all industry participants;
- for past claims, be funded by industry with a contribution by Government.
- if full redress is not possible, a rationing mechanism based on financial hardship should apply;
- trigger ASIC action against the firm's directors and managers to reduce phoenixing and incentivise prudent behaviour;
- be administered by a separate, self-funding unit; and
- be governed by a board with an independent chair and an equal number of directors from industry and consumer backgrounds.

With appropriate modifications, these extensively researched elements could be considered for a last resort scheme for the solar industry. However, any solar industry default fund would similarly operate as a compensation scheme of last resort. That is, it would only be available for claims where:

- loss flows from misconduct by a licensee;
- the misconduct has been proven through an alternative dispute resolution provider, a court, tribunal or through the fund administrator in cases where the company has already gone out of business by the time the person is able to make a claim;
- the licensee then cannot meet the claim; and
- all avenues for compensation have been exhausted.

The default fund would therefore only be called on in a minority of cases.

A default fund may trouble some industry groups concerned that solar retail companies doing the right thing will be forced to pay for the wrongs of those with less ethical business models. However, such a concern would be misplaced. If, as is being suggested here, all solar retailers are required to have a licence and a portion of all licence fees go into the default fund, all players in the industry would be responsible for the harm being caused in the industry. Furthermore, if a retailer's licence can be suspended upon a successful claim on the fund and if the persons running that retail business are restricted from starting up a new solar retail business (as is the case in the motor car trader's industry), then surely this would result in reputational benefits for, and increased consumer trust in, the industry as a whole. This can only be a good thing from the perspective of retail business doing the right thing by their customers.

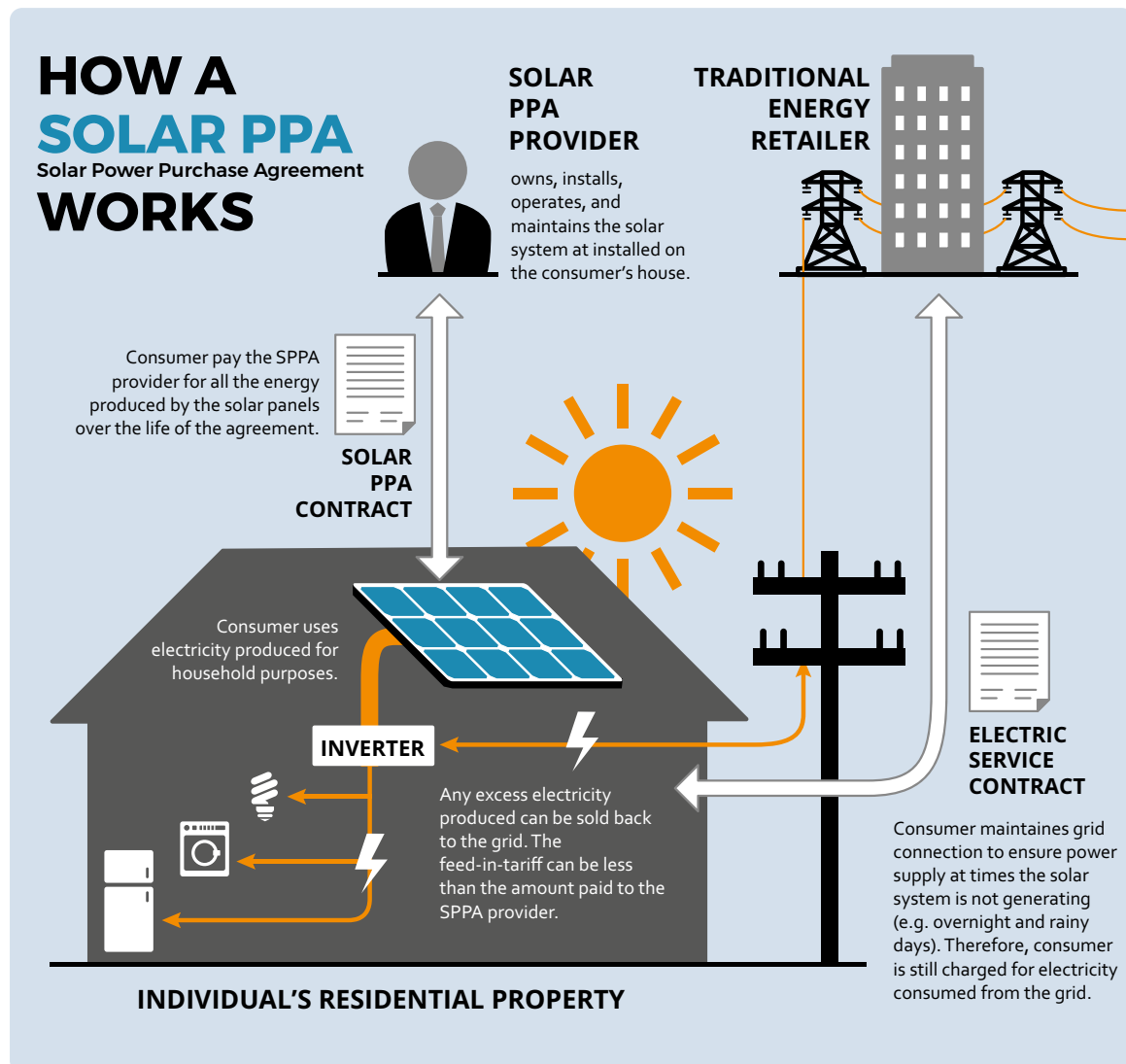
If such a scheme existed the harm and social impact of monetary loss would be reduced. Households with faulty 'solar orphans' would have an avenue for redress as would people like 'Henry', who was lumped with an underperforming rooftop solar system and an unenforceable and unpaid VCAT order.

RECOMMENDATION 6:

Introduce an industry-funded default or last resort compensation scheme.

5.8 Solar Power Purchase Agreements

Consumer Action have seen cases, such as case study 7 below, of poorly structured solar power purchase agreements or “Solar PPAs.” A Solar PPA is usually a long-term contract to purchase electricity generated by a solar panel system installed on an individual’s residential property but not owned by that individual. All of the electricity produced by the panels is purchased by the individual from the owner of the panels, regardless of the amount of electricity used by the household. The individual, who remains connected to the grid, is then free to sell any excess electricity to their energy retailer. This type of arrangement is illustrated below.



The purpose of solar PPA is to reduce the household’s energy costs by reducing the amount of electricity they buy from traditional energy retailers. But, as we see with case study 7, a poorly structured solar PPA can have the opposite effect.

CASE STUDY 7: “HUIXUAN”

Illustrative of the following issues:

- **Solar PPA**
- **Installation of system not fit for purpose**
- **Potentially unconscionable and/or misleading conduct**

Huixuan is a 54-year-old single Mum who depends on Centrelink income. She is primarily Mandarin speaking, cannot read or write English and required an interpreter to give her instructions when communicating with Consumer Action.

In 2014 Huixuan was convinced by a friend of hers, acting as an agent for a Solar Power Retailer, to enter into a solar power purchase agreement.

Huixuan’s understanding of the agreement was that, in return for allowing the Solar Power Retailer to install solar panels on her roof, Huixuan would receive free energy through the panels during the day and pay her usual Energy Retailer for energy she used at night, at normal rates.

Huixuan further understood there would be no charge for installation of the panels and she would not pay for energy produced by the panels that she didn’t use.

Unfortunately, the contract that Huixuan entered into was complex and did not reflect her understanding of the arrangement. In fact, Huixuan’s obligations under the contract would not even be clear to a native English speaker not acquainted with technical terms and industry regulations such as feed-in tariff rates.

The contract deemed Huixuan to be using 70% of electricity produced by the system and charged her a rate of 11.5c kW/h for that usage.

In addition, Huixuan was required to pay for electricity that the Solar Retailer acknowledged she did not use, at a rate of 8.8c kW/h, which exceeded the feed-in tariff rate at the time. This meant that Huixuan incurred cost for every kW/h the system produced in excess of her deemed usage.

It appeared the arrangement operated as an incentive for the Solar Power Retailer to install a system far in excess of Huixuan’s power usage needs, and in fact they did install a system with production capacity of approximately 300% of her total monthly electricity usage prior to installation. In addition, Huixuan was charged \$243.52 for installation of the panels.

Finally, the contract signed by Huixuan stipulated a 15-year term.

When referred to Consumer Action, Huixuan was being pursued by the Solar Power Retailer for \$1810.

Consumer Action successfully negotiated a settlement on behalf of Huixuan, alleging under the Australian Consumer Law that the Solar Power Retailer had engaged in misleading and deceptive conduct,

unconscionable conduct, and that the supplied system was not fit for purpose.

Under the terms of the settlement, Huixuan agreed to pay manageable monthly instalments to the Solar Power Retailer for twelve months – at which point Huixuan will own the solar panels, and the solar power purchase agreement that she entered into will be discharged.

Very clearly, the agreement Huixuan entered into was unfair, inappropriate and would inevitably lead to financial hardship. Her case demonstrates the need for clearer consumer guidance, and stronger regulation of solar power purchase agreements.

From Consumer Action's perspective at least, residential Solar PPAs seem to still be reasonably rare. However, we have seen enough cases of this kind involving significant unconscionability to represent a red flag. We are concerned that the number of these kinds of agreements may increase in the years ahead.

These are often very complex arrangements making them extremely difficult to understand. As was the case with Huixuan, the complexities can be compounded by misleading representations, unfair contract terms and lack of accountability and transparency. This can result in households paying far more than they expected for electricity, defeating the purpose of entering into the arrangement in the first place. Depending on the contract terms of the Solar PPA, an individual may be forced to pay the owner of the solar panels a higher rate for the electricity that the panels create than what they get back in a Feed-in-Tariff.

One solution to the issues presented in cases like Huixuan's is to require that solar panel providers make further enquiries about a person's objectives before entering into an agreement. This was one of the initiatives suggested in Consumer Action's *Power Transformed* report (2016) which suggested a requirement for energy service providers to identify a consumer's purpose in acquiring a service, to ensure it is appropriate.²⁸⁶ In applying such an initiative to the sale of new energy products and services such as rooftop solar, a person's purpose for purchase would be expressly declared in the purchase documentation which would support a person's rights under the ACL that goods and services are fit for purpose. Regulations could also be enacted requiring solar retailers to make enquiries in relation to and document a person's energy use in order to ensure the product will meet

the person's objective. This type of reform would also support people who are sold more panels than they need.

A second solution relates to dispute resolution avenues. Currently, people or businesses offering Solar PPAs are exempt from holding a licence under the Electricity Industry Act 2000 (Vic) but must be registered in a 'Register of Exempt Persons' under the Act.²⁸⁷ This has not always been the case. In 2015, the Victorian Government amended the class of exemptions from the requirement to hold a licence to include solar PPA providers.²⁸⁸ This means that from 2015, Solar PPAs were exempt from holding a licence and did not need to register their exemption or activities in the "Register of Exempt Persons" under the Act. DELWP undertook a review of all of the exemption to the Act, including the one relating to Solar PPAs, culminating in their final position paper published in 2017,²⁸⁹ which said that Solar PPAs will continue to be exempt but will need to register their activities. This is still the position now.

During the government review process, Consumer Action made submissions setting out our position about a registration exemption for Solar PPAs. We made it known to DELWP that we strongly disagree with its then proposed approach to limit jurisdiction of EWOV to consumers with Solar PPAs.²⁹⁰ Further, we made it known that our strong preference is that the EWOV should cover disputes arising from any energy service, including SPPAs. We maintain this view notwithstanding the Government's reasons for not extending EWOV's jurisdiction in 2017, which, appear to be based of the perceived negative impacts EWOV's jurisdiction might have on innovation, although not explicitly stated in those terms.²⁹¹

²⁸⁶ Consumer Action Law Centre, *Power Transformed* (July 2016), 36 <<https://consumeraction.org.au/wp-content/uploads/2016/07/Power-Transformed-Consumer-Action-Law-Centre-July-2016.pdf>>.

²⁸⁷ Victorian Government, 'Electricity Industry Act 2000 General Exemption Order 2017' in Victoria, Victorian Government Gazette, No. S 390, 15 November 2017, [17] <https://www.energy.vic.gov.au/_data/assets/pdf_file/0029/89309/General-Exemption-Order-2017-GG2017S390.pdf>.

²⁸⁸ Department of Environment, Land, Water and Planning, State of Victoria, *Review of the Victorian Electricity Licence Exemptions Framework Final Position Paper* (2017), 29 <https://www.energy.vic.gov.au/_data/assets/pdf_file/0025/80746/Review-of-the-Electricity-Licence-Exemptions-Framework-Final-Position-Paper.pdf>.

²⁸⁹ Department of Environment, Land, Water and Planning, Victoria State Government, *Victorian Licence Exemptions – General Exemption Order* (23 November 2018) <<https://www.energy.vic.gov.au/legislation/general-exemption-order>>.

²⁹⁰ Consumer Action and Consumer Utilities Advocacy Centre, Submission to Department of Environment, Land, Water and Planning, General Exemptions Order Draft Position Paper, 30 August 2016, 14 <<https://consumeraction.org.au/wp-content/uploads/2016/09/CUAC-CALC-SUBMISSION-ON-GEO-REVIEW-DRAFT-PAPER-30-AUG-amended.pdf>>.

²⁹¹ See, Department of Environment, Land, Water and Planning, State of Victoria, *Review of the Victorian Electricity Licence Exemptions Framework Final Position Paper* (2017) <https://www.energy.vic.gov.au/_data/assets/pdf_file/0025/80746/Review-of-the-Electricity-Licence-Exemptions-Framework-Final-Position-Paper.pdf>.

Making EWOV available to different types of energy consumer will become increasingly important as the sector continues to innovate and diversify. Victorians accessing electricity in exempt selling arrangements with fewer than ten customers encounter the same or worse detriment than other Victorian customers, yet without reform these arrangements will remain largely invisible to regulators, and their customers denied access to effective dispute resolution.

In our 2016 report, *Power Transformed*, which was informed by the deliberations of the Demand Side Energy Reference Group (including a senior member of DELWP) we describe a key area of consumer detriment, where new energy products and services may fall outside the current regulatory framework. One of three principles identified as essential for consumer engagement and trust in a competitive market is the application of consumer protections to all energy products and services.

There is an opportunity in Victoria to tackle this continued failure in the Victorian energy market by accepting Recommendation 10A from the Independent Review and extend EWOV's jurisdiction to cover disputes arising from any energy service, including SPPAs.

RECOMMENDATION 7 AND 8:

- **Require solar retailer to enquire about a customer's purposes and objectives before entering into an agreement to ensure that the products and services being sold are appropriate and fit for purpose.**
- **Remove the registration exemption for Solar PPAs from the *Electricity Industry Act 2000* General Exemption Order 2017 to enable EWOV to have jurisdiction over these arrangements.**



06

REGULATORY OPTIONS

Regulatory Instrument and Regulator Responsibility

This report has made a number of recommendations for regulatory reform. There are a number of options for policymakers to consider when considering the form of the regulatory instruments and the structure of regulatory scheme.

As a general principle, national uniform regulation would be the most desirable outcome. Although given the current differences in the national and Victorian regulation of the traditional energy market, this seems unlikely. As a short to medium term solution it would make sense to leverage off the state-based regime to incorporate the regulatory reforms suggested in this report. The options for legislative reform would include:

- amend the current *Electricity Industry Act 2000* (Vic) to include new energy products within the requirement to be licensed and create additional provisions where necessary; or
- create a standalone piece of legislation for the new energy market containing the regulatory reforms recommended in this report.



In terms of regulatory responsibility, consideration could be given to whether the ESC, as the statutory body with responsibility for regulation of the state's essential services, or whether CAV, as the Victorian regulator with responsibility for administering the Victorian consumer law, should have responsibility for residential solar and other new energy products and services. Relevant to the consideration are the following factors:

- rooftop solar panels are related to the creation of an essential service and the ESC;
- the ESC already has significant expertise and corporate knowledge in relation to the distribution and retail supply of electricity and the energy market;
- the ESC already has a close relationship with EWOV which is formalised through their memorandum of understanding;²⁹²
- having the ESC regulate both new and traditional energy markets would aid clarity and consistency across the industries.

Factors in favour of CAV taking regulatory responsibilities include:

- CAV has significant expertise and corporate knowledge in relation to the ACL, currently the main form of consumer protection for people who have purchased rooftop solar panels;
- CAV administers the licencing of motor car traders under the MCTA and the motor car trader's default fund which would aid their administration of similar schemes for the solar industry.

From Consumer Action's perspective, it appears that the ESC would be in the best position to administer the regulatory reforms proposed in this report.

²⁹² EWOV, Regulators <<https://www.ewov.com.au/about/our-relationships/regulators>>.

07

CONCLUSION

The energy market is changing but the regulatory system is dragging its feet. Through our work, Consumer Action has observed the impact of this lag. The most common and pressing issues we have seen in recent times are:

- **failings in solar installations or grid connection;**
- **inappropriate or unaffordable finance being offered to purchase solar systems;**
- **misleading and high-pressure sales tactics in the context of unsolicited sales;**
- **product faults and poor performance;**
- **a lack of affordable dispute resolution;**
- **business closures;**
- **poorly structured and highly problematic solar power purchase agreements.**

Consumer Action is not the only one reporting on these trends and discussions are underway about the improvements that could be made to both the traditional and new energy markets. Now is the time to capitalise on the momentum behind these discussions, particularly given further government investments in the new energy sector. The problems we are seeing with solar panels will repeat and manifest themselves in relation to other new and emerging energy technology in Australia unless we take the opportunity to prevent their spread.

Consumer Action is of the view that the following regulatory reforms will significantly reduce the harms currently being caused in the solar and new energy industries and will prevent future harm:

1. **Solar retailers should be given legal responsibility to ensure that solar panels are properly connected to the grid, unless people elect to take responsibility themselves;**
2. **The national credit laws should be amended so that all buy now, pay later finance arrangements come within their ambit;**
3. **Unsolicited sales should be banned;**



4. **A 10-year statutory warranty applying to the whole solar system should be provided by solar panel retailers;**
5. **The jurisdiction of the Energy and Water Ombudsman should be extended to include the retail sale of new energy products and services;**
6. **A solar default fund should be established to provide compensation to those entitled to compensation but unable to access it due to the insolvency of a solar retail business;**
7. **Solar power purchase agreements should be included within the ambit of any new or extended regulatory regime covering new energy products and services, including the extension of EWOV's jurisdiction to cover all new energy products.**

Not only will these reforms benefit households but they will also be of benefit to industry. For competition to thrive, consumers need to be willing to participate in the market, perceiving the benefits of participation to outweigh the costs.²⁹³ Effective consumer participation is based on trust that the market will deliver the outcomes they expect in terms of service, quality and price.²⁹⁴ Continued consumer detriment will undermine this trust.

Consumer detriment and a lack of trust also erodes the environmental ambitions shared by individuals who invest in new energy, community groups, innovative markets and governments alike. A refusal to implement the regulatory reforms suggested in this report does not protect economic and environmental innovation. Rather, a failure to implement regulatory reform would protect unscrupulous businesses that continue to do the wrong thing, often at the expense of those in our community who are already doing it tough.

²⁹³ Consumer Action Law Centre, *Power Transformed* (July 2016), 5 <<https://consumeraction.org.au/wp-content/uploads/2016/07/Power-Transformed-Consumer-Action-Law-Centre-July-2016.pdf>>.

²⁹⁴ *Ibid.*



 /consumeractionlawcentre

 consumer_action

 consumeraction.org.au

Molony, Erin

From: Stephanie Bashir <stephaniebashir@nexaadvisory.com.au>
Sent: Thursday, 28 March 2019 8:11 AM
To: Sabiene Heindl; Phil Khoury; Kurt Winter; mnarayan@energynetworks.com.au; Gerard Brody; michelle.taylor@energyq.com.au <michelle.taylor@energyq.com.au>; Miyuru Ediriweera; Steve Blume (NoCarbon); dean@ata.org.au <dean@ata.org.au>; claire.deane@consumeraction.org.au; ceo@smartenergy.org.au <ceo@smartenergy.org.au>; Ben Barnes; mlim@cleanenergycouncil.org.au; jennifer.gannon@energyq.com.au; Kane Thornton
Subject: FW: Action: NETC Code review & sign off

Dear all

As we did not receive any feedback from the BTM working group on the NETC Code, we will progress to the final stage.

With regards to the submission and feedback from Brighte- a sub group of the BTM wg members met with Brighte CEO and CFO yesterday listen to their issues and concerns. The discussion a sub group of the BTM wg which involved Sabiene Heindl, Gerard Brody, Mindy Lim, Dean Lombard, Wayne Smith with Brighte.

It was a very constructive discussion and the group came to the following conclusion as a result:

There are challenges to amend the Code to accommodate specific business models, even those that are sufficiently consumer focused especially as it puts a huge obligation and responsibility on the Administrator.

It was recognised that the Buy Now Pay Later code (being developed currently under financial sector) that Brighte referred to could be a good mechanism to work into the NETCC as a benchmark, however without that code yet being drafted it is difficult to envisage how this could work at this point, especially as the NETCC is due Monday to SCO.

The consensus is to draft in the NETCC ACCC application a section focused on this issue and state that the Council will instruct the Administrator (once appointed) to monitor the development of the Buy now pay later code and once drafted, if it meets the consumer protections in alignment with the NETC Code, the NETCC will be amended to specifically refer to the new Financial Code. The NETCC Council will make a decision on the basis that the new Financial code has sufficient consumer and stakeholder engagement, and is registered with ASIC.

This means at this stage no changes to the NETCC Package in that respect. Phil is currently finalising the package which we will circulate with an agenda and revised timeline ahead of our BTM working group meeting tomorrow.

Thanks for all your support this week.

Warm regards
Stephanie

Stephanie Bashir
Principal

The logo for nexa ADVISORY, with 'nexa' in a stylized yellow font and 'ADVISORY' in a grey font below it.

From: Stephanie Bashir <stephaniebashir@nexaadvisory.com.au>

Sent: Wednesday, 27 March 2019 8:30 AM

To: Sabiene Heindl <Sabiene.Heindl@energyconsumersaustralia.com.au>; Phil Khoury <phil@crkhoury.com>; Kurt Winter <kwinter@agl.com.au>; mnarayan@energynetworks.com.au; Gerard Brody <gerard@consumeraction.org.au>; michelle.taylor@energyq.com.au <michelle.taylor@energyq.com.au> <michelle.taylor@energyq.com.au>; Mediri Weera (PIAC) <mediriweera@piac.asn.au>; Steve Blume (NoCarbon) <CEO@nocarbon.com.au>; dean@ata.org.au <dean@ata.org.au> <dean@ata.org.au>; claire.deane@consumeraction.org.au; John Grimes <ceo@smartenergy.org.au>; Ben Barnes (Energy Council) <ben.barnes@energycouncil.com.au>; Mindy Lim (CEC) <MLim@cleanenergycouncil.org.au>; Jennifer Gannon (EnergyQ) <jennifer.gannon@energyq.com.au>; Kane Thornton <kthornton@cleanenergycouncil.org.au>

Subject: Re: Action: NETC Code review & sign off

Dear BTM working group members

This is a friendly reminder for those who circulated to their members for final review, that comments are due COB today.

Please make sure feedback is sent through by end of the day to be considered.

We are almost there!

A final package of the consumer code will be circulated Friday for sign off which will include the letter, the code, out of scope issues and the journey document.

Warm regards
Stephanie

Sent from my iPhone

On 22 Mar 2019, at 12:19 pm, Stephanie Bashir <stephaniebashir@nexaadvisory.com.au> wrote:

Thanks Sabiene for coming back on this so quickly.

