



**COMMONWEALTH OF AUSTRALIA**  
***Competition and Consumer Act 2010 (Cth)***

**IN THE AUSTRALIAN COMPETITION TRIBUNAL**

File No: ACT 1 of 2019  
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  
Applicant: Flexigroup Limited (ACN 122 574 583)

**DIRECTIONS**

TRIBUNAL: Justice O’Bryan (Deputy President)  
Dr J Walker (Member)  
Ms D Eilert (Member)  
DATE: 15 September 2020  
WHERE MADE: Melbourne

**THE TRIBUNAL DETERMINES THAT:**

1. The determination of the Australian Competition and Consumer Commission dated 5 December 2019 granting conditional authorisation to application AA1000439 made by the Australian Energy Council, Clean Energy Council, Smart Energy Council and Energy Consumers Australia (together, the **authorisation applicants**) is varied as follows:
  - (a) the authorisation applies to the following conduct:
    - (i) the authorisation applicants and future signatories to the New Energy Tech Consumer Code (**Code**) becoming signatories to, agreeing to comply with and giving effect to the provisions of the Code;
    - (ii) the persons constituting the Administrator and Code Monitoring and Compliance Panel from time to time

performing the functions and powers given to them under the Code;

- (b) the conditions of authorisation specified by the Australian Competition and Consumer Commission are replaced by the conditions set out in Annexure B to this determination; and
- (c) the authorisation remains in force for a period of 5 years from the date of this determination.

2. The reasons for determination of the Tribunal in this proceeding are not to be disclosed to any person other than the external legal representatives of the parties in order that any party may make an application to redact or suppress any part of the reasons on the grounds of commercial confidentiality, any such application to be filed and served on or before 4pm on 25 September 2020. If no application is made by that time, the Tribunal will publish its reasons in full. If any application is made within that time, the Tribunal will determine the question of publication in the resolution of that application



*[Handwritten signature]*

DEPUTY REGISTRAR  
Australian Competition Tribunal

## ANNEXURE B

### Conditions of authorisation

#### Conditions amending the Code

1 It is a condition of the authorisation that the Code is amended as follows:

- (a) Paragraph 3(d) of the Code is deleted.
- (b) Paragraph 9(o) of the Code is replaced by the following:
  - o) conspicuously and prominently on the front page of the quote, 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
- (c) Paragraph 20 of the Code is amended by the inclusion of the following additional subparagraph:
  - e) if your contract is an unsolicited consumer agreement under the Australian Consumer Law, the front page of your contract will conspicuously and prominently inform you about your cooling-off rights (including the right to terminate the contract within 10 business days) and the manner in which those rights can be exercised.

- (d) Paragraph 25 of the Code is replaced by the following:

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, we will ensure that:

- a) the deferred payment arrangement is offered through a credit provider (whether ourselves or a third party) that:
  - i. is licensed under the *National Consumer Credit Protection Act (2009)* (Cth) ("NCCPA") and the deferred payment arrangement is regulated by the NCCPA and the National Credit Code ("NCC"), or
  - ii. has had its deferred payment contract and its internal policies and procedures approved by the Administrator in accordance with paragraph A7 of the Annexure – Code Administration
- 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 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 deferred payment arrangement should be directed to the credit provider with whom you will be contracted.

(e) Paragraph 32 is amended as follows:

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 and good industry practice, using an installer that is trained, competent and where applicable, holds any required qualification or certification to undertake the work.

(f) Paragraph 61 is amended as follows:

61. We agree to comply with this Code as amended from time to time. 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.

(g) Paragraph A7 is amended as follows

A7. Where a provider of a deferred payment arrangement requests the Administrator to approve its deferred payment contract and internal policies and procedures for the purposes of paragraph 25(a)(ii), the Administrator must do so if:

- a) an appropriately qualified person engaged by the Administrator reviews the deferred payment contract and internal policies and procedures and certifies that they require the credit provider to:
  - (i) resolve any complaints with the customer 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 the customer is experiencing payment difficulties due to hardship; and
  - (iii) offer the customer alternative and flexible payment options if the customer is experiencing payment difficulties so that the customer can meet their repayments;
- b) the provider of the deferred payment arrangement pays the reasonable 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).

(h) A new paragraph A7A is included as follows:

Where the Administrator refuses to approve a provider's deferred payment contract and internal policies and procedures under paragraph A7, the provider has a right to appeal the Administrator's decision to the Panel (a fee may be payable by the provider).

(i) Paragraph A15 is amended as follows:

A15. The Administrator may develop supplementary materials to assist Signatories to meet the expectations of the Code. These may include Consumer Information Products, checklists, templates or training.

(j) Paragraphs A16, A17, A18 and A28(b) are deleted.

(k) Paragraph A28 is amended by the insertion of a new subparagraph as follows:

da) reviewing a decision made by the Administrator refusing to approve a provider's deferred payment contract and internal policies and procedures if requested under paragraph A7

(l) Paragraph A28(g) is amended as follows:

publishing online an annual report about the Code's operation which must include the following information:

- (i) the number of applicants admitted as Signatories to the Consumer Code, the number of unsuccessful applications for admittance under the Consumer Code and the number of appeals against a decision regarding admittance, and the outcome of those appeals;
- (ii) reporting on Code compliance to enable assessment of the Consumer Code's effectiveness and extent to which the Consumer Code is promoting the confidence of the community in New Energy Tech including the number and type of alleged breaches of the Consumer Code by Signatories;
- (iii) reporting on each finding of breach of the Code by the Administrator or Panel and the remedial action or sanction imposed on the relevant Signatory (classified by reference to suspensions, expulsions and other remedial action - this information must only identify the name of the relevant Signatory if the Signatory has been suspended or expelled);
- (iv) reporting on exemptions from Code requirements agreed to by the Administrator;
- (v) reporting on the Administrator's approval of unregulated consumer credit contracts, policies and procedures including the number and identity of such credit providers approved.

(m) Paragraph A31 is amended as follows:

A31. A Signatory must comply with the Code.

2 For the avoidance of doubt, the NET Code may also be amended to revise paragraph numbering and cross-referencing in light of the foregoing amendments and to correct typographical or grammatical errors.