John, Ben & Kane- over to you. If you are proceeding with member consultation, please note the timeline and key dates below:

- Final comments from BTM working group signatories (SEC, AEC, ENA CEC and ECA) by COB Wednesday 27 March (extended from Monday 25 March)
- Phil and working group to work through any last minute comments on Thursday 28 March
- Official sign off by BTM working group signatories on the NETCC package COB Friday 29 March (extended from COB Thursday 28 March)
- Sabiene to submit NETCC package to EMTPT COB Monday 1 April

Thanks
Stephanie

From: [Sabiene Heindl](mailto:Sabiene.Heindl@energyconsumersaustralia.com.au)

Sent: Friday, 22 March 2019 12:00 PM

To: [Stephanie Bashir](#); [Phil Khoury](#); [Kurt Winter](#); mnarayan@energynetworks.com.au; [Gerard Brody](#); michelle.taylor@energyq.com.au <michelle.taylor@energyq.com.au>; [Mediri Weera \(PIAC\)](#); [Steve Blume \(NoCarbon\)](#); dean@ata.org.au <dean@ata.org.au>; claire.deane@consumeraction.org.au; [John Grimes](#); [Ben Barnes \(Energy Council\)](#); [Mindy Lim \(CEC\)](#); [Jennifer Gannon \(EnergyQ\)](#); [Kane Thornton](#)

Subject: RE: Action: NETC Code review & sign off

Dear BTM WG

I have spoken to the Chair of EMTPT, Stephanie Jolly. Stephanie Jolly stressed that it is imperative that the Code be put to the SCO Meeting in April and then to COAG EC, as we have already committed to.

I explained that the purpose of the additional consultation was due to the desire of BTM WG to ensure fulsome support for the Code from their stakeholders, prior to ACCC authorisation.

On that basis, she has agreed to the Code package being submitted to EMTPT/ SCO on **1 April 2019**.

Best regards

Sabiene Heindl
Director, Strategic Engagement



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From: Stephanie Bashir <stephaniebashir@nexaadvisory.com.au>

Sent: Friday, 22 March 2019 11:29 AM

To: Phil Khoury <phil@crkhoury.com>; Sabiene Heindl

<Sabiene.Heindl@energyconsumersaustralia.com.au>; Kurt Winter <kwinter@agl.com.au>;

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Council) <ben.barnes@energycouncil.com.au>; Mindy Lim (CEC)

<MLim@cleanenergycouncil.org.au>; Jennifer Gannon (EnergyQ)

<jennifer.gannon@energyq.com.au>; Kane Thornton <kthornton@cleanenergycouncil.org.au>

Subject: Action: NETC Code review & sign off

Dear all

Following our meeting this morning, and the request from John to allow for member consultation on the final version of the NETCC, attached is a clean version of the NETCC.

There is a few extra days provided in the timeline as requested for member review.

Actions:

- Sabiene to reach out to the EMTPT to extend the submission date to COB Monday 1 April
- Final comments from BTM working group signatories (SEC, AEC, ENA CEC and ECA) by COB Wednesday 27 March (extended from Monday 25 March)
- Phil and working group to work through any last minute comments on Thursday 28 March
- Official sign off by BTM working group signatories on the NETCC package COB Friday 29 March (extended from COB Thursday 28 March)
- Sabiene to submit NETCC package to EMTPT COB Monday 1 April

As discussed, there has been extensive consultation and work to date so it would be great to ensure that confidence in the code is communicated to members and the opportunity for further consultation during the ACCC public consultation process.

In order to mitigate risk of delays and ensure that Phil and the team have sufficient time to work through the comments, we would appreciate any major issues raised to be brought to the attention of the working group as soon as possible so they can be managed appropriately.

Thanks everyone once again for all your hard work in moving this along.

Minutes from this morning, actions and revised timeline will be circulated shortly.

Warm regards
Stephanie

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Our ref: AA1000439
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16 August 2019

adjudication@acc.gov.au
www.acc.gov.au

Ms Mindy Lim
Code of Conduct Manager (Solar Retailer Code)
Clean Energy Council
Level 15, 222 Exhibition St
Melbourne VIC 3000

By email: MLim@cleanenergycouncil.org.au

CC: ASexton@cleanenergycouncil.org.au

Dear Ms Lim

Clean Energy Council & Ors application for authorisation of New Energy Tech Consumer Code AA1000439 – Pre-Decision Conference

Brighte and Solar Naturally have each requested that the Australian Competition & Consumer Commission (the **ACCC**) convene a conference in relation to the draft determination issued by the ACCC on 1 August 2019 proposing to grant authorisation AA1000439.

The draft determination follows an application for authorisation of the New Energy Tech Consumer Code which was lodged by the Clean Energy Council, the Australian Energy Council, the Smart Energy Council and Energy Consumers Australia. A copy of the application and draft determination can be found on the ACCC's website www.accc.gov.au.

A pre-decision conference provides an opportunity for applicants and interested parties to make oral submissions to the ACCC about its draft determination.

The ACCC will hold the conference on **9 September 2019** in Melbourne. The conference will commence at 10:00am and run until 12:00pm. The conference will be chaired by an ACCC Commissioner.

The applicant and other interested parties may attend the conference. If you wish to attend, you must notify the ACCC of your intention in writing by **5:00pm on Monday 26 August 2019**. To do so please email: adjudication@acc.gov.au.

We will contact registered attendees closer to the date of the conference to confirm the location, which may be at the ACCC's Melbourne office or another Melbourne venue. It may also be possible to arrange video or telephone links to other locations. Please notify us as soon as possible if you wish to attend but are unable to travel to Melbourne.

Please provide a list of attendees for the applicants and their position titles, and indicate who will be the chief spokesperson.

While conference participants may bring outside legal or other professional advisers to assist them, there is no entitlement for these advisers to participate in conference discussions.

Attached for your information are procedures usually followed at pre-decision conferences.

A copy of this letter has been placed on the ACCC's public register. If you require any further information in regard to the conference, please contact Theo Kelly on (02) 6243 1179 or Kaitlin Hanrahan on (03) 9290 1917.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D Jones', is positioned above the typed name.

David Jones
General Manager
Adjudication

Jacqueline Crawshaw

From: Mindy Lim <MLim@cleanenergycouncil.org.au>
Sent: Friday, 30 August 2019 2:05 PM
To: John Grimes; michelle.taylor@energyq.com.au; Kurt Winter; Mediri Weera (PIAC); Jennifer Gannon (EnergyQ); Steve Blume (NoCarbon); Ben Barnes (Energy Council); Jacqueline Crawshaw; Gerard Brody; Anna Sexton (CEC); Dean Lombard
Subject: ACCC pre hearing conference re. draft determination

Dear Working Group members,

In preparation for the discussion on Monday morning, the ACCC has requested that the Working Group respond to points raised in 3.3(b) to (e) in the Draft Determination.

1. Is the exclusion around BNPL too blunt? Are there other ways to ensure providers of BNPL and other exempt products provide appropriate (or equivalent) consumer protections without requiring a strict exclusion?
2. Some submissions call for a ban on unsolicited sales. Can the NETCC strengthen the obligations on providers who utilise this channel?
3. Some submissions have also mentioned that the drafting in NETCC is too high level and does not provide sufficient certainty to potential signatories. Can the WG consider some sections where the wording could be tightened?

We should have a written statement from the Working Group prior to the hearing on 9 Sept.

Regards
Mindy



MINDY LIM, CODE OF CONDUCT MANAGER



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From: [Ben Barnes](#)
To: ["Dean Lombard"](#); [Gerard Brody](#); [Mindy Lim \(CEC\)](#); [John Grimes](#); michelle.taylor@energyq.com.au; [Kurt Winter](#); [Mediri Weera \(PIAC\)](#); [Jennifer Gannon \(EnergyQ\)](#); [Steve Blume \(NoCarbon\)](#); [Jacqueline Crawshaw](#); [Anna Sexton \(CEC\)](#)
Subject: RE: ACCC pre hearing conference re. draft determination
Date: Monday, 2 September 2019 10:59:55 AM
Attachments: [image001.jpg](#)
[image002.png](#)
[image003.png](#)
[image004.jpg](#)
[image005.jpg](#)

Hi All

Thanks for your time today.

As agreed, the BTMWG will provide draft comments to the ACCC ahead of the PDC in writing, setting out potential changes to the Code in light of stakeholder submissions. Question 2 contains an action item for BTMWG members ahead of Friday's teleconference.

See below for outcomes and next steps.

1. Is the exclusion around BNPL too blunt? Are there other ways to ensure providers of BNPL and other exempt products provide appropriate (or equivalent) consumer protections without requiring a strict exclusion?

We understand the concerns of BNPL providers that they consider the code excludes them by type. That being said, there was agreement that the types of finance being offered by BNPL providers, particularly considering the substantial cost and long term nature of these arrangements for NET, deserved a higher standard in the NETCC.

In the interests of fairness, we propose to include an additional line into 24(b) of the code (drafted below as an example – suggest review by CRK or other expert).

24b) the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC"), **or complies with a regulator approved Code of Conduct or industry code that delivers substantively equivalent consumer protections to those contained in the NCCPA.**

This provision would avoid the need for the NETCC to be amended once an appropriate code of conduct was developed. We understand that BNPL providers are working on a code, but not with any urgency/transparency.

2. Some submissions call for a ban on unsolicited sales. Can the NETCC strengthen the obligations on providers who utilise this channel?

ACTION ITEM: There is a concern that making a fundamental change at the time of a draft decision is not appropriate process. The NETCC has not yet consulted on a significantly higher standard than the ACL, but has received comments from a number of consumer advocates that clause 4 is inadequate. To that end, we propose a very short period of informal consultation where BTMWG members can consult with their membership to foster views on one of the below approaches (in ascending order of intervention)

1. Status quo – existing obligations in clause 4 are adequate for version 1 of the Code
2. Strengthen clause 4 – increase the requirements on signatories to go above and beyond the ACL (eg, Signatories must ensure that their practices contractually provide additional protections to consumers if sales are unsolicited)
3. Pre-sale confirmation – Signatories must notify the customer (potentially in a mandated form, in plain English, not marketing language) prior to the end of the

cooling off period that reminds consumer of their rights to cancel

4. Warm up period – the customer must proactively contact the unsolicited seller within 10 business days to accept the contract. The seller would be prohibited for soliciting this contact.
5. Ban unsolicited sales for signatories

The issue can be revisited at the catch up later in the week to determine the position the BTMWG will make to the ACCC.

3. Some submissions have also mentioned that the drafting in NETCC is too high level and does not provide sufficient certainty to potential signatories. Can the WG consider some sections where the wording could be tightened?

The BTMWG strongly supported the existing level of the code, but agreed with Dean's view below that the interaction between the code and potential technical guidelines had been lost throughout the process. The BTMWG agreed to remind stakeholders as part of their pre-decision submission of the intended path forward post approval for the technical schedules. Where appropriate, technical schedules will be developed by the Administrator, in consultation with industry. These schedules will be iterative, and will only be developed where there are agreed standards of best practice.

Please don't hesitate to let me know if your notes differ. Mindy – can you please set up a quick 30 minute teleconference for 9.30am Friday?

Regards

Ben

From: Dean Lombard <dean.lombard@renew.org.au>

Sent: Monday, 2 September 2019 9:32 AM

To: Gerard Brody <gerard@consumeraction.org.au>; Mindy Lim <MLim@cleanenergycouncil.org.au>; ceo@smartenergy.org.au; michelle.taylor@energyq.com.au; Kurt Winter <kwinter@agl.com.au>; Miyuru Ediriweera <mediriweera@piac.asn.au>; jennifer.gannon@energyq.com.au; Steve Blume (NoCarbon <ceo@nocarbon.com.au>; Ben Barnes <Ben.Barnes@energycouncil.com.au>; Jacqueline Crawshaw <jacqueline.crawshaw@energyconsumersaustralia.com.au>; Anna Sexton <ASexton@cleanenergycouncil.org.au>

Subject: RE: ACCC pre hearing conference re. draft determination

Thanks Gerard

Can you clarify for me the distinction between a licenced credit provider and an approved (or accredited or whatever) credit product? Because my understanding is that Brighte *are* a licenced credit provider, but that their core product is not approved/accredited

Dean Lombard

Senior Energy Analyst

Renew (Alternative Technology Association Inc.)

I don't work Wednesdays.

From: Gerard Brody <gerard@consumeraction.org.au>

Sent: Sunday, 1 September 2019 2:15 PM

To: Dean Lombard <dean.lombard@renew.org.au>; Mindy Lim

<MLim@cleanenergycouncil.org.au>; ceo@smartenergy.org.au;
michelle.taylor@energyq.com.au; Kurt Winter <kwinter@agl.com.au>; Miyuru Ediriweera
 <mediriweera@piac.asn.au>; jennifer.gannon@energyq.com.au; Steve Blume (NoCarbon
 <ceo@nocarbon.com.au>; Ben Barnes (Energy Council <ben.barnes@energycouncil.com.au>;
 Jacqueline Crawshaw <jacqueline.crawshaw@energyconsumersaustralia.com.au>; Anna Sexton
 <ASexton@cleanenergycouncil.org.au>

Subject: RE: ACCC pre hearing conference re. draft determination

Thanks for this Dean – very helpful.

Just one thought from me on the possibility of an alternative accreditation basis for BNPL.

I understand that the BNPL industry may be establishing its own code of conduct (and thus could form an alternative way of accrediting providers). This was mentioned following the Senate Inquiry into these providers earlier this year, and was again mentioned in Flexigroup's market update last week. I think this may be being pursued through the [Australian Finance Industry Association](#).

The development of this code, however, is not occurring in a transparent fashion and falls way below the expectation of consumer groups. There appears to be no involvement of consumer groups, and thus is very different from the development of the NET Code. There is also a lot of changes in codes in the finance sector, following the Royal Commission – and it's likely that soon any code will have to be approved by ASIC. This should be the bare minimum in my view, and the NET Code should continue to require a lender with an Australian Credit Licence in absence of an approved code.

Dean, you might want to seek information about this if you meet with Brighte. It's likely they'll be involved.

Gerard

From: Dean Lombard <dean.lombard@renew.org.au>

Sent: Friday, 30 August 2019 3:59 PM

To: Mindy Lim <MLim@cleanenergycouncil.org.au>; ceo@smartenergy.org.au;
michelle.taylor@energyq.com.au; Kurt Winter <kwinter@agl.com.au>; Miyuru Ediriweera
 <mediriweera@piac.asn.au>; jennifer.gannon@energyq.com.au; Steve Blume (NoCarbon
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 Jacqueline Crawshaw <jacqueline.crawshaw@energyconsumersaustralia.com.au>; Gerard Brody
 <gerard@consumeraction.org.au>; Anna Sexton <ASexton@cleanenergycouncil.org.au>

Subject: Re: ACCC pre hearing conference re. draft determination

Thanks Mindy

My initial thoughts on those three points are:

1. If there is another way of accrediting BNPL providers that ensures they have equivalent consumer protections to those provided by the credit code, great! The core issue is that the NETCC Council and Administrator don't have the capability to assess providers' policies on a case-by-case basis. That's why we have used Licensed Credit Provider/Approved Credit product (or whatever it is – what is the right terminology?) as a benchmark. (I am meeting with Brighte

and Deloitte on Tuesday to discuss this. This will be my message to them unless anyone can suggest something different.)

2. I'm all for a stronger stance on unsolicited sales. Prohibit them? Or require a cooling on period? Worth noting too that the ban on unlicensed credit providers and unapproved credit products is in part a way of limiting the harm from unsolicited sales.

3. This is the core issue. The code is supposed to be principles-based with technical guidelines for specific products. I guess the provisions should be clear enough to give general guidance (e.g. advise the customer of site-specific issues that will affect the value they can derive from the product or service – it's really up to the vendor to identify what type of issues these would be) as well as to be amenable to more specific requirements in their technical guidelines for specific products (e.g. solar installers advise customers of the impacts of shading and orientation, and the possible existence of any export limits). I feel like the whole technical guidelines thing was not really understood by the code drafters nor many of the consulted stakeholders. I wonder if we need a different approach on this? I just can't see how it can have broad applicability with such technical specificity in the core code. perhaps one way is to incorporate the technical guidelines into the code itself. So to follow the example I have used, after the particular provision ("advise the customer of site-specific issues that will affect the value they can derive from the product or service" have some subordinate sections "for **Solar PV** this means the impacts of shading and orientation, the possible existence of any export limits, etc." "For **Home batteries** this means maximum power output and throughput, degradation rates by age and number of cycles, etc." "For **VPPs** this means minimum guaranteed number of payable events, penalties for non-participation, expected and maximum number of control events and their impact this will have on battery life and warranty, etc." This would make the code more ungainly but perhaps bring more certainty. We could still use technical guidelines for new products and services that emerge between code review cycles.

Them's my thoughts. I can't make it to the hearing. I have included participation in the NETCC working group in a funding application I've just submitted so if all goes well I'll be able to be more involved again soon.

Regards
Dean

Dean Lombard
Senior Energy Analyst
Renew

Alternative Technology Association Inc. trading as Renew Australia
Publishers of Renew and Sanctuary magazines
ABN: 57533056318

[REDACTED]
[REDACTED]
[REDACTED]

I don't work Wednesdays

Give mum the gift of a Renew magazine or Sanctuary magazine subscription for Mother's Day, Sunday May 12.

Renew acknowledges and pays respect to the Australian Aboriginal and Torres Strait Islander people of this nation, to their ancestors and elders, past and present as the traditional custodians of the lands upon which we work and live. We recognise Aboriginal and Torres Strait Islander people's deep cultural and spiritual relationships to the land, water and sea and their rich contribution to society.

From: Mindy Lim <MLim@cleanenergycouncil.org.au>

Sent: Friday, August 30, 2019 2:05 pm

To: ceo@smartenergy.org.au; michelle.taylor@energyq.com.au; Kurt Winter; Miyuru Ediriweera; jennifer.gannon@energyq.com.au; Steve Blume (NoCarbon); Ben Barnes (Energy Council); Jacqueline Crawshaw; Gerard Brody; Anna Sexton; Dean Lombard

Subject: ACCC pre hearing conference re. draft determination

Dear Working Group members,

In preparation for the discussion on Monday morning, the ACCC has requested that the Working Group respond to points raised in 3.3(b) to (e) in the Draft Determination.

1. Is the exclusion around BNPL too blunt? Are there other ways to ensure providers of BNPL and other exempt products provide appropriate (or equivalent) consumer protections without requiring a strict exclusion?
2. Some submissions call for a ban on unsolicited sales. Can the NETCC strengthen the obligations on providers who utilise this channel?
3. Some submissions have also mentioned that the drafting in NETCC is too high level and does not provide sufficient certainty to potential signatories. Can the WG consider some sections where the wording could be tightened?

We should have a written statement from the Working Group prior to the hearing on 9 Sept.

Regards
Mindy



MINDY LIM, CODE OF CONDUCT MANAGER

[Redacted text block]



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6 September 2019

Ms Susie Black
Director – Coordination and Strategy
Merger & Adjudication Review Division
Level 17 Casselden Place
2 Lonsdale Street, Melbourne 3000

Sent by email to: Theo.Kelly@accc.gov.au

Dear Ms Black

New Energy Tech Consumer Code - AA1000439

The Behind The Meter Working group (the BTMWG), on behalf of the Applicants, has considered the issues raised by the submissions following the ACCC's draft determination on 1 August 2019 to approve the New Energy Tech Consumer Code (NETCC).

We consider there are three key issues that require attention.

1. Clause 24 – Payment and finance
2. Clause 4 – Unsolicited sales
3. Overall level of detail in the Code

Pending views raised at the Pre-Decision Conference, to be held on Monday 9 September 2019, the BTM Working group intends to propose incremental changes to the drafting of Clause 24 and Clause 4.

Clause 24 – Payment and Finance

A number of submissions raised concerns with clause 24(b), which stakeholders considered excluded the ability for signatories to utilise the services of Buy Now Pay Later finance providers. This clause was developed initially following strong representations by Consumer Advocates that unregulated finance products were causing significant detriment to consumers, due to the lack of adequate protections regarding responsible lending, dispute resolution, and hardship. The BTMWG agreed with these concerns, as well as views raised by some stakeholders about competitive neutrality issues created by a requirement for some products to comply with the National Consumer Credit Protection Act (NCCPA), and others not to.

That being said, we understand the concerns of BNPL providers that as BNPL products are exempt from the NCCPA requirements, they would be excluded from the NETCC by type. This wasn't the intent of the BTM WG, rather that consumers received adequate protections when entering finance arrangements with signatories. We understand BNPL providers are intending to develop a code of conduct that, once in place, would provide substantively similar protections to consumers to the NCCPA. The BTMWG support this approach, and as such propose an additional line be included into clause 24(b):

24b) the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC"), or complies with a regulator approved Code of Conduct or industry code that delivers substantively equivalent consumer protections to those contained in the NCCPA.

The BTMWG welcomes comment from stakeholders regarding this approach.

Clause 4 – Unsolicited sales

A number of submissions raised concerns with the lack of prescription in clause 4, particularly with regard to unsolicited sales. Additionally, stakeholders suggested that unsolicited sales for significant purchases such as New Energy Tech was inappropriate, or unnecessary. The BTM WG agrees that unsolicited sales in this context have the potential to cause consumer detriment if not undertaken responsibly. That being said, we are concerned that making a substantial change to the code at this stage of proceedings is inappropriate and might cause concerns with industry. We strongly consider the NETCC should be delivered with a 'no surprises' principle.

To ensure that the NETCC continues to deliver good consumer outcomes, the BTMWG intends to include additional drafting in clause 4 requiring the code administrator, once appointed, to publish technical guidance highlighting the concerns regarding unsolicited sales, and to provide additional clarity to signatories regarding the expectations of the NETCC in delivering good customer outcomes. If necessary, the Administrator will be empowered to make mandatory guidelines if it is found that post implementation, consumer detriment is established.

Overall level of the Code

A number of submissions noted that the drafting of the NETCC was too high level, and should be more prescriptive to provide greater certainty to signatories and consumers. The BTM WG notes this issue, however highlights that in order to deliver a code that is technology agnostic and future proof, a principle based approach was necessary. The Code itself is intended to be underpinned by more specific technical guidance, developed by the administrator in consultation with industry. This will be prioritised following appointment of the administrator. Highlighting the relative infancy of some technologies intended to be captured by the NETCC, technical guidelines are intended to be iterative, and only published if there is sufficient agreement between industry and consumer advocates as to what constitutes best practice.

The BTM WG welcomes further views from stakeholders on each of the above matters, and looks forward to finalising and implementing the NETCC in the near future.

Yours sincerely



Kane Thornton
Chief Executive
Sent on behalf of the Applicants

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25 September 2019

Ms Susie Black
 Director – Coordination and Strategy
 Merger & Adjudication Review Division
 Level 17 Casselden Place
 2 Lonsdale Street, Melbourne 3000

Sent by email to: [REDACTED]

Dear Ms Black

New Energy Tech Consumer Code - AA1000439

The Behind The Meter Working group (the BTMWG), on behalf of the Applicants, has considered the issues raised by the submissions following the ACCC's draft determination on 1 August 2019 and the Pre-Decision Conference held on 9 September 2019.

We write to provide further information to the ACCC on several matters including:

1. Clause 24 – Payment and finance
2. Clause 4 – Unsolicited sales
3. Appeal for applicants
4. Appointment of the Chair of the Industry Council

We provide the following response to these matters, and **attach** an amended New Energy Tech Consumer Code, in change marked and final versions.

Clause 24 – Payment and Finance

As stated in our previous submission dated 6 September 2019, the BTMWG understands Buy Now Pay Later (BNPL) providers are intending to develop a code of conduct that would enhance the protections provided to consumers utilising these finance products. The BTMWG support this approach and have amended the previous clause 24(b) to permit products regulated under this approach to be utilised by signatories.

It is our understanding that a code of this nature could be approved by the Australian Securities and Investment Commission, under its Regulatory Guide 183. We note that a number of stakeholders have submitted that ASIC approval may be challenging, or delay implementation of such a code. The BTMWG note these concerns, but consider that if practicable, obtaining regulator approval ensures a thorough and transparent consultation process, as was the case in the development of the NETCC.

The Administrator, in consultation with the Industry Council will be required to ensure any code developed provides substantively equivalent protections to those provided in the NCCPA. Approval by a regulator will assist the Administrator in identifying whether or not any code will deliver positive consumer outcomes, consistent with the intent of the NETCC.

Clause 4 – Unsolicited sales

The BTMWG has considered further submissions on reducing consumer harm with unsolicited sales practices and propose to introduce the following commitments for signatories to NETCC.

We consider that signatories wishing to engage in unsolicited sales should have processes and procedures in place to ensure positive outcomes for consumers. Additional wording has been included to ensure that the Code Administrator is able to conduct reviews on signatories' processes

and policies to allow further assessment and consideration of any anticipated harm from direct marketing.

Additionally, we propose that signatories should not be able to offer finance products during unsolicited sales, unless they themselves hold an Australian Financial Services Licence. This ensures competitive neutrality, given the expanded clause 24(b). Without this additional limitation, Signatories would have only been able to offer products not regulated by the NCCPA during unsolicited sales. This would result in an unacceptable outcome and should be avoided.

3. Appeal for applicants

The BTMWG supports a right of appeal for applicants to the NETCC and as such, propose an additional power be provided to the panel to hear appeals from applicants refused by the Administrator.

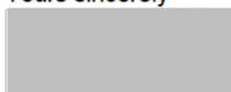
4. Appointment of the Chair of the Industry Council

The Stakeholder Panel, consisting of Chief Executives of the participants of the BTMWG, formally endorsed Clare Petre as the successful candidate for the position of Chair of the Industry Council. Clare Petre has been appointed as the Interim Chair for the NETCC for a period of 12 months. In appointing the Interim Chair, the Working Group sought a candidate with the following capabilities:

- Person of high standing and with an extensive understanding of consumer protection issues
- Capable of reflecting the viewpoints and concerns of consumers
- Expertise in consumer affairs and the confidence of consumers, consumer organisations, industry and other key stakeholders
- Supporter of strong governance frameworks
- Knowledge of self-regulatory frameworks
- Familiarity with industry and the energy sector
- Chairing, facilitation and negotiation skills

We expect the first roles of the interim chair will be to establish the Industry Council and will determine and guide proper process for the overall implementation of the NETCC.

Yours sincerely



Kane Thornton
Chief Executive
Sent on behalf of the Applicants

Attachment B – New Energy Tech Consumer Code

Part A - Overview

Scope

This New Energy Tech Consumer Code ("the Code") sets good practice standards for providing Residential and Small Business Customers with New Energy Tech products, systems and services. We may extend these protections to other customers if we expressly include this in the contract. New Energy Tech is defined in Part C of the Code to include such things as solar photovoltaic systems, wind turbines, energy storage systems, managing a customer's energy usage and electric vehicle charging services but does not include some simple, low cost, standard New Energy Tech.

The intention of this Code is to raise standards of consumer protection in the sector, to strengthen consumer confidence in New Energy Tech and to encourage innovation and the development of choice for consumers.

Providers who have been accepted by the Administrator as Code Signatories (referred to as "we" and "our") are bound to comply with this Code. Customers protected by this Code are referred to as "you" and "your".

The Code includes:

- Part A that provides an overview of the key commitments we make to you
- Part B that sets out our required practices in detail
- Part C that defines key terms (which are Capitalised in the Code) and
- an Annexure setting out how the Code is administered, monitored and enforced, including our obligations to the Administrator and the Code Monitoring and Compliance Panel ("The Panel").

The Code operates alongside a range of existing legal and regulatory protections. Generally, it does not repeat these protections except as needed to provide you with a complete understanding of what to expect from us.

Key Commitments

1. The key commitments made under this Code are to:
 - a) Provide you with clear, accurate and relevant information to help you make informed choices
 - b) Encourage you to be aware of your rights under the law and the Code
 - c) Ensure that our sales practices are responsible
 - d) Ensure that products, systems, services and documentation provided under the Code are suitable and fit for purpose
 - e) Support staff training and work processes that ensure that we comply with the law and the Code
 - f) Ensure that we will be responsive to your needs and take prompt, appropriate action if you make a complaint.

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The Code aims to cover the main steps of your 'customer journey' as illustrated below.





Part B – Our required practices

Advertising and promotion

2. We will ensure that we have adequate systems, policies and processes in place to ensure fair marketing and appropriate sales outcomes for consumers.

4-3. Our advertisements and other promotional material will not include any false or misleading claims about us or our New Energy Tech. In particular, our advertisements and promotional material will:

- a) ensure all relevant incentive schemes (government and non-government) are honestly and accurately represented
- b) not misrepresent our association with government or falsely claim to be part of a government scheme
- c) not make any false or misleading claims about the price, value, quality, capacity, output or other performance characteristic of our New Energy Tech, for example, through selective advertising, exaggeration or misleading focus on one or a few aspects only of the New Energy Tech
- d) make no unsolicited offers of payment arrangements not regulated by the *National Consumer Credit Protection Act (2009) (Cth)* (“NCCPA”)*
- e) use language that is accessible and that avoids industry jargon*
- f) not make any misleading claims about the place of origin (manufacture and assembly) of our products*
- g) not mislead you about the impact our New Energy Tech will have on your energy usage or costs*
- h) ensure that any claims relating to performance and energy cost savings of our New Energy Tech are reasonably based and where available, based on reputable sources*
- i) advertise the total price for our New Energy Tech as prominently as we advertise any component of the price*
- j) provide information that is specific to the state or region in which the promotional activity takes place*
- k) ensure that any disclaimers are clearly outlined and not buried in small print*
- l) only include a statement, promise, prediction or opinion if it is reasonably based*
- m) not include information that is no longer current, for example, quote an offer or financial incentive that is no longer available*
- n) be clear about any additional cost for finance or an alternative purchasing arrangement for New Energy Tech when the cost is being recovered in the overall price (e.g. where the price of financed New Energy Tech is greater than the price that would apply if immediate payment is made).*



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Direct marketing and sales

~~2-4.~~ When marketing directly to you, including through a sales agent (as well as meeting the requirements in paragraph ~~3)2)~~:

- a) we will explain up-front the purpose of any un-requested (“unsolicited”) contact by us, in person or by telephone and advise that you can ask us to leave or end the contact at any time
- b) we will leave your premises or end the contact immediately if you ask us to do so
- c) we will show you our company-issued identification if an unsolicited contact is in person
- d) any interactive internet marketing channel that we use will clearly identify for you the company whose New Energy Tech is being promoted
- e) we will provide you with the address of our local office or showroom, an email or other electronic address and a telephone number where any queries can be answered
- f) we will provide you with the Administrator approved Consumer Information Product that explains the consumer protection framework that applies under legislation and this Code and sets out other key information. The information may be provided to you in electronic format, however if you request, we will provide you the information in hard copy.



~~3-5.~~ We will adhere to responsible marketing practices at all times and avoid high-pressure sales tactics that may induce you to make hasty or uninformed decisions about the New Energy Tech you are considering. High-pressure sales tactics include (for example):

- a) seeking to sell to you if you are unlikely to be able to understand our information and/or our contract (e.g. due to English language difficulties, age, learning difficulties, mental illness or physical disability)
- b) offering discounts for agreeing to provide testimonials and/or referrals
- c) claiming special discounts (eg. “community” or bulk-buy discounts) apply, if they don’t
- d) applying psychological pressure to persuade you to make a quick purchase decision (eg. by unfairly appealing to your emotions)
- e) employing badgering techniques, such as revisiting your premises uninvited or making frequent telephone calls, to pressure you into signing a contract
- f) other conduct that the Administrator may reasonably identify as high-pressure sales tactics.

~~4-6.~~ Throughout our dealings with you, we will take extra care if we become aware that you may be facing vulnerable circumstances (eg. illness, impairment, a victim of abuse, financial stress).

Fit for purpose inquiry

5-7. As appropriate to the nature, complexity and cost of the new Energy Tech you are considering, we will support you in making a fit-for-purpose choice including:

- a) ask you about your specific circumstances, needs and expectations. This includes the extent to which you plan to use our New Energy Tech to supplement or improve the efficiency of energy use while connected to an Energy Network or be isolated from the Energy Network (also known as “off-grid”) or your expected outcomes from participating in forms of New Energy Tech supply such as virtual power plants or other energy markets.
- b) enquiring about any need you may have for energy for medical or life-support equipment or services and ensure that our New Energy Tech is suitable for this purpose and that you are made aware of any additional or increased risks.
- c) ensuring that any offer of New Energy Tech is fit for purpose in light of your circumstances, needs and expectations as you have described them to us (unless we clearly explain to you orally and in writing that it is not fit for that purpose). We will include a brief description of your circumstances, needs and expectations in our quotes and contracts. Where we offer you a New Energy Tech that is intended to work in conjunction with other New Energy Tech that you already have or are obtaining, we will ensure that our offer is compatible with that other New Energy Tech and confirm this in writing in your quote and contract.



6-8. If you advise us that you are considering operating off the Energy Network, we will provide you with a copy of the Administrator-approved Consumer Information Product that sets out Energy Networks Australia’s Off-Grid Principles.

Quote – general requirements

7-9. We will provide you with a written quote that sets out:

- a) our full name, Australian Business Number (if relevant) and physical address, an email or other electronic address and a telephone number where any queries can be answered
- b) an itemised list of the New Energy Tech to be supplied, including relevant specifications. For products and systems, this will include the manufacturer, model, year, quantities, configuration and performance specifications. For services, this will include the nature and purpose of the services, whether the services are ongoing, scheduled (and if so what frequency) or responsive to your request, the duration of the service commitment and whether the services will be provided remotely or at your premises
- c) information about how the New Energy Tech operates
- d) information about any responsibilities you have to facilitate the operation of the New Energy Tech including maintenance and access issues
- e) information about product, system or service limitations that are likely to be relevant to you (eg. where a battery does not provide a back-up facility)



- f) a performance estimate for the New Energy Tech to be supplied, which will be reasonably based, where available rely on reputable sources and comply with any relevant Administrator guidance
- g) where our offer is for a New Energy Tech product or system to be connected to the Energy Network, information that your energy supply contract may change as a consequence of purchasing the New Energy Tech and that it is your responsibility to contact your Energy Supplier to find out about this and whether there are any restrictions to your ability to interact with the Energy Network
- h) our timeframe for supplying and installing products and systems or commencing services to be provided to you (if there are circumstances that are out of our control that may cause delay, we will identify this)
- i) our business terms including the method of making payments
- j) details of any guarantees and warranties that apply. We will specify:
 - i. that your rights under your contractual warranty are in addition to the consumer guarantees under the Australian Consumer Law and that these are not excluded or replaced by your contract
 - ii. the specific details of the guarantee or warranty and how it applies to you
 - iii. for a New Energy Tech product or system - the name and contact details of our supplier in case you want to pursue your consumer guarantee rights under the Australian Consumer Law against that supplier or if for any reason you are unable to contact us.
- k) for a New Energy Tech product or system, information about its expected life and what is involved in disposing of it at the end of its life
- l) information about the portability of the proposed New Energy Tech
- m) information about the term of any applicable ongoing agreement and any provisions that may impact on your existing relationship with an Energy Supplier
- n) if the quote is for an installation on a strata title property and requires the approval of the Owners Corporation – the need for you to obtain that written approval and provide it to us before you sign the contract with us
- o) your cooling-off and termination rights (if applicable) under the Australian Consumer Law (including the right to terminate a sales agreement within 10 business days if the sale resulted from an unsolicited contact) and this Code
- p) any licenses, accreditation or certification that we hold that are needed to fulfil the offer we are making to you
- q) that we are bound by this Code
- r) the Administrator-approved Consumer Information Product that explains the benefits of the Code for our Customers and any other important information as applicable.

Quote – financial disclosure

~~8-10~~ Our quote to you will specify the deposit payable (if any) and the total price of all offered New Energy Tech including any taxes that apply. We will specify the period of time our pricing is valid for (which will be at least 10 business days).

~~9-11~~ Where our offer is of a Power Purchase Agreement, our quote will specify:

- a) the energy pricing and all associated fees and charges, any rights we have to change any of these and the notice we will provide of any price change
- b) a reasonable estimate of the aggregate amount payable over the agreement's term based on a stated, reasonable estimate of your energy consumption, including the basis of the calculation and, if applicable, the energy you will export to the Energy Network
- c) a clear statement that you must pay the stated energy prices for the term of the contract and that this amount may not reflect or be competitive with available prices for energy from the Energy Network.

~~10-12~~ Our quote to you will specify site conditions and circumstances beyond our control that may result in extra chargeable work not covered by the quote (eg. fees for meter exchange/re-configuration, repairs to existing faults, and changing dedicated off-peak control devices if required).

~~11-13~~ Our quote to you will specify the total value of any discounts, regulatory certificates, incentives or rebates (government and non-government) or government relief schemes and how and when these may or may not apply.

~~12-14~~ Where we offer New Energy Tech services and periodic or intermittent charges apply, our quote will specify the amount or method of calculation, any rights we have to vary charges during the term of the contract and the frequency of bills. For example, if there will be charges for software upgrades, we will aim to provide reasonable certainty as to the cost that you will incur.

~~13-15~~ If we make a claim that you are likely to achieve a favourable return on your investment, we will include in our quote a return on investment calculation that is based on reasonable assumptions and where available from reputable sources. Our quote will set out our assumptions including:

- a) system design, performance and output
- b) government and non-government financial incentives
- c) energy prices and usage
- d) financing costs (if applicable)
- e) maintenance costs
- f) end-of-life costs
- g) any other relevant factors.

We will also clearly state that our calculation is an estimate only and that if our assumptions prove not to be correct you may not achieve the estimated return.

~~14-16~~ If our offer involves us making payments to you (for example, for energy purchased from you), we will clearly specify how payments will be determined, any rights that we have to change the basis on which payments will be calculated and the frequency with which payments will be made.

Quote – design

~~15-17.~~ If the quote includes New Energy Tech that requires custom configuration or specification and/or physical installation by us or a competent or qualified installer, ~~we will:~~

- a) ~~we will~~ include as part of the quote:
 - i. a site-specific installation design or plan (a sketch or diagram is acceptable) including any configuration or positioning issues and how the New Energy Tech will integrate with other New Energy Tech you may have
 - ii. a site-specific performance estimate for the New Energy Tech.
- b) before we enter into a contract to provide New Energy Tech to you, ~~we will~~ complete a site-specific installation design or plan and site-specific performance estimate (both must meet the requirements of paragraph ~~174746a~~) for a non-refundable agreed fee, with no obligation on you to proceed to contract with us
- c) we can provide a site-specific installation design or plan and site-specific performance estimate (both of which will meet the requirements of paragraph ~~174746a~~) as an initial deliverable of the contract if:
 - i. we do so before the expiry of your cooling-off period (if applicable)
 - ii. we provide you with a full refund, if within 10 business days of receiving the site-specific installation design or plan and performance estimate you notify us that you do not accept these.

Quote - connections

~~16-18.~~ If our quote is for a New Energy Tech that requires approval from your Energy Supplier for connection to the Energy Network and/ or reconfiguration of your meter, we will also include in our quote:

- a) an offer to arrange this on your behalf and what, if any, charge we will make for doing this
- b) an explanation of the steps that need to be taken to obtain approval and/ or reconfiguration of your meter and the relevant paperwork that must be completed and submitted prior to installation
- c) a statement that your Energy Supplier may impose a charge for connection to the Energy Network and/or reconfiguring your meter and may change your existing energy pricing
- d) a statement that we will support you through these steps if you decide to obtain Energy Network connection approval yourself and whether there will be any non-refundable charge for this assistance.

Contracts

~~17-19~~ If you accept our quote and agree to purchase our New Energy Tech, we will provide you with a written contract that is clear, uses plain language and is in legible print.

~~18-20~~ Your contract will meet the same requirements as for a quote (and may do this by attaching the quote with any amendments that are necessary). In addition:

- a) your contract will include our undertaking to you to comply with the Code
- b) your contract will provide you with a standard minimum supplier's warranty period on the operation and performance of the New Energy Tech including workmanship. The period will meet or exceed the period set from time to time by the Administrator, in consultation with stakeholders, for the particular New Energy Tech
- c) your contract will include information about how to make a complaint and the complaint resolution process including your right to access an external dispute resolution scheme (where applicable), to take a complaint to the Administrator and to take a complaint to a government regulator and
- d) at the time we provide your contract to you, we will also provide you with any relevant Administrator-approved Consumer Information Product. We may give these to you electronically, but if requested, we will provide them in hard copy.



~~19-21~~ We will not offer you a contract that involves requiring you to purchase energy or services from another supplier (called "third line forcing"), except where this is permitted by the *Competition and Consumer Act 2010 (Cth)* and we have made this clear to you.

~~20-22~~ We will explain the contract to you prior to you entering into the agreement. In particular:

- a) we will draw your attention to any particular requirements of the contract that may cause confusion or disagreement (e.g. where additional fees may arise, early termination fees, end of contract payments or any difference between a verbal quote and the final price)
- b) we will clearly explain the process for the payment and trade of any government or regulatory certificates, and of any relevant trading facility and any limitations
- c) we will advise you that your Energy Supply contract may change as a result of purchasing the New Energy Tech and that it is your responsibility to contact your Energy Supplier to check what new pricing may be applied and, after installation of the New Energy Tech, to confirm that the agreed pricing has been applied.

~~21-23~~ Both of us will sign the contract and any amendments. Equivalent methods of legal agreement other than physically signing a written contract in person are also permitted (for example, electronic acceptance).

Payment and finance

~~22-24~~ We will issue you with a receipt for any deposit or other payment you make under the contract.

~~23-25~~ We may offer you New Energy Tech with a deferred payment arrangement as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph ~~3.n-2.m~~), we will ensure that:



- a) this ~~deferred~~ payment arrangement is offered through a credit provider (whether ourselves or a third party) licenced under the ~~National Consumer Credit Protection Act (2009) (Cth) ("NCCPAA")~~
- b) the deferred payment arrangement is ~~either~~ regulated by the NCCPA and the National Consumer Code ("NCC") ~~or complies with a regulator approved code of conduct (such as those meeting ASIC RG 183) that is verified by the Administrator, in consultation with the Industry Council, as delivering substantively equivalent consumer protections~~
- c) the term of the deferred payment contract or lease is no longer than the expected life of the product or system
- d) ~~ensure that~~ you receive the following clear and accurate information:
 - i. the name of the licensed credit provider to whom you will be contracted for the arrangement
 - ii. a clear statement that the deferred payment arrangement is a voluntary finance option
 - iii. the proposed total cost under the deferred payment arrangement compared with the cost of that same New Energy Tech product, system or service if you were to purchase it outright on that day
 - iv. the disclosures required under the NCC, including in relation to fees and charges ~~(regardless of whether the arrangement is regulated under the NCC)~~
 - v. whether at the conclusion of the deferred payment arrangement
 - you own any elements of the New Energy Tech or
 - you have any entitlement to any ongoing services or pricing and/or
 - you have the option to purchase any elements of the new Energy Tech and if so relevant details, including any associated costs and
 - vi. a statement that questions and complaints about the payment arrangement should be directed to the licensed credit provider with whom you will be contracted.

~~24-26~~ Paragraph ~~25-25~~24 does not apply if the finance is provided by a government body.

~~25-27~~ Paragraph ~~25-25~~24 does not apply if we offer you, as an alternative to full payment on delivery or installation, the opportunity to make progressive instalments to us over a period of not more than 6

months, provided that the total amount to be paid by you does not include an interest component, additional fees or an increased price (see paragraph ~~3.1(2)(b))~~).

~~26-28~~ Paragraph ~~25-27~~24 does not apply if the Administrator is satisfied that the contract we offer you is a Power Purchase Agreement and our contract includes a commitment to try and assist you if you notify us that you are experiencing financial hardship, including by advising you of any relevant government assistance schemes and by offering you a payment plan.

~~27-29~~ Where we are providing an ongoing service to you and the contract allows us to change the price that we charge you, we will advise you as soon as practical and no later than five business days prior to the price change taking effect.

~~28-30~~ If your contract requires us to make payments to you (whether by transfer of money or by offset to a payment you make to us), we will make those payments on time in accordance with your contract. If our payments to you are calculated using an undisclosed formula, we will ensure that our payment calculation system is regularly audited by a registered company auditor to ensure that payments are accurately calculated.

Delivery, installation and safety

~~29-31~~ We will arrange delivery and installation (if applicable) of New Energy Tech you purchase from us within the timeframe specified in your contract, unless any delay is because of circumstances that were identified in your contract as outside our control.



~~30-32~~ If you purchase New Energy Tech that requires physical installation by us, we will ensure your safety and the safety of our installers. We will install in accordance with all applicable safety standards, manufacturer's specifications, relevant Australian Standards, Energy Network standards, any binding guidance issued by the Code Administrator and good industry practice, using an installer that is trained, competent and where applicable, holds any required qualification or certification to undertake the work.

Activation

~~34-33~~ If you authorise us to obtain Energy Network connection approval on your behalf for New Energy Tech, we will:

- a) not install or commence the New Energy Tech until approval is provided
- b) provide you with a full refund if the relevant approvals are not obtained
- c) prepare and submit within a reasonable timeframe all relevant documentation required by the Energy Supplier for connection to the Energy Network and for reconfiguration of your meter (if relevant)
- d) respond within a reasonable timeframe to any additional compliance requests from the Energy Supplier (for example, re-submitting incorrect paperwork), and consult with you if necessary



- e) keep you informed of progress at each step, including any restrictions or limitations that may adversely affect you.

32-34. If you take responsibility for obtaining Energy Network connection approval for New Energy Tech, we supply to you, we will:

- a) clearly explain to you each step in the process for preparing and submitting the documentation to the Energy Supplier
- b) provide you with information as to where to find and how to complete and submit paper or on-line forms
- c) provide you with expected timeframes and any deadlines for each step of the process
- d) advise you of contact details for queries or following up on progress
- e) advise of any potential problems that may arise
- f) provide you with a refund consistent with paragraph ~~484847~~ if your application is rejected.

33-35. If you take responsibility for obtaining Energy Network connection approval for New Energy Tech and your application is rejected after you have signed a contract for that New Energy Tech, we will provide you with a refund minus reasonable expenses incurred by us to the point of termination of the contract.

34-36. If we supply you with New Energy Tech that needs another form of activation in order to provide you with the intended benefit, we will explain to you the steps that need to be taken and who is responsible for these. We will promptly fulfil our responsibilities and keep you informed of progress at each step.

Operating Information

35-37. Prior to the activation of the New Energy Tech we are providing you, we will:

- a) provide you with comprehensive information for safe and effective operation, maintenance and optimisation of your New Energy Tech
- b) explain to you any obligations that you may have to facilitate or enable the New Energy Tech (for example, to maintain an internet connection that we are able to access)
- c) advise you how to use your New Energy Tech and/or assess the benefit you are deriving from these. The advice will be appropriate to the New Energy Tech we are providing to you and will involve at least one of the following:
 - i. written instructions and a physical or electronically recorded demonstration (for example, an instructional video)
 - ii. providing you either with a measuring or monitoring device that connects to the New Energy Tech or with continuous access to a remote monitoring service (in either case that will facilitate accurate measurement of benefit that is based on objective standards acceptable to the Administrator) together with written instructions as to how to use that device or access that service ~~or~~



- iii. a commitment to provide you with regular reports that accurately quantify the benefit that you are deriving and that meet any guidelines made by the Administrator in relation to reporting of this kind (for example, in the case of a service that is designed to reduce your energy bills by smart management of your energy consuming products).

The required information will vary depending on the specifics of the New Energy Tech but will meet the Administrator's requirements. The information may be provided to you in electronic format, hard copy or by web link or something similar. If you request, we will provide you the information in hard copy (in which case, we will provide it at least quarterly, namely every three months).

Performance

~~36-38.~~ Our New Energy Tech will meet your reasonable expectations including but not limited to:

- a) meeting your needs as explained to us (see paragraph ~~776~~), unless we have clearly explained to you and confirmed in writing that those needs cannot be met
- b) performing properly
- c) reflecting any agreed contract and meeting the performance specifications outlined by us to you;
- d) fulfilling any commitments we make to you (for example, to provide access to an accurate monitoring service or regular reports that accurately quantify the benefit you are gaining)
- e) New Energy Tech that utilises information and communications technology will be secure
- f) all our services will be provided with due care and skill.

~~37-39.~~ If we become aware that New Energy Tech that we have supplied to you is defective or unsafe, we will promptly tell you and offer to fix the problem if this is possible or otherwise remove the product or system from your premises and provide reasonable compensation to you.

~~39-40.~~ If we provide you with New Energy Tech that involves the use of equipment that you own, we will do so in a way that is consistent with the equipment manufacturer's instructions and warranty requirements.

Move from premises

~~39-41.~~ If our contract with you includes a lock-in period and imposes fees if you terminate early, and

- a) the services are not transferrable to another property
- b) you sell or move from the property to which those services are being provided
- c) the occupier of the property agrees to take over your contract

we will agree to the occupier of the property substituting for you under the contract and will not charge you early termination fees, unless we have a reasonable basis for refusing to contract with the occupier of your property.

Warranty claim

~~40-42~~ We will respond promptly to any warranty claim by you and within a reasonable timeframe implement warranty repairs and replacements, remedy service issues or provide compensation.

~~41-43~~ We will provide you with the name and contact details of our New Energy Tech product or system supplier in case you want to pursue your consumer guarantee rights under the Australian Consumer Law against that supplier or if for any reason, you are unable to contact us. ~~we should go out of business.~~

~~42-44~~ In some circumstances, you may not be entitled to a consumer guarantee under Australian Consumer Law, and in that case, you may not be entitled to a remedy, if the claim is due to something that:

- a) someone else said or did (excluding our agents or employees) or
- b) beyond human control that happened after the goods or services were supplied (for example, an extreme weather event).



Termination of contract

~~43-45~~ You are entitled to terminate your contract and we will provide you with a full refund if:

- a) your contract is for the supply of New Energy Tech that requires physical installation
- b) consistent with paragraph ~~17.b)17.b)16.b)~~, we provide you with a site-specific installation design or plan and site-specific performance estimate as an initial deliverable under the contract (rather than as part of our quote)
- c) within 10 business days of receiving our site-specific installation design plan and performance estimate you notify us that you do not accept these.



~~44-46~~ You are also entitled to terminate your contract and we will provide you with a full refund, if your contract is for the supply of New Energy Tech that requires physical installation and either of the following applies:

- a) we propose to significantly change the New Energy Tech installation design from that previously provided to you (whether provided in our quote or as a first deliverable under your contract) and you are not willing to accept the change or
- b) site conditions and circumstances beyond our control result in extra chargeable work not within the contract price and we are not willing to bear those additional costs.

~~45-47~~ You are also entitled to terminate your contract for the supply of New Energy Tech, and we will provide you with a full refund, if we fail to meet the timeframe specified in your contract for delivery and installation (if applicable), or commencement of service of any New Energy Tech. This does not apply, however, if the delay was because of circumstances that were identified in your contract as outside our control.

~~46-48~~ If you take responsibility for obtaining Energy Network connection approvals and your application is rejected after you have signed a contract with us (see para ~~352534~~), you may terminate the contract

and we will provide you with a refund minus reasonable expenses incurred by us up to the time of the termination.

47-49. We will terminate your contract and remove New Energy Tech that we supplied to you and return the site to its former state, if:

- a) you have a strata title property
- b) you were required by law to obtain the Owners Corporation written consent before installing our New Energy Tech
- c) you entered into a contract with us to supply the New Energy Tech before obtaining that written consent and
- d) the Owners Corporation subsequently refuses to give that consent.

We will provide a full refund and conduct the removal and restoration at our cost, unless:

- e) we advised you of the need for written consent under paragraph [9.1\(9.1\)\(8.1\)](#) and
- f) we have proceeded with the installation on your incorrect advice that yours is not a strata title property.

48-50. Under the Australian Consumer Law, if the sale to you was unsolicited and you are a Residential Customer, you will be given 10 business days after you sign a contract to cancel the contract without penalty (the “cooling-off period”). If you wish to withdraw from a valid contract after the expiry of any cooling-off period, we may apply our own policies regarding fees for cancellation, provided that we specified them in the initial contract. For all Customers protected by this Code, we may only impose cancellation or termination fees that are reasonable and related to the cost incurred by us.

Customer service

49-51. We will provide fair terms, clear communication and maintain high standards of customer service at all times and respond courteously and promptly to any contact from you and queries you may have about New Energy Tech supplied by us to you.



50-52. If we have an ongoing service relationship with you and we are aware that you may be facing vulnerable circumstances (eg. illness, impairment, a victim of abuse, financial stress or needing energy for medical or life-support equipment or services), we will take additional care to respond promptly to any related issues arising from the use of our New Energy Tech.

Complaints

51-53. If you are dissatisfied with a New Energy Tech we offered or supplied, you can submit a complaint directly to us. A complaint may include, for example, any expression of dissatisfaction with a New Energy Tech offered or provided, with the sales process or salesperson, or with the complaints handling procedure itself.



52-54. We will handle your complaint in a way that is fair, timely and transparent. This means that:

- a) we will have information readily available for you and our staff about how complaints may be made, how these are handled and available avenues to which you can escalate your complaint if you are not satisfied with our response
- b) we will acknowledge receipt of your complaint as soon as possible and tell you when we expect to be able to respond to your complaint
- c) we will log your complaint in a complaint's register and promptly begin investigating the issues
- d) we will aim to provide you with a response to your complaint within 15 business days of receipt of your complaint. If we do not provide you with a final response by then, we will advise you before 15 business days have passed and provide an update of progress;
- e) we will provide you with a final response to your complaint within 25 business days of receipt of your complaint, unless we have both agreed to a further extension
- f) if you are dissatisfied with our response to your complaint, we will provide you with contact details for escalation options including any external dispute resolution (Ombudsman) scheme of which we are a member, the State Consumer Affairs or Fair Trading body and the Administrator
- g) we will maintain appropriate record keeping of complaints and their outcomes and steps that we take to minimise similar complaints in the future.

Legal and privacy obligations

53-55 We will comply with all local, state and federal legislation, relevant Accreditation Guidelines, and regulations including but not limited to:

- a) The Renewable Energy (Electricity) Act 2000 (Cth) which is supported by the Renewable Energy (Electricity) Regulations 2001 (Cth)
- b) The Do Not Call Register Act 2006 (Cth) and associated telemarketing standards including permitted hours for contacting consumers
- c) Australian Consumer Law
- d) Respecting "Do Not Knock" and "No Hawkers" stickers.



54-56 Even if we are not bound by the Privacy Act 1988 (Cth), we will take reasonable steps to ensure the safety of your personal information and we will only use your personal information:

- a) for the purpose of providing you with a requested quote or carrying out our obligations under your contract (as applicable)
- b) for future marketing of other related New Energy Tech or providing you with information that you might reasonable expect to receive from us or
- c) to provide your personal information to a third party if you have given express permission for this.

55-57 We will not provide you with marketing material unless we also provide a simple, easy way for you to ask not to receive future direct marketing communications and include a clear, prominent opt-out provision in each marketing communication.

Training

56-58. We will train our sales agents, representatives, contractors and employees about our New Energy Tech and their responsibilities under this Code, so that they can provide you with accurate information and quality services.

57-59. We will ensure the safety of our installers, subcontractors and employees and demonstrate due diligence in ensuring the safety of persons under our direct or indirect responsibility.

58-60. Our people will be competent, appropriately qualified and have completed the relevant safety training modules (as specified by the relevant regulator or by the Administrator) appropriate to the work.

Compliance with the Code

59-61. We agree to comply with this Code as amended from time to time and any mandatory standards published by the Administrator on the Code website that apply to New Energy Tech that we provide. We will also ensure that our employees, contractors, agents, representatives and any other individuals or businesses acting on our behalf do likewise. This includes third parties we engage to undertake direct marketing and sales for us.

60-62. We will be responsible for all actions governed by this Code, whether taken by our employees, contractors, agents, representatives or any other individuals or businesses acting on our behalf. This includes third parties we engage to undertake direct marketing for us or who we engage to install products or systems we provide to you or to deliver services to you.

Part C – Definitions

The definitions for terms used in this Code are as follows.

Administrator is the organisation with responsibility for administering the Code as set out in the Annexure – Code Administration.

Australian Consumer Law – Schedule 2 to the Competition and Consumer Act 2010 (Commonwealth).

ASIC – [Australian Securities and Investments Commission](#)

Business day – A day that is not a Saturday, Sunday or public holiday in the relevant location in Australia.

Customer – A potential or existing Residential Customer or Small Business Customer. The term also includes other customers if their contract expressly includes that this Code applies.

Consumer Information Product – consumer information (hardcopy, web-based, electronic, etc) that is approved by the Administrator to provide independent information to assist a customer or potential customer to make informed choices about New Energy Tech.

Energy Network – Any of Australia’s principal energy transmission and distribution networks (including South West Interconnected System, North West Interconnected System, Darwin-Katherine Electricity Network, National Electricity Market).

Energy Supplier – Any of Australia’s public offer energy providers, including retailers and network businesses.

New Energy Tech are:

- a) small-scale (in-home or small business) products and systems that generate, store or trade energy away from Australia’s main transmission and distribution Energy Networks or as distributed energy resources connected to an Energy Network
- b) services that support or are closely related to those products and systems
- c) products, systems and services that monitor or manage a Customer’s usage of energy whether on or off an Energy Network
- d) any other product, system and service that the Administrator is satisfied is appropriately within this Code.

The term does not, however, include simple, low cost or off-the-shelf New Energy Tech that are within a class exemption made by the Administrator in accordance with paragraph 17 of the Annexure – Code Administration.

Examples of New Energy Tech are:

- e) distributed energy resources owned by or leased to the Customer that are connected to an Energy Network for supplementary supply such as solar photovoltaic systems, wind turbines, hydro and bioenergy generators
- f) a microgrid that may be connected or fully isolated from the Energy Network

- g) a power system for a single Customer, whether or not the Customer is also connected to an Energy Network
- h) energy management products, systems and services supplied to a Customer including home energy management systems and services, battery and other storage products, systems and services
- i) programs aimed at stabilising the supply of energy including by paying Customers an incentive to reduce their usage during critical peak periods or by shutting down or restricting the power consumption of Customer appliances during critical peak periods
- j) a Power Purchase Agreement
- k) person to person energy trading systems and services
- l) electric vehicle charging services
- m) suppliers of repair, maintenance and removal services for New Energy Tech products and systems.

These examples are not intended to limit the scope of the definition. Rather the term has been defined to accommodate new products and services as they enter the Australian market where the nature, complexity and cost is such that the Code protections are appropriate.

Owners Corporation – The body (however described) that has legal responsibility for the common property in a strata development.

Panel – The independent Code Monitoring and Compliance Panel appointed to oversee the work of the Code Administrator.

Power Purchase Agreement - An agreement for a Signatory to supply a customer with energy from New Energy Tech which may be from generation or storage equipment located on the customer's premises or remotely. This is not intended to cover energy purchased through the wholesale electricity or gas markets.

Residential Customer – A customer that is purchasing New Energy Tech for personal, domestic or household purposes. The term includes an Owners Corporation for a residential strata property and the operator of a retirement village.

[RG_183 – ASIC's Regulatory Guide 183 – Approval of financial sector codes of conduct](#)

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Small Business Customer – A customer that is a business or not for profit organisation that employs less than 20 people. Associated entities are taken to be one entity when calculating the number of employees.

Annexure – Code Administration

Introduction

~~1-A1.~~ The Code is administered in accordance with the Memorandum of Understanding agreed to on 24 January 2019 by Energy Consumers Australia, Energy Networks Australia, Public Interest Advocacy Centre, Clean Energy Council, Smart Energy Council, Australian Energy Council and Renew (MOU). The MOU provides that the governance, accountability and administration structure of the Code will be guided by the following principles:

- a) Customer focused
- b) Fair and not anti-competitive
- c) Relevant expertise
- d) Independent and avoiding conflicts of interest
- e) Inclusive
- f) Adequately resourced.

~~2-A2.~~ The MOU specifies that the Code will be governed and administered by:

- a) The Council, which must comprise representatives of key stakeholders including industry associations and consumer bodies
- b) The Steward, appointed by the Council to be the legal entity responsible for the Code, for entering into any contracts related to the Code and funding any shortfall in Code revenue
- c) The Administrator, appointed by the Council and responsible for day to day administration of the Code
- d) The Code Monitoring and Compliance Panel (Panel) appointed by the Council and comprising industry and consumer representatives and independent persons with relevant expertise.

This Annexure to the Code expands upon the role of the Administrator and the Panel and may be revised by the Council from time to time, following consultation with stakeholders.

Applications and renewals

~~3-A3.~~ The Administrator is responsible for developing application forms and renewal forms for use by industry participants wanting to become a signatory to the Code (Signatory) or renew their status as a Signatory.

~~4-A4.~~ Where an application is made by an industry participant and the application fee is paid, the Administrator must assess whether to admit the applicant as a Signatory. In making this assessment, the Administrator must take into account:

- a) whether the applicant's processes and documents are sufficient to support compliance by the applicant with the Code (other than a provision of the Code from which the Administrator has exempted the applicant)

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- b) whether the key personnel in the applicant's business have had a significant involvement in another business that became insolvent.

~~A5.~~ Where a Signatory applies to renew their status as a Signatory, the Administrator may take into account any complaints that have been made about the Signatory, whether the Signatory has co-operated with the Administrator and Panel in carrying out their responsibilities and any other relevant factors.

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~~5-A6.~~ Where an applicant is refused admittance or renewal as a Signatory, the Applicant has a right to appeal the Administrator's decision to the Panel (a fee may be payable by the Applicant).

Fees

~~6-A7.~~ The Council must, on an annual basis, agree to the fees and contributions required to cover the costs of operating the Council. These shared costs include the costs of the Independent Chair and the Consumer representatives. Industry members of the Council must cover the attendance costs of their own representatives. Council members may volunteer additional contribution but are not liable for any shortfall in funding to meet the costs of governing and administering the Code.

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~~7-A8.~~ The Administrator, on an annual basis, must review the fees payable by applicants and annual and other fees payable by Signatories, with a view to cost recovery including Code governance and administration costs. As part of its annual budgeting process, the Administrator must propose a schedule of fees and contributions to the Council for approval, at least 3 months prior to the intended date of effect.

~~8-A9.~~ If the Council is not willing to endorse the fees proposal, the Steward must engage an independent accountant to review the reasonableness of the fees proposal in light of the budget for the Code and, if relevant, the extent of revenue shortfall that the Steward has indicated it is willing to fund. The Steward must bear the accountant's costs. Fees for the coming year will then be set by the Administrator taking into account any recommendations made by the independent accountant.

~~9-A10.~~ The Administrator must publish details of fees on the Code website. A change in fees is not effective until at least 3 months after publication of the new fee on the Code website.

Code promotion and branding

~~10-A11.~~ The Council and the Administrator must promote the benefits of the Code to customers, to industry participants and to other stakeholders.

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~~11-A12.~~ The Council and the Administrator must develop Code brand mark guidelines for Signatories and publish these on the Code website. The Administrator must enforce compliance with these guidelines.

~~12-A13.~~ The Administrator must maintain an easily accessible list of Signatories on the Code website.

Supplementary materials

~~13-A14.~~ The Administrator may develop supplementary materials to assist Signatories to meet the expectations of the Code. These may include written standards, guidelines, approved Consumer Information Products, checklists, templates or training. They may apply to particular technologies or systems or address particular aspects of New Energy Tech that apply across many or all types.

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~~14-A15.~~ These materials may include any combination of:

- a) Mandatory and binding standards which must be followed where they apply

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- b) Safe harbour guidelines which provide a Signatory with an approved method of complying with an aspect of the Code while allowing for other ways of compliance
- c) Non-binding guidance, which may be of assistance to Signatories
- d) Independent consumer information, designed to assist consumers to make informed choices

~~15-A16.~~ The Administrator must consult with stakeholders (including consumer representatives, industry and government) in the development of these materials. The period of consultation may vary and must be adequate to the importance and impact of the proposed materials. In the case of materials that are intended to be mandatory and to bind Signatories, the period of consultation must not be less than 3 months and may well be longer.

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~~16-A17.~~ Where substantive disagreement emerges in the course of the consultation over mandatory or safe-harbour guidance, the Administrator may refer the proposed material to the Panel for decision. Where a Signatory makes an application for referral, the Administrator must refer the proposed material to the Panel for decision.

Exemptions

~~17-A18.~~ If an applicant or a Signatory applies to the Administrator for an exemption from a provision of the Code, the Administrator may agree to an exemption if satisfied that the exemption would not unduly diminish customer protection. For example, an exemption might be sensible if:

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- a) an existing Code requirement was not appropriate to a proposed New Energy Tech or a trial involving new technology or a new offering
- b) A product or service is a free additional 'value-added' service that does not materially impact the benefit of the core offering.

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~~18-A19.~~ The Administrator, following consultation with stakeholders, may publish a class exemption. This does not require an individual application by a Signatory. A class exemption may set out conditions required for a Signatory to be able to rely on the exemption. (For example, it is intended that the Administrator will issue a class exemption to exempt simple, low-cost or off-the-shelf products or services (say priced below \$199) for which the Code consumer protections are not appropriate. The Administrator may also publish a class exemption that permits temporary customer trials of new offerings.) The Administrator must publish class exemptions on the Code website.

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~~19-A20.~~ Any exemption (including a class exemption) must be for a fixed period and may only be extended following review by the Administrator.

Monitoring and investigations

~~20-A21.~~ The Administrator must monitor compliance with the Code, ~~for example,~~ This might include undertaking regular compliance audits and reviews of Signatories' systems, policies and procedures, and mystery shopping, assessing customer satisfaction, analysing customer complaints and investigating repeat instances. For example, the Administrator may conduct audits of sales conducted via direct marketing.

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~~21-A22.~~ The Administrator must develop and publish a Complaints Procedure, consistent with Australian Standard AS ISO 10002, setting out the process where an allegation of breach of the Code is made. This must provide that:

- a) a complaint may be self-reported by a Signatory or made by Customers, another Signatory, regulators or others
- b) if a complaint is made by a Signatory's Customer, the Administrator will investigate the complaint and, where appropriate, attempt to negotiate an outcome that is fair for both the Signatory and the Customer
- c) where the Administrator is satisfied that a Signatory has breached the Code, the Administrator will determine what, if any, remedial action or sanction is appropriate
- d) if the Signatory wishes to do so, the Signatory may ask the Panel to review a decision by the Administrator requiring the Signatory to take remedial action or imposing a sanction on the Signatory in response to a breach.

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~~23-A23.~~ The Administrator has the power to require a Signatory to:

- a) rectify the issues that gave rise to the breach
- b) train staff to minimise the likelihood of repeat breaches
- ~~b)c)~~ require sales agents to undertake an assessment and accreditation process
- ~~e)d)~~ appoint an external auditor, at the Signatory's cost, to audit areas of activity relevant to the breach (generally required if there are more than three major breaches in a 12-month period).

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The Administrator also has the power to publicise the breach, including the name of the Signatory, on the Code website.

~~23-A24.~~ If the Administrator requires a Signatory to undertake remedial action in accordance with paragraph ~~A23A2322~~ a. to ~~de.~~, the Administrator must monitor the Signatory's compliance with that requirement.

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~~24-A25.~~ If the Administrator considers that a Signatory has breached the Code in a way that may warrant the suspension or expulsion of the Signatory, the Administrator may refer the matter to the Panel for its consideration. For example, the Administrator may do this if the Signatory fails without reasonable excuse to undertake remedial action as required by the Administrator in accordance with paragraph ~~A23A2322~~ a. to ~~de.~~

~~25-A26.~~ If the Administrator identifies an issue that may constitute a serious or systemic breach of law, the Administrator may refer the matter to the Panel to decide whether the matter should be referred to the relevant regulator.

Panel

~~26-A27.~~ The Panel is responsible for:

- a) overseeing the monitoring of compliance and enforcement of this Code by the Administrator
- b) reviewing a proposed mandatory or safe-harbour standard or guideline referred to it by the Administrator under paragraph ~~A17A1716~~
- c) reviewing a decision made by the Administrator requiring rectification of a breach (under paragraph ~~A23A2322~~), if the relevant Signatory requests a review
- ~~d)~~ reviewing a decision made by the Administrator to refuse admittance or renewal as a Signatory if requested under Paragraph ~~A6~~

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~~e)~~ deciding matters of suspension or expulsion referred under paragraph ~~A25A2524~~ to it by the Administrator

~~f)~~ referring serious or systemic breaches of law to relevant regulators under paragraph ~~A26A2625~~

~~g)~~ publishing on-line an annual report about the Code's operation. This must include reporting on Code compliance to enable assessment of the Code's effectiveness and extent to which the Code is promoting the confidence of the community in New Energy Tech. The report must also set out any exemptions from Code requirements agreed to by the Administrator. It must also include each finding of breach by the Administrator or Panel and the remedial action or sanction imposed on the relevant Signatory. This information must only identify the name of the relevant Signatory if the Signatory has been suspended or expelled

~~h)~~ every 3 years, engaging an independent body to undertake a review of the Code and its governance framework including by seeking the views of stakeholders (the review report must be published on the Code website) and revising the Code in light of that review.

Signatories' obligations to Administrator and Panel

~~27-A28.~~ A Signatory must ensure that it takes all reasonable steps to promote the benefits of this Code to Customers including prominent links to or a display of the latest version of this Code on its online presence.

~~28-A29.~~ A Signatory must promptly pay annual and any other Code-related fees applicable to it.

~~29-A30.~~ A Signatory must comply with the Code and all standards mandated by the Administrator in accordance with the Code.

~~30-A31.~~ A Signatory must co-operate with the Administrator and Panel in their exercise of their powers and responsibilities under the Code.

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11 November 2019

Ms Susie Black
Director – Coordination and Strategy
Merger & Adjudication Review Division
Level 17 Casselden Place
2 Lonsdale Street, Melbourne 3000

Sent by email to: Kaitlin.Hanrahan@accc.gov.au

Dear Ms Black

New Energy Tech Consumer Code - AA1000439

The Behind The Meter Working group (the BTMWG), on behalf of the Applicants, has considered the issues raised by ACCC in its letter of 22 October 2019 relating to additional consultation on proposed amendments to the draft New Energy Tech Consumer Code (‘the Code’).

We provide the following response to the matters raised in that letter, and the resulting consequential impacts they may cause. We also attached a revised version of the Code, incorporating the ACCC’s proposed clause 24, with minor amendments as highlighted in this submission.

This submission does not touch on the proposed amendments to unsolicited sales, and the appeals mechanism, detailed in the amended version of the Code provided on September 25 2019 (the amended code).

Drafting of Clause 24 (now 25) – Payment and Finance

The BTMWG accepts the advice of the ACCC that the amended code may not provide adequate certainty and clarity to stakeholders as to what specific consumer protections are required under the Code.

The BTMWG agree with the intent of the ACCC’s alternative drafting of clause 24, and are comfortable with the suggestion to include reference to specific sections of the National Consumer Credit Protection Act within the NETCC.

That being said, the BTMWG consider that the ACCC’s proposed approach may be impractical for the Code Administrator. The Code Administrator in the proposed approach would effectively need to act as a finance regulator, approving and monitoring compliance with sections of the Code that relate to the provision of credit products by non-signatories to the NETCC. This task will likely be outside the expertise of the Code Administrator and require significant additional investment for little benefit to actual signatories to the Code.

The BTMWG remains of the view that the most efficient mechanism to ensure customers of BNPL providers are adequately protected is through the implementation of a robust and enforceable industry code of conduct. We strongly consider a code of this nature would deliver consumers the greatest level of protections, with the costs borne by the benefiting parties.

In order to codify this outcome, the BTMWG encourages the ACCC to amend its proposed clause 24(a)(ii)(A) to state:

*The Code Administrator has determined that the credit provider is a **signatory to an industry code of conduct** that requires the credit provider to...*

The BTMWG understands consumer advocates have raised concerns that the list of NCCPA clauses captured by the ACCC in its proposed clause 24 may not adequately protect consumers of BNPL products. The BTMWG encourages the ACCC to consider these concerns, and those of other relevant experts, in finalising the scope of the amended clause 24.

Transitional issues

The BTMWG acknowledge the concerns raised by the ACCC that a delay in developing a BNPL industry code may result in detrimental consumer outcomes. To address this, whilst limiting the administrative burden on the Code Administrator, the BTMWG proposes a transitional provision be implemented into the Code (new clause 25(a)(ii)(B)). This transitional provision would require the Code Administrator to 'approve' BNPL providers in the manner envisioned by the proposed clause 24 until such time as a BNPL industry code was finalised. The BTMWG proposes to provide a 12 month transitional period from the date of authorisation.

Whilst this transitional provision would limit the cost burden on the administrator in the longer term, the BTMWG remain concerned that the proposed clause 24, even as an interim measure, would create significant costs that would ultimately be passed on to signatories of the Code.

To avoid these costs being unfairly recovered from signatories who do not utilise BNPL services, the BTMWG proposes to require the Code Administrator to charge the BNPL provider, on a costs incurred basis, to engage an appropriately qualified third party to assess the BNPL providers compliance with the relevant consumer protections (incorporated in new clause A7).

The BTMWG would welcome the opportunity to meet with the ACCC to discuss this minor amendment in further detail, to ensure positive consumer outcomes are delivered as soon as practicable.

Yours sincerely



Kane Thornton
Chief Executive
Sent on behalf of the Applicants

Attachment B – New Energy Tech Consumer Code

Part A - Overview

Scope

This New Energy Tech Consumer Code ("the Code") sets good practice standards for providing Residential and Small Business Customers with New Energy Tech products, systems and services. We may extend these protections to other customers if we expressly include this in the contract. New Energy Tech is defined in Part C of the Code to include such things as solar photovoltaic systems, wind turbines, energy storage systems, managing a customer's energy usage and electric vehicle charging services but does not include some simple, low cost, standard New Energy Tech.

The intention of this Code is to raise standards of consumer protection in the sector, to strengthen consumer confidence in New Energy Tech and to encourage innovation and the development of choice for consumers.

Providers who have been accepted by the Administrator as Code Signatories (referred to as "we" and "our") are bound to comply with this Code. Customers protected by this Code are referred to as "you" and "your".

The Code includes:

- Part A that provides an overview of the key commitments we make to you
- Part B that sets out our required practices in detail
- Part C that defines key terms (which are Capitalised in the Code) and
- an Annexure setting out how the Code is administered, monitored and enforced, including our obligations to the Administrator and the Code Monitoring and Compliance Panel ("The Panel").

The Code operates alongside a range of existing legal and regulatory protections. Generally, it does not repeat these protections except as needed to provide you with a complete understanding of what to expect from us.

Key Commitments

1. The key commitments made under this Code are to:
 - a) Provide you with clear, accurate and relevant information to help you make informed choices
 - b) Encourage you to be aware of your rights under the law and the Code
 - c) Ensure that our sales practices are responsible
 - d) Ensure that products, systems, services and documentation provided under the Code are suitable and fit for purpose
 - e) Support staff training and work processes that ensure that we comply with the law and the Code
 - f) Ensure that we will be responsive to your needs and take prompt, appropriate action if you make a complaint.

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The Code aims to cover the main steps of your 'customer journey' as illustrated below.





Part B – Our required practices

Advertising and promotion

2. We will ensure that we have adequate systems, policies and processes in place to ensure fair marketing and appropriate sales outcomes for consumers.

1-3. Our advertisements and other promotional material will not include any false or misleading claims about us or our New Energy Tech. In particular, our advertisements and promotional material will:

- a) ensure all relevant incentive schemes (government and non-government) are honestly and accurately represented
- b) not misrepresent our association with government or falsely claim to be part of a government scheme
- c) not make any false or misleading claims about the price, value, quality, capacity, output or other performance characteristic of our New Energy Tech, for example, through selective advertising, exaggeration or misleading focus on one or a few aspects only of the New Energy Tech
- d) make no unsolicited offers of payment arrangements not regulated by the *National Consumer Credit Protection Act (2009) (Cth)* (“NCCPA”)*
- e) use language that is accessible and that avoids industry jargon*
- f) not make any misleading claims about the place of origin (manufacture and assembly) of our products*
- g) not mislead you about the impact our New Energy Tech will have on your energy usage or costs*
- h) ensure that any claims relating to performance and energy cost savings of our New Energy Tech are reasonably based and where available, based on reputable sources*
- i) advertise the total price for our New Energy Tech as prominently as we advertise any component of the price*
- j) provide information that is specific to the state or region in which the promotional activity takes place*
- k) ensure that any disclaimers are clearly outlined and not buried in small print*
- l) only include a statement, promise, prediction or opinion if it is reasonably based*
- m) not include information that is no longer current, for example, quote an offer or financial incentive that is no longer available*
- n) be clear about any additional cost for finance or an alternative purchasing arrangement for New Energy Tech when the cost is being recovered in the overall price (e.g. where the price of financed New Energy Tech is greater than the price that would apply if immediate payment is made).*



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Direct marketing and sales

~~2-4.~~ When marketing directly to you, including through a sales agent (as well as meeting the requirements in paragraph ~~3)2)~~:

- a) we will explain up-front the purpose of any un-requested (“unsolicited”) contact by us, in person or by telephone and advise that you can ask us to leave or end the contact at any time
- b) we will leave your premises or end the contact immediately if you ask us to do so
- c) we will show you our company-issued identification if an unsolicited contact is in person
- d) any interactive internet marketing channel that we use will clearly identify for you the company whose New Energy Tech is being promoted
- e) we will provide you with the address of our local office or showroom, an email or other electronic address and a telephone number where any queries can be answered
- f) we will provide you with the Administrator approved Consumer Information Product that explains the consumer protection framework that applies under legislation and this Code and sets out other key information. The information may be provided to you in electronic format, however if you request, we will provide you the information in hard copy.



~~3-5.~~ We will adhere to responsible marketing practices at all times and avoid high-pressure sales tactics that may induce you to make hasty or uninformed decisions about the New Energy Tech you are considering. High-pressure sales tactics include (for example):

- a) seeking to sell to you if you are unlikely to be able to understand our information and/or our contract (e.g. due to English language difficulties, age, learning difficulties, mental illness or physical disability)
- b) offering discounts for agreeing to provide testimonials and/or referrals
- c) claiming special discounts (eg. “community” or bulk-buy discounts) apply, if they don’t
- d) applying psychological pressure to persuade you to make a quick purchase decision (eg. by unfairly appealing to your emotions)
- e) employing badgering techniques, such as revisiting your premises uninvited or making frequent telephone calls, to pressure you into signing a contract
- f) other conduct that the Administrator may reasonably identify as high-pressure sales tactics.

~~4-6.~~ Throughout our dealings with you, we will take extra care if we become aware that you may be facing vulnerable circumstances (eg. illness, impairment, a victim of abuse, financial stress).

Fit for purpose inquiry

5-7. As appropriate to the nature, complexity and cost of the new Energy Tech you are considering, we will support you in making a fit-for-purpose choice including:

- a) ask you about your specific circumstances, needs and expectations. This includes the extent to which you plan to use our New Energy Tech to supplement or improve the efficiency of energy use while connected to an Energy Network or be isolated from the Energy Network (also known as “off-grid”) or your expected outcomes from participating in forms of New Energy Tech supply such as virtual power plants or other energy markets.
- b) enquiring about any need you may have for energy for medical or life-support equipment or services and ensure that our New Energy Tech is suitable for this purpose and that you are made aware of any additional or increased risks.
- c) ensuring that any offer of New Energy Tech is fit for purpose in light of your circumstances, needs and expectations as you have described them to us (unless we clearly explain to you orally and in writing that it is not fit for that purpose). We will include a brief description of your circumstances, needs and expectations in our quotes and contracts. Where we offer you a New Energy Tech that is intended to work in conjunction with other New Energy Tech that you already have or are obtaining, we will ensure that our offer is compatible with that other New Energy Tech and confirm this in writing in your quote and contract.



6-8. If you advise us that you are considering operating off the Energy Network, we will provide you with a copy of the Administrator-approved Consumer Information Product that sets out Energy Networks Australia’s Off-Grid Principles.

Quote – general requirements

7-9. We will provide you with a written quote that sets out:

- a) our full name, Australian Business Number (if relevant) and physical address, an email or other electronic address and a telephone number where any queries can be answered
- b) an itemised list of the New Energy Tech to be supplied, including relevant specifications. For products and systems, this will include the manufacturer, model, year, quantities, configuration and performance specifications. For services, this will include the nature and purpose of the services, whether the services are ongoing, scheduled (and if so what frequency) or responsive to your request, the duration of the service commitment and whether the services will be provided remotely or at your premises
- c) information about how the New Energy Tech operates
- d) information about any responsibilities you have to facilitate the operation of the New Energy Tech including maintenance and access issues
- e) information about product, system or service limitations that are likely to be relevant to you (eg. where a battery does not provide a back-up facility)



- f) a performance estimate for the New Energy Tech to be supplied, which will be reasonably based, where available rely on reputable sources and comply with any relevant Administrator guidance
- g) where our offer is for a New Energy Tech product or system to be connected to the Energy Network, information that your energy supply contract may change as a consequence of purchasing the New Energy Tech and that it is your responsibility to contact your Energy Supplier to find out about this and whether there are any restrictions to your ability to interact with the Energy Network
- h) our timeframe for supplying and installing products and systems or commencing services to be provided to you (if there are circumstances that are out of our control that may cause delay, we will identify this)
- i) our business terms including the method of making payments
- j) details of any guarantees and warranties that apply. We will specify:
 - i. that your rights under your contractual warranty are in addition to the consumer guarantees under the Australian Consumer Law and that these are not excluded or replaced by your contract
 - ii. the specific details of the guarantee or warranty and how it applies to you
 - iii. for a New Energy Tech product or system - the name and contact details of our supplier in case you want to pursue your consumer guarantee rights under the Australian Consumer Law against that supplier or if for any reason you are unable to contact us.
- k) for a New Energy Tech product or system, information about its expected life and what is involved in disposing of it at the end of its life
- l) information about the portability of the proposed New Energy Tech
- m) information about the term of any applicable ongoing agreement and any provisions that may impact on your existing relationship with an Energy Supplier
- n) if the quote is for an installation on a strata title property and requires the approval of the Owners Corporation – the need for you to obtain that written approval and provide it to us before you sign the contract with us
- o) your cooling-off and termination rights (if applicable) under the Australian Consumer Law (including the right to terminate a sales agreement within 10 business days if the sale resulted from an unsolicited contact) and this Code
- p) any licenses, accreditation or certification that we hold that are needed to fulfil the offer we are making to you
- q) that we are bound by this Code
- r) the Administrator-approved Consumer Information Product that explains the benefits of the Code for our Customers and any other important information as applicable.

Quote – financial disclosure

~~8-10~~ Our quote to you will specify the deposit payable (if any) and the total price of all offered New Energy Tech including any taxes that apply. We will specify the period of time our pricing is valid for (which will be at least 10 business days).

~~9-11~~ Where our offer is of a Power Purchase Agreement, our quote will specify:

- a) the energy pricing and all associated fees and charges, any rights we have to change any of these and the notice we will provide of any price change
- b) a reasonable estimate of the aggregate amount payable over the agreement's term based on a stated, reasonable estimate of your energy consumption, including the basis of the calculation and, if applicable, the energy you will export to the Energy Network
- c) a clear statement that you must pay the stated energy prices for the term of the contract and that this amount may not reflect or be competitive with available prices for energy from the Energy Network.

~~10-12~~ Our quote to you will specify site conditions and circumstances beyond our control that may result in extra chargeable work not covered by the quote (eg. fees for meter exchange/re-configuration, repairs to existing faults, and changing dedicated off-peak control devices if required).

~~11-13~~ Our quote to you will specify the total value of any discounts, regulatory certificates, incentives or rebates (government and non-government) or government relief schemes and how and when these may or may not apply.

~~12-14~~ Where we offer New Energy Tech services and periodic or intermittent charges apply, our quote will specify the amount or method of calculation, any rights we have to vary charges during the term of the contract and the frequency of bills. For example, if there will be charges for software upgrades, we will aim to provide reasonable certainty as to the cost that you will incur.

~~13-15~~ If we make a claim that you are likely to achieve a favourable return on your investment, we will include in our quote a return on investment calculation that is based on reasonable assumptions and where available from reputable sources. Our quote will set out our assumptions including:

- a) system design, performance and output
- b) government and non-government financial incentives
- c) energy prices and usage
- d) financing costs (if applicable)
- e) maintenance costs
- f) end-of-life costs
- g) any other relevant factors.

We will also clearly state that our calculation is an estimate only and that if our assumptions prove not to be correct you may not achieve the estimated return.

~~14-16~~ If our offer involves us making payments to you (for example, for energy purchased from you), we will clearly specify how payments will be determined, any rights that we have to change the basis on which payments will be calculated and the frequency with which payments will be made.

Quote – design

~~15-17.~~ If the quote includes New Energy Tech that requires custom configuration or specification and/or physical installation by us or a competent or qualified installer, ~~we will:~~

- a) we will include as part of the quote:
 - i. a site-specific installation design or plan (a sketch or diagram is acceptable) including any configuration or positioning issues and how the New Energy Tech will integrate with other New Energy Tech you may have
 - ii. a site-specific performance estimate for the New Energy Tech.
- b) before we enter into a contract to provide New Energy Tech to you, we will complete a site-specific installation design or plan and site-specific performance estimate (both must meet the requirements of paragraph ~~171716a~~) for a non-refundable agreed fee, with no obligation on you to proceed to contract with us
- c) we can provide a site-specific installation design or plan and site-specific performance estimate (both of which will meet the requirements of paragraph ~~171716a~~) as an initial deliverable of the contract if:
 - i. we do so before the expiry of your cooling-off period (if applicable)
 - ii. we provide you with a full refund, if within 10 business days of receiving the site-specific installation design or plan and performance estimate you notify us that you do not accept these.

Quote - connections

~~16-18.~~ If our quote is for a New Energy Tech that requires approval from your Energy Supplier for connection to the Energy Network and/ or reconfiguration of your meter, we will also include in our quote:

- a) an offer to arrange this on your behalf and what, if any, charge we will make for doing this
- b) an explanation of the steps that need to be taken to obtain approval and/ or reconfiguration of your meter and the relevant paperwork that must be completed and submitted prior to installation
- c) a statement that your Energy Supplier may impose a charge for connection to the Energy Network and/or reconfiguring your meter and may change your existing energy pricing
- d) a statement that we will support you through these steps if you decide to obtain Energy Network connection approval yourself and whether there will be any non-refundable charge for this assistance.

Contracts

~~17-19.~~ If you accept our quote and agree to purchase our New Energy Tech, we will provide you with a written contract that is clear, uses plain language and is in legible print.

~~18-20.~~ Your contract will meet the same requirements as for a quote (and may do this by attaching the quote with any amendments that are necessary). In addition:

- a) your contract will include our undertaking to you to comply with the Code
- b) your contract will provide you with a standard minimum supplier's warranty period on the operation and performance of the New Energy Tech including workmanship. The period will meet or exceed the period set from time to time by the Administrator, in consultation with stakeholders, for the particular New Energy Tech
- c) your contract will include information about how to make a complaint and the complaint resolution process including your right to access an external dispute resolution scheme (where applicable), to take a complaint to the Administrator and to take a complaint to a government regulator and
- d) at the time we provide your contract to you, we will also provide you with any relevant Administrator-approved Consumer Information Product. We may give these to you electronically, but if requested, we will provide them in hard copy.



~~19-21.~~ We will not offer you a contract that involves requiring you to purchase energy or services from another supplier (called "third line forcing"), except where this is permitted by the *Competition and Consumer Act 2010 (Cth)* and we have made this clear to you.

~~20-22.~~ We will explain the contract to you prior to you entering into the agreement. In particular:

- a) we will draw your attention to any particular requirements of the contract that may cause confusion or disagreement (e.g. where additional fees may arise, early termination fees, end of contract payments or any difference between a verbal quote and the final price)
- b) we will clearly explain the process for the payment and trade of any government or regulatory certificates, and of any relevant trading facility and any limitations
- c) we will advise you that your Energy Supply contract may change as a result of purchasing the New Energy Tech and that it is your responsibility to contact your Energy Supplier to check what new pricing may be applied and, after installation of the New Energy Tech, to confirm that the agreed pricing has been applied.

~~21-23.~~ Both of us will sign the contract and any amendments. Equivalent methods of legal agreement other than physically signing a written contract in person are also permitted (for example, electronic acceptance).

Payment and finance

~~22-24.~~ We will issue you with a receipt for any deposit or other payment you make under the contract.

~~23-25.~~ We may offer you New Energy Tech with a deferred payment arrangement as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph ~~3.n.-2.m~~), we will ensure that:



a) this deferred payment arrangement is offered through a credit provider (whether ourselves or a third party) that is:

i. licensed under the ~~National Consumer Credit Protection Act (2009) (Cth) ("NCCPA") and the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC"), or~~

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ii. licensed under the NCCPA or is a related body corporate (as defined in section 5 of the NCCPA) of a credit provider licensed under the NCCPA and the deferred payment arrangement is exempt from the NCC, and;

(A) the Administrator has determined that the credit provider is a signatory to an industry code of conduct that requires the credit provider to:

- (i) resolve any complaints you may have using an internal dispute resolution process and if the complaint remains unresolved, an external dispute resolution process (which must include the scheme operated by the Australian Financial Complaints Authority)
- (ii) have processes to identify whether you are experiencing payment difficulties due to hardship
- (iii) offer you alternative and flexible payment options if you are experiencing payment difficulties so that you can meet your repayments
- (iv) comply with the following sections of the NCCPA as if the credit provider was a licensee and the credit contract was regulated by the NCCPA and the NCC:

- s 128 (obligation to assess unsuitability)
- s 129 (assessment of unsuitability)
- s 130 (reasonable inquiries about the consumer)
- s 131 (when the credit contract must be assessed as unsuitable)
- s 132 (giving the consumer the assessment) and
- s 133 (prohibition on entering, or increasing the credit limit of, unsuitable credit contracts), or

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(B) the Administrator has approved the credit provider's deferred payment contract in accordance with paragraph A7 of the Annexure – Code Administration. (This paragraph (B) is as an interim measure pending the development of a regulator approved code of conduct that will enable paragraph (A) to apply. Paragraph (B) ceases to apply on 1 January 2021 regardless of whether a regulator approved code of conduct is in operation by that date)

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a) —
b) — the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC") or complies with a regulator approved code of conduct (such as those meeting ASIC RG 182) that is verified by the Administrator, in consultation with the Industry Council, as delivering substantively equivalent consumer protections

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e)b) the term of the deferred payment contract or lease is no longer than the expected life of the product or system

e)c) ensure that you receive the following clear and accurate information:

- i. the name of the licensed credit provider to whom you will be contracted for the arrangement
- ii. a clear statement that the deferred payment arrangement is a voluntary finance option
- iii. the proposed total cost under the deferred payment arrangement compared with the cost of that same New Energy Tech product, system or service if you were to purchase it outright on that day
- iv. the disclosures required under the NCC, including in relation to fees and charges (regardless of whether the arrangement is regulated under the NCC)
- v. whether at the conclusion of the deferred payment arrangement
 - you own any elements of the New Energy Tech or
 - you have any entitlement to any ongoing services or pricing and/or
 - you have the option to purchase any elements of the new Energy Tech and if so relevant details, including any associated costs, and
- vi. a statement that questions and complaints about the payment arrangement should be directed to the licensed credit provider with whom you will be contracted.

24-26. Paragraph 25-25-24 does not apply if the finance is provided by a government body.

25-27. Paragraph 25-25-24 does not apply if we offer you, as an alternative to full payment on delivery or installation, the opportunity to make progressive instalments to us over a period of not more than 6 months, provided that the total amount to be paid by you does not include an interest component, additional fees or an increased price (see paragraph 3. n-2.m).

26-28. Paragraph 25-25-24 does not apply if the Administrator is satisfied that the contract we offer you is a Power Purchase Agreement and our contract includes a commitment to try and assist you if you notify us that you are experiencing financial hardship, including by advising you of any relevant government assistance schemes and by offering you a payment plan.

~~27-29.~~ Where we are providing an ongoing service to you and the contract allows us to change the price that we charge you, we will advise you as soon as practical and no later than five business days prior to the price change taking effect.

~~28-30.~~ If your contract requires us to make payments to you (whether by transfer of money or by offset to a payment you make to us), we will make those payments on time in accordance with your contract. If our payments to you are calculated using an undisclosed formula, we will ensure that our payment calculation system is regularly audited by a registered company auditor to ensure that payments are accurately calculated.

Delivery, installation and safety

~~29-31.~~ We will arrange delivery and installation (if applicable) of New Energy Tech you purchase from us within the timeframe specified in your contract, unless any delay is because of circumstances that were identified in your contract as outside our control.



~~30-32.~~ If you purchase New Energy Tech that requires physical installation by us, we will ensure your safety and the safety of our installers. We will install in accordance with all applicable safety standards, manufacturer's specifications, relevant Australian Standards, Energy Network standards, any binding guidance issued by the Code Administrator and good industry practice, using an installer that is trained, competent and where applicable, holds any required qualification or certification to undertake the work.

Activation

~~34-33.~~ If you authorise us to obtain Energy Network connection approval on your behalf for New Energy Tech, we will:

- a) not install or commence the New Energy Tech until approval is provided
- b) provide you with a full refund if the relevant approvals are not obtained
- c) prepare and submit within a reasonable timeframe all relevant documentation required by the Energy Supplier for connection to the Energy Network and for reconfiguration of your meter (if relevant)
- d) respond within a reasonable timeframe to any additional compliance requests from the Energy Supplier (for example, re-submitting incorrect paperwork), and consult with you if necessary
- e) keep you informed of progress at each step, including any restrictions or limitations that may adversely affect you.



~~32-34.~~ If you take responsibility for obtaining Energy Network connection approval for New Energy Tech, we supply to you, we will:

- a) clearly explain to you each step in the process for preparing and submitting the documentation to the Energy Supplier

- b) provide you with information as to where to find and how to complete and submit paper or on-line forms
- c) provide you with expected timeframes and any deadlines for each step of the process
- d) advise you of contact details for queries or following up on progress
- e) advise of any potential problems that may arise
- f) provide you with a refund consistent with paragraph [48484847](#) if your application is rejected.

~~33-35~~ [35-37](#) If you take responsibility for obtaining Energy Network connection approval for New Energy Tech and your application is rejected after you have signed a contract for that New Energy Tech, we will provide you with a refund minus reasonable expenses incurred by us to the point of termination of the contract.

~~34-36~~ [35-37](#) If we supply you with New Energy Tech that needs another form of activation in order to provide you with the intended benefit, we will explain to you the steps that need to be taken and who is responsible for these. We will promptly fulfil our responsibilities and keep you informed of progress at each step.

Operating Information

~~35-37~~ [35-37](#) Prior to the activation of the New Energy Tech we are providing you, we will:

- a) provide you with comprehensive information for safe and effective operation, maintenance and optimisation of your New Energy Tech
- b) explain to you any obligations that you may have to facilitate or enable the New Energy Tech (for example, to maintain an internet connection that we are able to access)
- c) advise you how to use your New Energy Tech and/or assess the benefit you are deriving from these. The advice will be appropriate to the New Energy Tech we are providing to you and will involve at least one of the following:
 - i. written instructions and a physical or electronically recorded demonstration (for example, an instructional video)
 - ii. providing you either with a measuring or monitoring device that connects to the New Energy Tech or with continuous access to a remote monitoring service (in either case that will facilitate accurate measurement of benefit that is based on objective standards acceptable to the Administrator) together with written instructions as to how to use that device or access that service ~~or~~
 - iii. a commitment to provide you with regular reports that accurately quantify the benefit that you are deriving and that meet any guidelines made by the Administrator in relation to reporting of this kind (for example, in the case of a service that is designed to reduce your energy bills by smart management of your energy consuming products).



The required information will vary depending on the specifics of the New Energy Tech but will meet the Administrator's requirements. The information may be provided to you in electronic format, hard copy or by web link or something similar. If you request, we will provide you the information in hard copy (in which case, we will provide it at least quarterly, namely every three months).

Performance

~~36-38.~~ Our New Energy Tech will meet your reasonable expectations including but not limited to:

- a) meeting your needs as explained to us (see paragraph ~~77-76~~), unless we have clearly explained to you and confirmed in writing that those needs cannot be met
- b) performing properly
- c) reflecting any agreed contract and meeting the performance specifications outlined by us to you;
- d) fulfilling any commitments we make to you (for example, to provide access to an accurate monitoring service or regular reports that accurately quantify the benefit you are gaining)
- e) New Energy Tech that utilises information and communications technology will be secure
- f) all our services will be provided with due care and skill.

~~37-39.~~ If we become aware that New Energy Tech that we have supplied to you is defective or unsafe, we will promptly tell you and offer to fix the problem if this is possible or otherwise remove the product or system from your premises and provide reasonable compensation to you.

~~38-40.~~ If we provide you with New Energy Tech that involves the use of equipment that you own, we will do so in a way that is consistent with the equipment manufacturer's instructions and warranty requirements.

Move from premises

~~39-41.~~ If our contract with you includes a lock-in period and imposes fees if you terminate early, and

- a) the services are not transferrable to another property
- b) you sell or move from the property to which those services are being provided
- c) the occupier of the property agrees to take over your contract

we will agree to the occupier of the property substituting for you under the contract and will not charge you early termination fees, unless we have a reasonable basis for refusing to contract with the occupier of your property.

Warranty claim

~~40-42.~~ We will respond promptly to any warranty claim by you and within a reasonable timeframe implement warranty repairs and replacements, remedy service issues or provide compensation.

~~41-43.~~ We will provide you with the name and contact details of our New Energy Tech product or system supplier in case you want to pursue your consumer guarantee rights under the Australian Consumer Law against that supplier or if for any reason, you are unable to contact us. ~~we should go out of business.~~



~~42-44.~~ In some circumstances, you may not be entitled to a consumer guarantee under Australian Consumer Law, and in that case, you may not be entitled to a remedy, if the claim is due to something that:

- a) someone else said or did (excluding our agents or employees) or

- b) beyond human control that happened after the goods or services were supplied (for example, an extreme weather event).

Termination of contract

~~43-45.~~ You are entitled to terminate your contract and we will provide you with a full refund if:

- a) your contract is for the supply of New Energy Tech that requires physical installation
- b) consistent with paragraph ~~17.b)~~~~17.b)~~~~16.a)~~, we provide you with a site-specific installation design or plan and site-specific performance estimate as an initial deliverable under the contract (rather than as part of our quote)
- c) within 10 business days of receiving our site-specific installation design plan and performance estimate you notify us that you do not accept these.



~~44-46.~~ You are also entitled to terminate your contract and we will provide you with a full refund, if your contract is for the supply of New Energy Tech that requires physical installation and either of the following applies:

- a) we propose to significantly change the New Energy Tech installation design from that previously provided to you (whether provided in our quote or as a first deliverable under your contract) and you are not willing to accept the change or
- b) site conditions and circumstances beyond our control result in extra chargeable work not within the contract price and we are not willing to bear those additional costs.

~~45-47.~~ You are also entitled to terminate your contract for the supply of New Energy Tech, and we will provide you with a full refund, if we fail to meet the timeframe specified in your contract for delivery and installation (if applicable), or commencement of service of any New Energy Tech. This does not apply, however, if the delay was because of circumstances that were identified in your contract as outside our control.

~~46-48.~~ If you take responsibility for obtaining Energy Network connection approvals and your application is rejected after you have signed a contract with us (see para ~~353534~~), you may terminate the contract and we will provide you with a refund minus reasonable expenses incurred by us up to the time of the termination.

~~47-49.~~ We will terminate your contract and remove New Energy Tech that we supplied to you and return the site to its former state, if:

- a) you have a strata title property
- b) you were required by law to obtain the Owners Corporation written consent before installing our New Energy Tech
- c) you entered into a contract with us to supply the New Energy Tech before obtaining that written consent and
- d) the Owners Corporation subsequently refuses to give that consent.

We will provide a full refund and conduct the removal and restoration at our cost, unless:

- e) we advised you of the need for written consent under paragraph [9.n\)9.n\)9.n\)9.n\)](#) and
- f) we have proceeded with the installation on your incorrect advice that yours is not a strata title property.

[49-50.](#) Under the Australian Consumer Law, if the sale to you was unsolicited and you are a Residential Customer, you will be given 10 business days after you sign a contract to cancel the contract without penalty (the “cooling-off period”). If you wish to withdraw from a valid contract after the expiry of any cooling-off period, we may apply our own policies regarding fees for cancellation, provided that we specified them in the initial contract. For all Customers protected by this Code, we may only impose cancellation or termination fees that are reasonable and related to the cost incurred by us.

Customer service

[49-51.](#) We will provide fair terms, clear communication and maintain high standards of customer service at all times and respond courteously and promptly to any contact from you and queries you may have about New Energy Tech supplied by us to you.



[50-52.](#) If we have an ongoing service relationship with you and we are aware that you may be facing vulnerable circumstances (eg. illness, impairment, a victim of abuse, financial stress or needing energy for medical or life-support equipment or services), we will take additional care to respond promptly to any related issues arising from the use of our New Energy Tech.

Complaints

[54-53.](#) If you are dissatisfied with a New Energy Tech we offered or supplied, you can submit a complaint directly to us. A complaint may include, for example, any expression of dissatisfaction with a New Energy Tech offered or provided, with the sales process or salesperson, or with the complaints handling procedure itself.



[52-54.](#) We will handle your complaint in a way that is fair, timely and transparent. This means that:

- a) we will have information readily available for you and our staff about how complaints may be made, how these are handled and available avenues to which you can escalate your complaint if you are not satisfied with our response
- b) we will acknowledge receipt of your complaint as soon as possible and tell you when we expect to be able to respond to your complaint
- c) we will log your complaint in a complaint’s register and promptly begin investigating the issues
- d) we will aim to provide you with a response to your complaint within 15 business days of receipt of your complaint. If we do not provide you with a final response by then, we will advise you before 15 business days have passed and provide an update of progress;
- e) we will provide you with a final response to your complaint within 25 business days of receipt of your complaint, unless we have both agreed to a further extension

- f) if you are dissatisfied with our response to your complaint, we will provide you with contact details for escalation options including any external dispute resolution (Ombudsman) scheme of which we are a member, the State Consumer Affairs or Fair Trading body and the Administrator
- g) we will maintain appropriate record keeping of complaints and their outcomes and steps that we take to minimise similar complaints in the future.

Legal and privacy obligations

53-55. We will comply with all local, state and federal legislation, relevant Accreditation Guidelines, and regulations including but not limited to:

- a) The Renewable Energy (Electricity) Act 2000 (Cth) which is supported by the Renewable Energy (Electricity) Regulations 2001 (Cth)
- b) The Do Not Call Register Act 2006 (Cth) and associated telemarketing standards including permitted hours for contacting consumers
- c) Australian Consumer Law
- d) Respecting "Do Not Knock" and "No Hawkers" stickers.



54-56. Even if we are not bound by the Privacy Act 1988 (Cth), we will take reasonable steps to ensure the safety of your personal information and we will only use your personal information:

- a) for the purpose of providing you with a requested quote or carrying out our obligations under your contract (as applicable)
- b) for future marketing of other related New Energy Tech or providing you with information that you might reasonable expect to receive from us or
- c) to provide your personal information to a third party if you have given express permission for this.

55-57. We will not provide you with marketing material unless we also provide a simple, easy way for you to ask not to receive future direct marketing communications and include a clear, prominent opt-out provision in each marketing communication.

Training

56-58. We will train our sales agents, representatives, contractors and employees about our New Energy Tech and their responsibilities under this Code, so that they can provide you with accurate information and quality services.

57-59. We will ensure the safety of our installers, subcontractors and employees and demonstrate due diligence in ensuring the safety of persons under our direct or indirect responsibility.

58-60. Our people will be competent, appropriately qualified and have completed the relevant safety training modules (as specified by the relevant regulator or by the Administrator) appropriate to the work.

Compliance with the Code

~~59-61~~ We agree to comply with this Code as amended from time to time and any mandatory standards published by the Administrator on the Code website that apply to New Energy Tech that we provide. We will also ensure that our employees, contractors, agents, representatives and any other individuals or businesses acting on our behalf do likewise. This includes third parties we engage to undertake direct marketing and sales for us.

~~60-62~~ We will be responsible for all actions governed by this Code, whether taken by our employees, contractors, agents, representatives or any other individuals or businesses acting on our behalf. This includes third parties we engage to undertake direct marketing for us or who we engage to install products or systems we provide to you or to deliver services to you.

Part C – Definitions

The definitions for terms used in this Code are as follows.

Administrator is the organisation with responsibility for administering the Code as set out in the Annexure – Code Administration.

Australian Consumer Law – Schedule 2 to the Competition and Consumer Act 2010 (Commonwealth).

~~**ASIC** – Australian Securities and Investments Commission~~

Business day – A day that is not a Saturday, Sunday or public holiday in the relevant location in Australia.

Customer – A potential or existing Residential Customer or Small Business Customer. The term also includes other customers if their contract expressly includes that this Code applies.

Consumer Information Product – consumer information (hardcopy, web-based, electronic, etc) that is approved by the Administrator to provide independent information to assist a customer or potential customer to make informed choices about New Energy Tech.

Energy Network – Any of Australia’s principal energy transmission and distribution networks (including South West Interconnected System, North West Interconnected System, Darwin-Katherine Electricity Network, National Electricity Market).

Energy Supplier – Any of Australia’s public offer energy providers, including retailers and network businesses.

New Energy Tech are:

- a) small-scale (in-home or small business) products and systems that generate, store or trade energy away from Australia’s main transmission and distribution Energy Networks or as distributed energy resources connected to an Energy Network
- b) services that support or are closely related to those products and systems
- c) products, systems and services that monitor or manage a Customer’s usage of energy whether on or off an Energy Network
- d) any other product, system and service that the Administrator is satisfied is appropriately within this Code.

The term does not, however, include simple, low cost or off-the-shelf New Energy Tech that are within a class exemption made by the Administrator in accordance with paragraph 17 of the Annexure – Code Administration.

Examples of New Energy Tech are:

- e) distributed energy resources owned by or leased to the Customer that are connected to an Energy Network for supplementary supply such as solar photovoltaic systems, wind turbines, hydro and bioenergy generators
- f) a microgrid that may be connected or fully isolated from the Energy Network

- g) a power system for a single Customer, whether or not the Customer is also connected to an Energy Network
- h) energy management products, systems and services supplied to a Customer including home energy management systems and services, battery and other storage products, systems and services
- i) programs aimed at stabilising the supply of energy including by paying Customers an incentive to reduce their usage during critical peak periods or by shutting down or restricting the power consumption of Customer appliances during critical peak periods
- j) a Power Purchase Agreement
- k) person to person energy trading systems and services
- l) electric vehicle charging services
- m) suppliers of repair, maintenance and removal services for New Energy Tech products and systems.

These examples are not intended to limit the scope of the definition. Rather the term has been defined to accommodate new products and services as they enter the Australian market where the nature, complexity and cost is such that the Code protections are appropriate.

Owners Corporation – The body (however described) that has legal responsibility for the common property in a strata development.

Panel – The independent Code Monitoring and Compliance Panel appointed to oversee the work of the Code Administrator.

Power Purchase Agreement - An agreement for a Signatory to supply a customer with energy from New Energy Tech which may be from generation or storage equipment located on the customer's premises or remotely. This is not intended to cover energy purchased through the wholesale electricity or gas markets.

Residential Customer – A customer that is purchasing New Energy Tech for personal, domestic or household purposes. The term includes an Owners Corporation for a residential strata property and the operator of a retirement village.

~~RG 183 – ASIC's Regulatory Guide 183 – Approval of financial sector codes of conduct~~

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Small Business Customer – A customer that is a business or not for profit organisation that employs less than 20 people. Associated entities are taken to be one entity when calculating the number of employees.

Annexure – Code Administration

Introduction

~~1-A1.~~ The Code is administered in accordance with the Memorandum of Understanding agreed to on 24 January 2019 by Energy Consumers Australia, Energy Networks Australia, Public Interest Advocacy Centre, Clean Energy Council, Smart Energy Council, Australian Energy Council and Renew (MOU). The MOU provides that the governance, accountability and administration structure of the Code will be guided by the following principles:

- a) Customer focused
- b) Fair and not anti-competitive
- c) Relevant expertise
- d) Independent and avoiding conflicts of interest
- e) Inclusive
- f) Adequately resourced.

~~2-A2.~~ The MOU specifies that the Code will be governed and administered by:

- a) The Council, which must comprise representatives of key stakeholders including industry associations and consumer bodies
- b) The Steward, appointed by the Council to be the legal entity responsible for the Code, for entering into any contracts related to the Code and funding any shortfall in Code revenue
- c) The Administrator, appointed by the Council and responsible for day to day administration of the Code
- d) The Code Monitoring and Compliance Panel (Panel) appointed by the Council and comprising industry and consumer representatives and independent persons with relevant expertise.

This Annexure to the Code expands upon the role of the Administrator and the Panel and may be revised by the Council from time to time, following consultation with stakeholders.

Applications and renewals

~~3-A3.~~ The Administrator is responsible for developing application forms and renewal forms for use by industry participants wanting to become a signatory to the Code (Signatory) or renew their status as a Signatory.

~~4-A4.~~ Where an application is made by an industry participant and the application fee is paid, the Administrator must assess whether to admit the applicant as a Signatory. In making this assessment, the Administrator must take into account:

- a) whether the applicant's processes and documents are sufficient to support compliance by the applicant with the Code (other than a provision of the Code from which the Administrator has exempted the applicant)

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- b) whether the key personnel in the applicant's business have had a significant involvement in another business that became insolvent.

A5. Where a Signatory applies to renew their status as a Signatory, the Administrator may take into account any complaints that have been made about the Signatory, whether the Signatory has co-operated with the Administrator and Panel in carrying out their responsibilities and any other relevant factors.

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A6. Where an applicant is refused admittance or renewal as a Signatory, the Applicant has a right to appeal the Administrator's decision to the Panel (a fee may be payable by the Applicant).

Deferred payment arrangement providers

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A7. Where a Signatory requests the Administrator at any time until 30 June 2020 to approve a deferred payment contract for the purposes of paragraph 25(a)(ii)(B), the Administrator must do so if:

- a) an appropriately qualified person engaged by the Administrator reviews the deferred payment contract and certifies that the contract includes undertakings to comply with the consumer protections listed set out in clause paragraph 25(2)(a)(ii)(A)(i) to (iv) substantially the same protections as would apply if the contract were a credit contract regulated under the NCCPA and NCG; and

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- a) the provider of the deferred payment arrangement pays the costs of the person engaged by the Administrator to undertake that work (costs to be paid to the Administrator in advance of the performance of the work).

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Fees

6-A8. The Council must, on an annual basis, agree to the fees and contributions required to cover the costs of operating the Council. These shared costs include the costs of the Independent Chair and the Consumer representatives. Industry members of the Council must cover the attendance costs of their own representatives. Council members may volunteer additional contribution but are not liable for any shortfall in funding to meet the costs of governing and administering the Code.

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7-A9. The Administrator, on an annual basis, must review the fees payable by applicants and annual and other fees payable by Signatories, with a view to cost recovery including Code governance and administration costs. As part of its annual budgeting process, the Administrator must propose a schedule of fees and contributions to the Council for approval, at least 3 months prior to the intended date of effect.

8-A10. If the Council is not willing to endorse the fees proposal, the Steward must engage an independent accountant to review the reasonableness of the fees proposal in light of the budget for the Code and, if relevant, the extent of revenue shortfall that the Steward has indicated it is willing to fund. The Steward must bear the accountant's costs. Fees for the coming year will then be set by the Administrator taking into account any recommendations made by the independent accountant.

9-A11. The Administrator must publish details of fees on the Code website. A change in fees is not effective until at least 3 months after publication of the new fee on the Code website.

Code promotion and branding

10-A12. The Council and the Administrator must promote the benefits of the Code to customers, to industry participants and to other stakeholders.

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~~11-A13.~~ The Council and the Administrator must develop Code brand mark guidelines for Signatories and publish these on the Code website. The Administrator must enforce compliance with these guidelines.

~~12-A14.~~ The Administrator must maintain an easily accessible list of Signatories on the Code website.

Supplementary materials

~~13-A15.~~ The Administrator may develop supplementary materials to assist Signatories to meet the expectations of the Code. These may include written standards, guidelines, approved Consumer Information Products, checklists, templates or training. They may apply to particular technologies or systems or address particular aspects of New Energy Tech that apply across many or all types.

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~~14-A16.~~ These materials may include any combination of:

- a) Mandatory and binding standards which must be followed where they apply
- b) Safe harbour guidelines which provide a Signatory with an approved method of complying with an aspect of the Code while allowing for other ways of compliance
- c) Non-binding guidance, which may be of assistance to Signatories
- d) Independent consumer information, designed to assist consumers to make informed choices

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~~15-A17.~~ The Administrator must consult with stakeholders (including consumer representatives, industry and government) in the development of these materials. The period of consultation may vary and must be adequate to the importance and impact of the proposed materials. In the case of materials that are intended to be mandatory and to bind Signatories, the period of consultation must not be less than 3 months and may well be longer.

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~~16-A18.~~ Where substantive disagreement emerges in the course of the consultation over mandatory or safe-harbour guidance, the Administrator may refer the proposed material to the Panel for decision. Where a Signatory makes an application for referral, the Administrator must refer the proposed material to the Panel for decision.

Exemptions

~~17-A19.~~ If an applicant or a Signatory applies to the Administrator for an exemption from a provision of the Code, the Administrator may agree to an exemption if satisfied that the exemption would not unduly diminish customer protection. For example, an exemption might be sensible if:

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- a) an existing Code requirement was not appropriate to a proposed New Energy Tech or a trial involving new technology or a new offering
- b) A product or service is a free additional 'value-added' service that does not materially impact the benefit of the core offering.

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~~18-A20.~~ The Administrator, following consultation with stakeholders, may publish a class exemption. This does not require an individual application by a Signatory. A class exemption may set out conditions required for a Signatory to be able to rely on the exemption. (For example, it is intended that the Administrator will issue a class exemption to exempt simple, low-cost or off-the-shelf products or services (say priced below \$199) for which the Code consumer protections are not appropriate. The Administrator may also publish a class exemption that permits temporary customer trials of new offerings.) The Administrator must publish class exemptions on the Code website.

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~~19-A21~~. Any exemption (including a class exemption) must be for a fixed period and may only be extended following review by the Administrator.

Monitoring and investigations

~~20-A22~~. The Administrator must monitor compliance with the Code, ~~for example, This might include~~ undertaking regular compliance audits ~~and reviews of Signatories' systems, policies and procedures,~~ ~~and~~ mystery shopping, assessing customer satisfaction, analysing customer complaints and investigating repeat instances. ~~For example, the Administrator may conduct audits of sales conducted via direct marketing.~~

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~~21-A23~~. The Administrator must develop and publish a Complaints Procedure, consistent with Australian Standard AS ISO 10002, setting out the process where an allegation of breach of the Code is made. This must provide that:

- a) a complaint may be self-reported by a Signatory or made by Customers, another Signatory, regulators or others
- b) if a complaint is made by a Signatory's Customer, the Administrator will investigate the complaint and, where appropriate, attempt to negotiate an outcome that is fair for both the Signatory and the Customer
- c) where the Administrator is satisfied that a Signatory has breached the Code, the Administrator will determine what, if any, remedial action or sanction is appropriate
- d) if the Signatory wishes to do so, the Signatory may ask the Panel to review a decision by the Administrator requiring the Signatory to take remedial action or imposing a sanction on the Signatory in response to a breach.

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~~22-A24~~. The Administrator has the power to require a Signatory to:

- a) rectify the issues that gave rise to the breach
- b) train staff to minimise the likelihood of repeat breaches
- ~~b)c)~~ require sales agents to undertake an assessment and accreditation process
- ~~e)d)~~ appoint an external auditor, at the Signatory's cost, to audit areas of activity relevant to the breach (generally required if there are more than three major breaches in a 12-month period).

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The Administrator also has the power to publicise the breach, including the name of the Signatory, on the Code website.

~~23-A25~~. If the Administrator requires a Signatory to undertake remedial action in accordance with paragraph ~~A24A24A2322~~ a. to ~~d~~e., the Administrator must monitor the Signatory's compliance with that requirement.

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~~24-A26~~. If the Administrator considers that a Signatory has breached the Code in a way that may warrant the suspension or expulsion of the Signatory, the Administrator may refer the matter to the Panel for its consideration. For example, the Administrator may do this if the Signatory fails without reasonable excuse to undertake remedial action as required by the Administrator in accordance with paragraph ~~A24A24A2322~~ a. to ~~d~~e.

~~25-A27.~~ If the Administrator identifies an issue that may constitute a serious or systemic breach of law, the Administrator may refer the matter to the Panel to decide whether the matter should be referred to the relevant regulator.

Panel

~~26-A28.~~ The Panel is responsible for:

- a) overseeing the monitoring of compliance and enforcement of this Code by the Administrator
- b) reviewing a proposed mandatory or safe-harbour standard or guideline referred to it by the Administrator under paragraph [A18A18A1716](#)
- c) reviewing a decision made by the Administrator requiring rectification of a breach (under paragraph [A24A24A2322](#)), if the relevant Signatory requests a review
- ~~d)~~ [reviewing a decision made by the Administrator to refuse admittance or renewal as a Signatory if requested under Paragraph A6](#)
- ~~e)~~ deciding matters of suspension or expulsion referred under paragraph [A26A26A2524](#) to it by the Administrator
- ~~f)~~ referring serious or systemic breaches of law to relevant regulators under paragraph [A27A27A2625](#)
- ~~g)~~ publishing on-line an annual report about the Code's operation. This must include reporting on Code compliance to enable assessment of the Code's effectiveness and extent to which the Code is promoting the confidence of the community in New Energy Tech. The report must also set out any exemptions from Code requirements agreed to by the Administrator. It must also include each finding of breach by the Administrator or Panel and the remedial action or sanction imposed on the relevant Signatory. This information must only identify the name of the relevant Signatory if the Signatory has been suspended or expelled
- ~~h)~~ every 3 years, engaging an independent body to undertake a review of the Code and its governance framework including by seeking the views of stakeholders (the review report must be published on the Code website) and revising the Code in light of that review.

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Signatories' obligations to Administrator and Panel

~~27-A29.~~ A Signatory must ensure that it takes all reasonable steps to promote the benefits of this Code to Customers including prominent links to or a display of the latest version of this Code on its online presence.

~~28-A30.~~ A Signatory must promptly pay annual and any other Code-related fees applicable to it.

~~29-A31.~~ A Signatory must comply with the Code and all standards mandated by the Administrator in accordance with the Code.

~~30-A32.~~ A Signatory must co-operate with the Administrator and Panel in their exercise of their powers and responsibilities under the Code.

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Attachment B – New Energy Tech Consumer Code

Part A - Overview

Scope

This New Energy Tech Consumer Code (“the Code”) sets good practice standards for providing Residential and Small Business Customers with New Energy Tech products, systems and services. We may extend these protections to other customers if we expressly include this in the contract. New Energy Tech is defined in Part C of the Code to include such things as solar photovoltaic systems, wind turbines, energy storage systems, managing a customer’s energy usage and electric vehicle charging services but does not include some simple, low cost, standard New Energy Tech.

The intention of this Code is to raise standards of consumer protection in the sector, to strengthen consumer confidence in New Energy Tech and to encourage innovation and the development of choice for consumers.

Providers who have been accepted by the Administrator as Code Signatories (referred to as “we” and “our”) are bound to comply with this Code. Customers protected by this Code are referred to as “you” and “your”.

The Code includes:

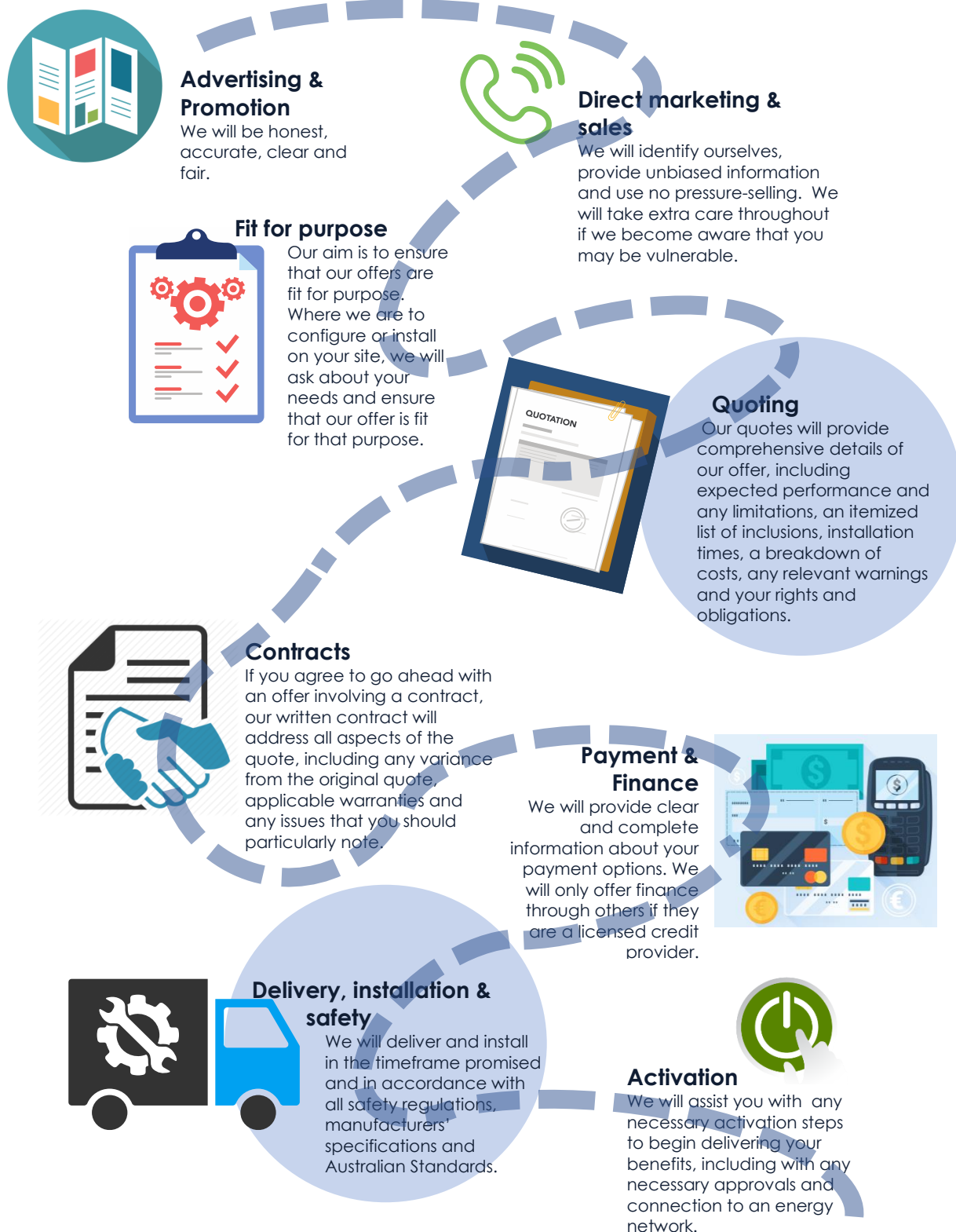
- Part A that provides an overview of the key commitments we make to you
- Part B that sets out our required practices in detail
- Part C that defines key terms (which are Capitalised in the Code) and
- an Annexure setting out how the Code is administered, monitored and enforced, including our obligations to the Administrator and the Code Monitoring and Compliance Panel (“The Panel”).

The Code operates alongside a range of existing legal and regulatory protections. Generally, it does not repeat these protections except as needed to provide you with a complete understanding of what to expect from us.

Key Commitments

1. The key commitments made under this Code are to:
 - a) Provide you with clear, accurate and relevant information to help you make informed choices
 - b) Encourage you to be aware of your rights under the law and the Code
 - c) Ensure that our sales practices are responsible
 - d) Ensure that products, systems, services and documentation provided under the Code are suitable and fit for purpose
 - e) Support staff training and work processes that ensure that we comply with the law and the Code
 - f) Ensure that we will be responsive to your needs and take prompt, appropriate action if you make a complaint.

The Code aims to cover the main steps of your 'customer journey' as illustrated below.





Part B – Our required practices

Advertising and promotion

2. We will ensure that we have adequate systems, policies and processes in place to ensure fair marketing and appropriate sales outcomes for consumers.
3. Our advertisements and other promotional material will not include any false or misleading claims about us or our New Energy Tech. In particular, our advertisements and promotional material will:
 - a) ensure all relevant incentive schemes (government and non-government) are honestly and accurately represented
 - b) not misrepresent our association with government or falsely claim to be part of a government scheme
 - c) not make any false or misleading claims about the price, value, quality, capacity, output or other performance characteristic of our New Energy Tech, for example, through selective advertising, exaggeration or misleading focus on one or a few aspects only of the New Energy Tech
 - d) make no unsolicited offers of payment arrangements not regulated by the *National Consumer Credit Protection Act (2009) (Cth)* (“NCCPA”)
 - e) use language that is accessible and that avoids industry jargon
 - f) not make any misleading claims about the place of origin (manufacture and assembly) of our products
 - g) not mislead you about the impact our New Energy Tech will have on your energy usage or costs
 - h) ensure that any claims relating to performance and energy cost savings of our New Energy Tech are reasonably based and where available, based on reputable sources
 - i) advertise the total price for our New Energy Tech as prominently as we advertise any component of the price
 - j) provide information that is specific to the state or region in which the promotional activity takes place
 - k) ensure that any disclaimers are clearly outlined and not buried in small print
 - l) only include a statement, promise, prediction or opinion if it is reasonably based
 - m) not include information that is no longer current, for example, quote an offer or financial incentive that is no longer available
 - n) be clear about any additional cost for finance or an alternative purchasing arrangement for New Energy Tech when the cost is being recovered in the overall price (e.g. where the price of financed New Energy Tech is greater than the price that would apply if immediate payment is made).



Direct marketing and sales

4. When marketing directly to you, including through a sales agent (as well as meeting the requirements in paragraph 3):
 - a) we will explain up-front the purpose of any un-requested (“unsolicited”) contact by us, in person or by telephone and advise that you can ask us to leave or end the contact at any time
 - b) we will leave your premises or end the contact immediately if you ask us to do so
 - c) we will show you our company-issued identification if an unsolicited contact is in person
 - d) any interactive internet marketing channel that we use will clearly identify for you the company whose New Energy Tech is being promoted
 - e) we will provide you with the address of our local office or showroom, an email or other electronic address and a telephone number where any queries can be answered
 - f) we will provide you with the Administrator approved Consumer Information Product that explains the consumer protection framework that applies under legislation and this Code and sets out other key information. The information may be provided to you in electronic format, however if you request, we will provide you the information in hard copy.

5. We will adhere to responsible marketing practices at all times and avoid high-pressure sales tactics that may induce you to make hasty or uninformed decisions about the New Energy Tech you are considering. High-pressure sales tactics include (for example):
 - a) seeking to sell to you if you are unlikely to be able to understand our information and/or our contract (e.g. due to English language difficulties, age, learning difficulties, mental illness or physical disability)
 - b) offering discounts for agreeing to provide testimonials and/or referrals
 - c) claiming special discounts (eg. “community” or bulk-buy discounts) apply, if they don’t
 - d) applying psychological pressure to persuade you to make a quick purchase decision (eg. by unfairly appealing to your emotions)
 - e) employing badgering techniques, such as revisiting your premises uninvited or making frequent telephone calls, to pressure you into signing a contract
 - f) other conduct that the Administrator may reasonably identify as high-pressure sales tactics.

6. Throughout our dealings with you, we will take extra care if we become aware that you may be facing vulnerable circumstances (eg. illness, impairment, a victim of abuse, financial stress).



Fit for purpose inquiry

7. As appropriate to the nature, complexity and cost of the new Energy Tech you are considering, we will support you in making a fit-for-purpose choice including:
- ask you about your specific circumstances, needs and expectations. This includes the extent to which you plan to use our New Energy Tech to supplement or improve the efficiency of energy use while connected to an Energy Network or be isolated from the Energy Network (also known as “off-grid”) or your expected outcomes from participating in forms of New Energy Tech supply such as virtual power plants or other energy markets.
 - enquiring about any need you may have for energy for medical or life-support equipment or services and ensure that our New Energy Tech is suitable for this purpose and that you are made aware of any additional or increased risks.
 - ensuring that any offer of New Energy Tech is fit for purpose in light of your circumstances, needs and expectations as you have described them to us (unless we clearly explain to you orally and in writing that it is not fit for that purpose). We will include a brief description of your circumstances, needs and expectations in our quotes and contracts. Where we offer you a New Energy Tech that is intended to work in conjunction with other New Energy Tech that you already have or are obtaining, we will ensure that our offer is compatible with that other New Energy Tech and confirm this in writing in your quote and contract.
8. If you advise us that you are considering operating off the Energy Network, we will provide you with a copy of the Administrator-approved Consumer Information Product that sets out Energy Networks Australia’s Off-Grid Principles.



Quote – general requirements

9. We will provide you with a written quote that sets out:
- our full name, Australian Business Number (if relevant) and physical address, an email or other electronic address and a telephone number where any queries can be answered
 - an itemised list of the New Energy Tech to be supplied, including relevant specifications. For products and systems, this will include the manufacturer, model, year, quantities, configuration and performance specifications. For services, this will include the nature and purpose of the services, whether the services are ongoing, scheduled (and if so what frequency) or responsive to your request, the duration of the service commitment and whether the services will be provided remotely or at your premises
 - information about how the New Energy Tech operates
 - information about any responsibilities you have to facilitate the operation of the New Energy Tech including maintenance and access issues
 - information about product, system or service limitations that are likely to be relevant to you (eg. where a battery does not provide a back-up facility)



- f) a performance estimate for the New Energy Tech to be supplied, which will be reasonably based, where available rely on reputable sources and comply with any relevant Administrator guidance
- g) where our offer is for a New Energy Tech product or system to be connected to the Energy Network, information that your energy supply contract may change as a consequence of purchasing the New Energy Tech and that it is your responsibility to contact your Energy Supplier to find out about this and whether there are any restrictions to your ability to interact with the Energy Network
- h) our timeframe for supplying and installing products and systems or commencing services to be provided to you (if there are circumstances that are out of our control that may cause delay, we will identify this)
- i) our business terms including the method of making payments
- j) details of any guarantees and warranties that apply. We will specify:
 - i. that your rights under your contractual warranty are in addition to the consumer guarantees under the Australian Consumer Law and that these are not excluded or replaced by your contract
 - ii. the specific details of the guarantee or warranty and how it applies to you
 - iii. for a New Energy Tech product or system - the name and contact details of our supplier in case you want to pursue your consumer guarantee rights under the Australian Consumer Law against that supplier or if for any reason you are unable to contact us.
- k) for a New Energy Tech product or system, information about its expected life and what is involved in disposing of it at the end of its life
- l) information about the portability of the proposed New Energy Tech
- m) information about the term of any applicable ongoing agreement and any provisions that may impact on your existing relationship with an Energy Supplier
- n) if the quote is for an installation on a strata title property and requires the approval of the Owners Corporation – the need for you to obtain that written approval and provide it to us before you sign the contract with us
- o) your cooling-off and termination rights (if applicable) under the Australian Consumer Law (including the right to terminate a sales agreement within 10 business days if the sale resulted from an unsolicited contact) and this Code
- p) any licenses, accreditation or certification that we hold that are needed to fulfil the offer we are making to you
- q) that we are bound by this Code
- r) the Administrator-approved Consumer Information Product that explains the benefits of the Code for our Customers and any other important information as applicable.

Quote – financial disclosure

10. Our quote to you will specify the deposit payable (if any) and the total price of all offered New Energy Tech including any taxes that apply. We will specify the period of time our pricing is valid for (which will be at least 10 business days).
11. Where our offer is of a Power Purchase Agreement, our quote will specify:
 - a) the energy pricing and all associated fees and charges, any rights we have to change any of these and the notice we will provide of any price change
 - b) a reasonable estimate of the aggregate amount payable over the agreement's term based on a stated, reasonable estimate of your energy consumption, including the basis of the calculation and, if applicable, the energy you will export to the Energy Network
 - c) a clear statement that you must pay the stated energy prices for the term of the contract and that this amount may not reflect or be competitive with available prices for energy from the Energy Network.
12. Our quote to you will specify site conditions and circumstances beyond our control that may result in extra chargeable work not covered by the quote (eg. fees for meter exchange/re-configuration, repairs to existing faults, and changing dedicated off-peak control devices if required).
13. Our quote to you will specify the total value of any discounts, regulatory certificates, incentives or rebates (government and non-government) or government relief schemes and how and when these may or may not apply.
14. Where we offer New Energy Tech services and periodic or intermittent charges apply, our quote will specify the amount or method of calculation, any rights we have to vary charges during the term of the contract and the frequency of bills. For example, if there will be charges for software upgrades, we will aim to provide reasonable certainty as to the cost that you will incur.
15. If we make a claim that you are likely to achieve a favourable return on your investment, we will include in our quote a return on investment calculation that is based on reasonable assumptions and where available from reputable sources. Our quote will set out our assumptions including:
 - a) system design, performance and output
 - b) government and non-government financial incentives
 - c) energy prices and usage
 - d) financing costs (if applicable)
 - e) maintenance costs
 - f) end-of-life costs
 - g) any other relevant factors.

We will also clearly state that our calculation is an estimate only and that if our assumptions prove not to be correct you may not achieve the estimated return.
16. If our offer involves us making payments to you (for example, for energy purchased from you), we will clearly specify how payments will be determined, any rights that we have to change the basis on which payments will be calculated and the frequency with which payments will be made.

Quote – design

17. If the quote includes New Energy Tech that requires custom configuration or specification and/or physical installation by us or a competent or qualified installer:
- a) we will include as part of the quote:
 - i. a site-specific installation design or plan (a sketch or diagram is acceptable) including any configuration or positioning issues and how the New Energy Tech will integrate with other New Energy Tech you may have
 - ii. a site-specific performance estimate for the New Energy Tech.
 - b) before we enter into a contract to provide New Energy Tech to you, we will complete a site-specific installation design or plan and site-specific performance estimate (both must meet the requirements of paragraph 17a)) for a non-refundable agreed fee, with no obligation on you to proceed to contract with us
 - c) we can provide a site-specific installation design or plan and site-specific performance estimate (both of which will meet the requirements of paragraph 17a)) as an initial deliverable of the contract if:
 - i. we do so before the expiry of your cooling-off period (if applicable)
 - ii. we provide you with a full refund, if within 10 business days of receiving the site-specific installation design or plan and performance estimate you notify us that you do not accept these.

Quote - connections

18. If our quote is for a New Energy Tech that requires approval from your Energy Supplier for connection to the Energy Network and/ or reconfiguration of your meter, we will also include in our quote:
- a) an offer to arrange this on your behalf and what, if any, charge we will make for doing this
 - b) an explanation of the steps that need to be taken to obtain approval and/ or reconfiguration of your meter and the relevant paperwork that must be completed and submitted prior to installation
 - c) a statement that your Energy Supplier may impose a charge for connection to the Energy Network and/or reconfiguring your meter and may change your existing energy pricing
 - d) a statement that we will support you through these steps if you decide to obtain Energy Network connection approval yourself and whether there will be any non-refundable charge for this assistance.

Contracts

19. If you accept our quote and agree to purchase our New Energy Tech, we will provide you with a written contract that is clear, uses plain language and is in legible print.
20. Your contract will meet the same requirements as for a quote (and may do this by attaching the quote with any amendments that are necessary). In addition:
 - a) your contract will include our undertaking to you to comply with the Code
 - b) your contract will provide you with a standard minimum supplier's warranty period on the operation and performance of the New Energy Tech including workmanship. The period will meet or exceed the period set from time to time by the Administrator, in consultation with stakeholders, for the particular New Energy Tech
 - c) your contract will include information about how to make a complaint and the complaint resolution process including your right to access an external dispute resolution scheme (where applicable), to take a complaint to the Administrator and to take a complaint to a government regulator and
 - d) at the time we provide your contract to you, we will also provide you with any relevant Administrator-approved Consumer Information Product. We may give these to you electronically, but if requested, we will provide them in hard copy.
21. We will not offer you a contract that involves requiring you to purchase energy or services from another supplier (called "third line forcing"), except where this is permitted by the *Competition and Consumer Act 2010 (Cth)* and we have made this clear to you.
22. We will explain the contract to you prior to you entering into the agreement. In particular:
 - a) we will draw your attention to any particular requirements of the contract that may cause confusion or disagreement (e.g. where additional fees may arise, early termination fees, end of contract payments or any difference between a verbal quote and the final price)
 - b) we will clearly explain the process for the payment and trade of any government or regulatory certificates, and of any relevant trading facility and any limitations
 - c) we will advise you that your Energy Supply contract may change as a result of purchasing the New Energy Tech and that it is your responsibility to contact your Energy Supplier to check what new pricing may be applied and, after installation of the New Energy Tech, to confirm that the agreed pricing has been applied.
23. Both of us will sign the contract and any amendments. Equivalent methods of legal agreement other than physically signing a written contract in person are also permitted (for example, electronic acceptance).



Payment and finance

24. We will issue you with a receipt for any deposit or other payment you make under the contract.
25. We may offer you New Energy Tech with a deferred payment arrangement as an alternative to upfront payment upon delivery or installation. If you are a Residential Customer and this deferred payment arrangement includes an interest component, additional fees or an increased price (see paragraph 3.n., we will ensure that:



- a) this deferred payment arrangement is offered through a credit provider (whether ourselves or a third party) that is:
- i. licenced under the NCCPA and the deferred payment arrangement is regulated by the NCCPA and the National Consumer Code ("NCC"), or
 - ii. licensed under the NCCPA or is a related body corporate (as defined in section 5 of the NCCPA) of a credit provider licensed under the NCCPA and the deferred payment arrangement is exempt from the NCC, and:
 - (A) the Administrator has determined that the credit provider is a signatory to an industry code of conduct that requires the credit provider to:
 - (I) resolve any complaints you may have using an internal dispute resolution process and if the complaint remains unresolved, an external dispute resolution process (which must include the scheme operated by the Australian Financial Complaints Authority)
 - (II) have processes to identify whether you are experiencing payment difficulties due to hardship
 - (III) offer you alternative and flexible payment options if you are experiencing payment difficulties so that you can meet your repayments
 - (IV) comply with the following sections of the NCCPA as if the credit provider was a licensee and the credit contract was regulated by the NCCPA and the NCC:
 - s 128 (obligation to assess unsuitability)
 - s 129 (assessment of unsuitability)
 - s 130 (reasonable inquiries about the consumer)
 - s 131 (when the credit contract must be assessed as unsuitable)
 - s 132 (giving the consumer the assessment) and
 - s 133 (prohibition on entering, or increasing the credit limit of, unsuitable credit contracts), or
 - (B) the Administrator has approved the credit provider's deferred payment contract in accordance with paragraph A7 of the Annexure – Code Administration. (This

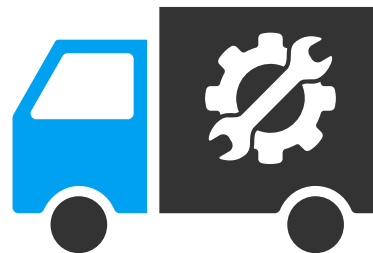
paragraph (B) is as an interim measure pending the development of an approved code of conduct that will enable paragraph (A) to apply. Paragraph (B) ceases to apply on 1 January 2021 regardless of whether a regulator approved code of conduct is in operation by that date)

- b) the term of the deferred payment contract or lease is no longer than the expected life of the product or system
- c) you receive the following clear and accurate information:
- i. the name of the licensed credit provider to whom you will be contracted for the arrangement
 - ii. a clear statement that the deferred payment arrangement is a voluntary finance option
 - iii. the proposed total cost under the deferred payment arrangement compared with the cost of that same New Energy Tech product, system or service if you were to purchase it outright on that day
 - iv. the disclosures required under the NCC, including in relation to fees and charges (regardless of whether the arrangement is regulated under the NCC)
 - v. whether at the conclusion of the deferred payment arrangement
 - you own any elements of the New Energy Tech or
 - you have any entitlement to any ongoing services or pricing and/or
 - you have the option to purchase any elements of the new Energy Tech and if so relevant details, including any associated costs, and
 - vi. a statement that questions and complaints about the payment arrangement should be directed to the licensed credit provider with whom you will be contracted.
26. Paragraph 25 does not apply if the finance is provided by a government body.
27. Paragraph 25 does not apply if we offer you, as an alternative to full payment on delivery or installation, the opportunity to make progressive instalments to us over a period of not more than 6 months, provided that the total amount to be paid by you does not include an interest component, additional fees or an increased price (see paragraph 3. n.).
28. Paragraph 25 does not apply if the Administrator is satisfied that the contract we offer you is a Power Purchase Agreement and our contract includes a commitment to try and assist you if you notify us that you are experiencing financial hardship, including by advising you of any relevant government assistance schemes and by offering you a payment plan.
29. Where we are providing an ongoing service to you and the contract allows us to change the price that we charge you, we will advise you as soon as practical and no later than five business days prior to the price change taking effect.
30. If your contract requires us to make payments to you (whether by transfer of money or by offset to a payment you make to us), we will make those payments on time in accordance with your contract. If our payments to you are calculated using an undisclosed formula, we will ensure that our payment calculation system is regularly audited by a registered company auditor to ensure that payments are accurately calculated.

Delivery, installation and safety

31. We will arrange delivery and installation (if applicable) of New Energy Tech you purchase from us within the timeframe specified in your contract, unless any delay is because of circumstances that were identified in your contract as outside our control.

32. If you purchase New Energy Tech that requires physical installation by us, we will ensure your safety and the safety of our installers. We will install in accordance with all applicable safety standards, manufacturer's specifications, relevant Australian Standards, Energy Network standards, any binding guidance issued by the Code Administrator and good industry practice, using an installer that is trained, competent and where applicable, holds any required qualification or certification to undertake the work.



Activation

33. If you authorise us to obtain Energy Network connection approval on your behalf for New Energy Tech, we will:

- a) not install or commence the New Energy Tech until approval is provided
- b) provide you with a full refund if the relevant approvals are not obtained
- c) prepare and submit within a reasonable timeframe all relevant documentation required by the Energy Supplier for connection to the Energy Network and for reconfiguration of your meter (if relevant)
- d) respond within a reasonable timeframe to any additional compliance requests from the Energy Supplier (for example, re-submitting incorrect paperwork), and consult with you if necessary
- e) keep you informed of progress at each step, including any restrictions or limitations that may adversely affect you.



34. If you take responsibility for obtaining Energy Network connection approval for New Energy Tech, we supply to you, we will:

- a) clearly explain to you each step in the process for preparing and submitting the documentation to the Energy Supplier
- b) provide you with information as to where to find and how to complete and submit paper or on-line forms
- c) provide you with expected timeframes and any deadlines for each step of the process
- d) advise you of contact details for queries or following up on progress
- e) advise of any potential problems that may arise
- f) provide you with a refund consistent with paragraph 48 if your application is rejected.

35. If you take responsibility for obtaining Energy Network connection approval for New Energy Tech and your application is rejected after you have signed a contract for that New Energy Tech, we will provide you with a refund minus reasonable expenses incurred by us to the point of termination of the contract.
36. If we supply you with New Energy Tech that needs another form of activation in order to provide you with the intended benefit, we will explain to you the steps that need to be taken and who is responsible for these. We will promptly fulfil our responsibilities and keep you informed of progress at each step.

Operating Information

37. Prior to the activation of the New Energy Tech we are providing you, we will:
- a) provide you with comprehensive information for safe and effective operation, maintenance and optimisation of your New Energy Tech
 - b) explain to you any obligations that you may have to facilitate or enable the New Energy Tech (for example, to maintain an internet connection that we are able to access)
 - c) advise you how to use your New Energy Tech and/or assess the benefit you are deriving from these. The advice will be appropriate to the New Energy Tech we are providing to you and will involve at least one of the following:
 - i. written instructions and a physical or electronically recorded demonstration (for example, an instructional video)
 - ii. providing you either with a measuring or monitoring device that connects to the New Energy Tech or with continuous access to a remote monitoring service (in either case that will facilitate accurate measurement of benefit that is based on objective standards acceptable to the Administrator) together with written instructions as to how to use that device or access that service
 - iii. a commitment to provide you with regular reports that accurately quantify the benefit that you are deriving and that meet any guidelines made by the Administrator in relation to reporting of this kind (for example, in the case of a service that is designed to reduce your energy bills by smart management of your energy consuming products).



The required information will vary depending on the specifics of the New Energy Tech but will meet the Administrator's requirements. The information may be provided to you in electronic format, hard copy or by web link or something similar. If you request, we will provide you the information in hard copy (in which case, we will provide it at least quarterly, namely every three months).

Performance

38. Our New Energy Tech will meet your reasonable expectations including but not limited to:
- a) meeting your needs as explained to us (see paragraph 7), unless we have clearly explained to you and confirmed in writing that those needs cannot be met
 - b) performing properly
 - c) reflecting any agreed contract and meeting the performance specifications outlined by us to you;

- d) fulfilling any commitments we make to you (for example, to provide access to an accurate monitoring service or regular reports that accurately quantify the benefit you are gaining)
 - e) New Energy Tech that utilises information and communications technology will be secure
 - f) all our services will be provided with due care and skill.
39. If we become aware that New Energy Tech that we have supplied to you is defective or unsafe, we will promptly tell you and offer to fix the problem if this is possible or otherwise remove the product or system from your premises and provide reasonable compensation to you.
40. If we provide you with New Energy Tech that involves the use of equipment that you own, we will do so in a way that is consistent with the equipment manufacturer's instructions and warranty requirements.

Move from premises

41. If our contract with you includes a lock-in period and imposes fees if you terminate early, and
- a) the services are not transferrable to another property
 - b) you sell or move from the property to which those services are being provided
 - c) the occupier of the property agrees to take over your contract

we will agree to the occupier of the property substituting for you under the contract and will not charge you early termination fees, unless we have a reasonable basis for refusing to contract with the occupier of your property.

Warranty claim

42. We will respond promptly to any warranty claim by you and within a reasonable timeframe implement warranty repairs and replacements, remedy service issues or provide compensation.
43. We will provide you with the name and contact details of our New Energy Tech product or system supplier in case you want to pursue your consumer guarantee rights under the Australian Consumer Law against that supplier or if for any reason, you are unable to contact us.
44. In some circumstances, you may not be entitled to a consumer guarantee under Australian Consumer Law, and in that case, you may not be entitled to a remedy, if the claim is due to something that:
- a) someone else said or did (excluding our agents or employees) or
 - b) beyond human control that happened after the goods or services were supplied (for example, an extreme weather event).



Termination of contract

45. You are entitled to terminate your contract and we will provide you with a full refund if:
- a) your contract is for the supply of New Energy Tech that requires physical installation
 - b) consistent with paragraph 17.b), we provide you with a site-specific installation design or plan and site-specific performance estimate as an initial deliverable under the contract (rather than as part of our quote)
 - c) within 10 business days of receiving our site-specific installation design plan and performance estimate you notify us that you do not accept these.
46. You are also entitled to terminate your contract and we will provide you with a full refund, if your contract is for the supply of New Energy Tech that requires physical installation and either of the following applies:
- a) we propose to significantly change the New Energy Tech installation design from that previously provided to you (whether provided in our quote or as a first deliverable under your contract) and you are not willing to accept the change or
 - b) site conditions and circumstances beyond our control result in extra chargeable work not within the contract price and we are not willing to bear those additional costs.
47. You are also entitled to terminate your contract for the supply of New Energy Tech, and we will provide you with a full refund, if we fail to meet the timeframe specified in your contract for delivery and installation (if applicable), or commencement of service of any New Energy Tech. This does not apply, however, if the delay was because of circumstances that were identified in your contract as outside our control.
48. If you take responsibility for obtaining Energy Network connection approvals and your application is rejected after you have signed a contract with us (see para 35), you may terminate the contract and we will provide you with a refund minus reasonable expenses incurred by us up to the time of the termination.
49. We will terminate your contract and remove New Energy Tech that we supplied to you and return the site to its former state, if:
- a) you have a strata title property
 - b) you were required by law to obtain the Owners Corporation written consent before installing our New Energy Tech
 - c) you entered into a contract with us to supply the New Energy Tech before obtaining that written consent and
 - d) the Owners Corporation subsequently refuses to give that consent.
- We will provide a full refund and conduct the removal and restoration at our cost, unless:
- e) we advised you of the need for written consent under paragraph 9.n) and



- f) we have proceeded with the installation on your incorrect advice that yours is not a strata title property.
50. Under the Australian Consumer Law, if the sale to you was unsolicited and you are a Residential Customer, you will be given 10 business days after you sign a contract to cancel the contract without penalty (the “cooling-off period”). If you wish to withdraw from a valid contract after the expiry of any cooling-off period, we may apply our own policies regarding fees for cancellation, provided that we specified them in the initial contract. For all Customers protected by this Code, we may only impose cancellation or termination fees that are reasonable and related to the cost incurred by us.

Customer service

51. We will provide fair terms, clear communication and maintain high standards of customer service at all times and respond courteously and promptly to any contact from you and queries you may have about New Energy Tech supplied by us to you.



52. If we have an ongoing service relationship with you and we are aware that you may be facing vulnerable circumstances (eg. illness, impairment, a victim of abuse, financial stress or needing energy for medical or life-support equipment or services), we will take additional care to respond promptly to any related issues arising from the use of our New Energy Tech.

Complaints

53. If you are dissatisfied with a New Energy Tech we offered or supplied, you can submit a complaint directly to us. A complaint may include, for example, any expression of dissatisfaction with a New Energy Tech offered or provided, with the sales process or salesperson, or with the complaints handling procedure itself.



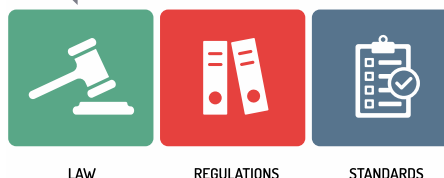
54. We will handle your complaint in a way that is fair, timely and transparent. This means that:
- we will have information readily available for you and our staff about how complaints may be made, how these are handled and available avenues to which you can escalate your complaint if you are not satisfied with our response
 - we will acknowledge receipt of your complaint as soon as possible and tell you when we expect to be able to respond to your complaint
 - we will log your complaint in a complaint’s register and promptly begin investigating the issues
 - we will aim to provide you with a response to your complaint within 15 business days of receipt of your complaint. If we do not provide you with a final response by then, we will advise you before 15 business days have passed and provide an update of progress;
 - we will provide you with a final response to your complaint within 25 business days of receipt of your complaint, unless we have both agreed to a further extension
 - if you are dissatisfied with our response to your complaint, we will provide you with contact details for escalation options including any external dispute resolution (Ombudsman) scheme of which we are a member, the State Consumer Affairs or Fair Trading body and the Administrator

- g) we will maintain appropriate record keeping of complaints and their outcomes and steps that we take to minimise similar complaints in the future.

Legal and privacy obligations

55. We will comply with all local, state and federal legislation, relevant Accreditation Guidelines, and regulations including but not limited to:

- a) The Renewable Energy (Electricity) Act 2000 (Cth) which is supported by the Renewable Energy (Electricity) Regulations 2001 (Cth)
- b) The Do Not Call Register Act 2006 (Cth) and associated telemarketing standards including permitted hours for contacting consumers
- c) Australian Consumer Law
- d) Respecting “Do Not Knock” and “No Hawkers” stickers.



56. Even if we are not bound by the Privacy Act 1988 (Cth), we will take reasonable steps to ensure the safety of your personal information and we will only use your personal information:
- a) for the purpose of providing you with a requested quote or carrying out our obligations under your contract (as applicable)
- b) for future marketing of other related New Energy Tech or providing you with information that you might reasonable expect to receive from us or
- c) to provide your personal information to a third party if you have given express permission for this.
57. We will not provide you with marketing material unless we also provide a simple, easy way for you to ask not to receive future direct marketing communications and include a clear, prominent opt-out provision in each marketing communication.

Training

58. We will train our sales agents, representatives, contractors and employees about our New Energy Tech and their responsibilities under this Code, so that they can provide you with accurate information and quality services.
59. We will ensure the safety of our installers, subcontractors and employees and demonstrate due diligence in ensuring the safety of persons under our direct or indirect responsibility.
60. Our people will be competent, appropriately qualified and have completed the relevant safety training modules (as specified by the relevant regulator or by the Administrator) appropriate to the work.

Compliance with the Code

61. We agree to comply with this Code as amended from time to time and any mandatory standards published by the Administrator on the Code website that apply to New Energy Tech that we provide. We will also ensure that our employees, contractors, agents, representatives and any other individuals

or businesses acting on our behalf do likewise. This includes third parties we engage to undertake direct marketing and sales for us.

62. We will be responsible for all actions governed by this Code, whether taken by our employees, contractors, agents, representatives or any other individuals or businesses acting on our behalf. This includes third parties we engage to undertake direct marketing for us or who we engage to install products or systems we provide to you or to deliver services to you.

Part C – Definitions

The definitions for terms used in this Code are as follows.

Administrator is the organisation with responsibility for administering the Code as set out in the Annexure – Code Administration.

Australian Consumer Law – Schedule 2 to the Competition and Consumer Act 2010 (Commonwealth).

Business day – A day that is not a Saturday, Sunday or public holiday in the relevant location in Australia.

Customer – A potential or existing Residential Customer or Small Business Customer. The term also includes other customers if their contract expressly includes that this Code applies.

Consumer Information Product – consumer information (hardcopy, web-based, electronic, etc) that is approved by the Administrator to provide independent information to assist a customer or potential customer to make informed choices about New Energy Tech.

Energy Network – Any of Australia’s principal energy transmission and distribution networks (including South West Interconnected System, North West Interconnected System, Darwin-Katherine Electricity Network, National Electricity Market).

Energy Supplier – Any of Australia’s public offer energy providers, including retailers and network businesses.

New Energy Tech are:

- a) small-scale (in-home or small business) products and systems that generate, store or trade energy away from Australia’s main transmission and distribution Energy Networks or as distributed energy resources connected to an Energy Network
- b) services that support or are closely related to those products and systems
- c) products, systems and services that monitor or manage a Customer’s usage of energy whether on or off an Energy Network
- d) any other product, system and service that the Administrator is satisfied is appropriately within this Code.

The term does not, however, include simple, low cost or off-the-shelf New Energy Tech that are within a class exemption made by the Administrator in accordance with paragraph 17 of the Annexure – Code Administration.

Examples of New Energy Tech are:

- e) distributed energy resources owned by or leased to the Customer that are connected to an Energy Network for supplementary supply such as solar photovoltaic systems, wind turbines, hydro and bioenergy generators
- f) a microgrid that may be connected or fully isolated from the Energy Network
- g) a power system for a single Customer, whether or not the Customer is also connected to an Energy Network

- h) energy management products, systems and services supplied to a Customer including home energy management systems and services, battery and other storage products, systems and services
- i) programs aimed at stabilising the supply of energy including by paying Customers an incentive to reduce their usage during critical peak periods or by shutting down or restricting the power consumption of Customer appliances during critical peak periods
- j) a Power Purchase Agreement
- k) person to person energy trading systems and services
- l) electric vehicle charging services
- m) suppliers of repair, maintenance and removal services for New Energy Tech products and systems.

These examples are not intended to limit the scope of the definition. Rather the term has been defined to accommodate new products and services as they enter the Australian market where the nature, complexity and cost is such that the Code protections are appropriate.

Owners Corporation – The body (however described) that has legal responsibility for the common property in a strata development.

Panel – The independent Code Monitoring and Compliance Panel appointed to oversee the work of the Code Administrator.

Power Purchase Agreement - An agreement for a Signatory to supply a customer with energy from New Energy Tech which may be from generation or storage equipment located on the customer's premises or remotely. This is not intended to cover energy purchased through the wholesale electricity or gas markets.

Residential Customer – A customer that is purchasing New Energy Tech for personal, domestic or household purposes. The term includes an Owners Corporation for a residential strata property and the operator of a retirement village.

Small Business Customer – A customer that is a business or not for profit organisation that employs less than 20 people. Associated entities are taken to be one entity when calculating the number of employees.

Annexure – Code Administration

Introduction

- A1. The Code is administered in accordance with the Memorandum of Understanding agreed to on 24 January 2019 by Energy Consumers Australia, Energy Networks Australia, Public Interest Advocacy Centre, Clean Energy Council, Smart Energy Council, Australian Energy Council and Renew (MOU). The MOU provides that the governance, accountability and administration structure of the Code will be guided by the following principles:
- a) Customer focused
 - b) Fair and not anti-competitive
 - c) Relevant expertise
 - d) Independent and avoiding conflicts of interest
 - e) Inclusive
 - f) Adequately resourced.
- A2. The MOU specifies that the Code will be governed and administered by:
- a) The Council, which must comprise representatives of key stakeholders including industry associations and consumer bodies
 - b) The Steward, appointed by the Council to be the legal entity responsible for the Code, for entering into any contracts related to the Code and funding any shortfall in Code revenue
 - c) The Administrator, appointed by the Council and responsible for day to day administration of the Code
 - d) The Code Monitoring and Compliance Panel (Panel) appointed by the Council and comprising industry and consumer representatives and independent persons with relevant expertise.

This Annexure to the Code expands upon the role of the Administrator and the Panel and may be revised by the Council from time to time, following consultation with stakeholders.

Applications and renewals

- A3. The Administrator is responsible for developing application forms and renewal forms for use by industry participants wanting to become a signatory to the Code (Signatory) or renew their status as a Signatory.
- A4. Where an application is made by an industry participant and the application fee is paid, the Administrator must assess whether to admit the applicant as a Signatory. In making this assessment, the Administrator must take into account:
- a) whether the applicant's processes and documents are sufficient to support compliance by the applicant with the Code (other than a provision of the Code from which the Administrator has exempted the applicant)

- b) whether the key personnel in the applicant's business have had a significant involvement in another business that became insolvent.
- A5. Where a Signatory applies to renew their status as a Signatory, the Administrator may take into account any complaints that have been made about the Signatory, whether the Signatory has co-operated with the Administrator and Panel in carrying out their responsibilities and any other relevant factors.
- A6. Where an applicant is refused admittance or renewal as a Signatory, the Applicant has a right to appeal the Administrator's decision to the Panel (a fee may be payable by the Applicant).

Deferred payment arrangement providers

- A7. Where a Signatory requests the Administrator at any time until 30 June 2020 to approve a deferred payment contract for the purposes of paragraph 25(a)(ii)(B), the Administrator must do so if:
- a) an appropriately qualified person engaged by the Administrator reviews the deferred payment contract and certifies that the contract includes undertakings to comply with the consumer protections set out in paragraph 25(a)(ii)(A)(I) to (IV) ; and
 - b) the provider of the deferred payment arrangement pays the costs of the person engaged by the Administrator to undertake that work (costs to be paid to the Administrator in advance of the performance of the work).

Fees

- A8. The Council must, on an annual basis, agree to the fees and contributions required to cover the costs of operating the Council. These shared costs include the costs of the Independent Chair and the Consumer representatives. Industry members of the Council must cover the attendance costs of their own representatives. Council members may volunteer additional contribution but are not liable for any shortfall in funding to meet the costs of governing and administering the Code.
- A9. The Administrator, on an annual basis, must review the fees payable by applicants and annual and other fees payable by Signatories, with a view to cost recovery including Code governance and administration costs. As part of its annual budgeting process, the Administrator must propose a schedule of fees and contributions to the Council for approval, at least 3 months prior to the intended date of effect.
- A10. If the Council is not willing to endorse the fees proposal, the Steward must engage an independent accountant to review the reasonableness of the fees proposal in light of the budget for the Code and, if relevant, the extent of revenue shortfall that the Steward has indicated it is willing to fund. The Steward must bear the accountant's costs. Fees for the coming year will then be set by the Administrator taking into account any recommendations made by the independent accountant.
- A11. The Administrator must publish details of fees on the Code website. A change in fees is not effective until at least 3 months after publication of the new fee on the Code website.

Code promotion and branding

- A12. The Council and the Administrator must promote the benefits of the Code to customers, to industry participants and to other stakeholders.
- A13. The Council and the Administrator must develop Code brand mark guidelines for Signatories and publish these on the Code website. The Administrator must enforce compliance with these guidelines.
- A14. The Administrator must maintain an easily accessible list of Signatories on the Code website.

Supplementary materials

- A15. The Administrator may develop supplementary materials to assist Signatories to meet the expectations of the Code. These may include written standards, guidelines, approved Consumer Information Products, checklists, templates or training. They may apply to particular technologies or systems or address particular aspects of New Energy Tech that apply across many or all types.
- A16. These materials may include any combination of:
- a) Mandatory and binding standards which must be followed where they apply
 - b) Safe harbour guidelines which provide a Signatory with an approved method of complying with an aspect of the Code while allowing for other ways of compliance
 - c) Non-binding guidance, which may be of assistance to Signatories
 - d) Independent consumer information, designed to assist consumers to make informed choices
- A17. The Administrator must consult with stakeholders (including consumer representatives, industry and government) in the development of these materials. The period of consultation may vary and must be adequate to the importance and impact of the proposed materials. In the case of materials that are intended to be mandatory and to bind Signatories, the period of consultation must not be less than 3 months and may well be longer.
- A18. Where substantive disagreement emerges in the course of the consultation over mandatory or safe-harbour guidance, the Administrator may refer the proposed material to the Panel for decision. Where a Signatory makes an application for referral, the Administrator must refer the proposed material to the Panel for decision.

Exemptions

- A19. If an applicant or a Signatory applies to the Administrator for an exemption from a provision of the Code, the Administrator may agree to an exemption if satisfied that the exemption would not unduly diminish customer protection. For example, an exemption might be sensible if:
- a) an existing Code requirement was not appropriate to a proposed New Energy Tech or a trial involving new technology or a new offering
 - b) A product or service is a free additional 'value-added' service that does not materially impact the benefit of the core offering.
- A20. The Administrator, following consultation with stakeholders, may publish a class exemption. This does not require an individual application by a Signatory. A class exemption may set out conditions required for a Signatory to be able to rely on the exemption. (For example, it is intended that the Administrator will issue a class exemption to exempt simple, low-cost or off-the-shelf products or services (say priced below \$199) for which the Code consumer protections are not appropriate. The Administrator may also publish a class exemption that permits temporary customer trials of new offerings.) The Administrator must publish class exemptions on the Code website.
- A21. Any exemption (including a class exemption) must be for a fixed period and may only be extended following review by the Administrator.

Monitoring and investigations

- A22. The Administrator must monitor compliance with the Code. This might include undertaking regular compliance audits and reviews of Signatories' systems, policies and procedures, mystery shopping, assessing customer satisfaction, analysing customer complaints and investigating repeat instances. For example, the Administrator may conduct audits of sales conducted via direct marketing.
- A23. The Administrator must develop and publish a Complaints Procedure, consistent with Australian Standard AS ISO 10002, setting out the process where an allegation of breach of the Code is made. This must provide that:
- a) a complaint may be self-reported by a Signatory or made by Customers, another Signatory, regulators or others
 - b) if a complaint is made by a Signatory's Customer, the Administrator will investigate the complaint and, where appropriate, attempt to negotiate an outcome that is fair for both the Signatory and the Customer
 - c) where the Administrator is satisfied that a Signatory has breached the Code, the Administrator will determine what, if any, remedial action or sanction is appropriate
 - d) if the Signatory wishes to do so, the Signatory may ask the Panel to review a decision by the Administrator requiring the Signatory to take remedial action or imposing a sanction on the Signatory in response to a breach.
- A24. The Administrator has the power to require a Signatory to:
- a) rectify the issues that gave rise to the breach
 - b) train staff to minimise the likelihood of repeat breaches
 - c) require sales agents to undertake an assessment and accreditation process
 - d) appoint an external auditor, at the Signatory's cost, to audit areas of activity relevant to the breach (generally required if there are more than three major breaches in a 12-month period).

The Administrator also has the power to publicise the breach, including the name of the Signatory, on the Code website.

- A25. If the Administrator requires a Signatory to undertake remedial action in accordance with paragraph A24 a. to d., the Administrator must monitor the Signatory's compliance with that requirement.
- A26. If the Administrator considers that a Signatory has breached the Code in a way that may warrant the suspension or expulsion of the Signatory, the Administrator may refer the matter to the Panel for its consideration. For example, the Administrator may do this if the Signatory fails without reasonable excuse to undertake remedial action as required by the Administrator in accordance with paragraph A24 a. to d.
- A27. If the Administrator identifies an issue that may constitute a serious or systemic breach of law, the Administrator may refer the matter to the Panel to decide whether the matter should be referred to the relevant regulator.

Panel

- A28. The Panel is responsible for:

- a) overseeing the monitoring of compliance and enforcement of this Code by the Administrator
- b) reviewing a proposed mandatory or safe-harbour standard or guideline referred to it by the Administrator under paragraph A18
- c) reviewing a decision made by the Administrator requiring rectification of a breach (under paragraph A24), if the relevant Signatory requests a review
- d) reviewing a decision made by the Administrator to refuse admittance or renewal as a Signatory if requested under Paragraph A6
- e) deciding matters of suspension or expulsion referred under paragraph A26 to it by the Administrator
- f) referring serious or systemic breaches of law to relevant regulators under paragraph A27
- g) publishing on-line an annual report about the Code's operation. This must include reporting on Code compliance to enable assessment of the Code's effectiveness and extent to which the Code is promoting the confidence of the community in New Energy Tech. The report must also set out any exemptions from Code requirements agreed to by the Administrator. It must also include each finding of breach by the Administrator or Panel and the remedial action or sanction imposed on the relevant Signatory. This information must only identify the name of the relevant Signatory if the Signatory has been suspended or expelled
- h) every 3 years, engaging an independent body to undertake a review of the Code and its governance framework including by seeking the views of stakeholders (the review report must be published on the Code website) and revising the Code in light of that review.

Signatories' obligations to Administrator and Panel

- A29. A Signatory must ensure that it takes all reasonable steps to promote the benefits of this Code to Customers including prominent links to or a display of the latest version of this Code on its online presence.
- A30. A Signatory must promptly pay annual and any other Code-related fees applicable to it.
- A31. A Signatory must comply with the Code and all standards mandated by the Administrator in accordance with the Code.
- A32. A Signatory must co-operate with the Administrator and Panel in their exercise of their powers and responsibilities under the Code.